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Managing Democratization: Achievements and Limitations in AK Party Era

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ABSTRACT *During its first two terms (2002-2012), AK Party adopted a range of constitutional democratization reforms connected with the EU accession process covering issues such as: freedom of thought, faith, expression and assembly, the legal and practical improvements regarding the Kurdish issue, opening process on the Alevite question, a new libertarian stress and vision on minority rights, and diminishing, even eliminating, the prerogatives of the military. Nevertheless, since 2013 there have been big challenges triggered both by internal and external developments, which have caused a rippled path for democratization. This paper aims to provide a comprehensive documentation on the question of democratization on the one hand and a holistic assessment and perspective of the current situation, on the other.*

Conceptual Frame and Turkey's Stand

When reviewing the near political history of modern Turkey, it will be substantive to notice that Turkey has had a long path towards gaining the institutional democracy it now enjoys, passing through breakdown periods caused by coups every ten years consistently in its short history of the multi-party rule since 1950. Thus, referring to Huntington's classification on waves of democracy,¹ Turkey has suffered much in attaining the transition from an authoritarian centralist pattern to a regime based on principal tenets of democracy. In his coding, the democratization has been a nonlinear process, as waves of democratization have been followed by reverse flows in successive periods, the transition from the single party has symbolized a fluctuant path due to the settled perceptions of political culture in Turkey which have conventionally been of an undemocratic nature.

The global flows have had sprawling impacts with a 'snowballing' effect, but also with the warning that a snowball can melt in unfavorable environments.² In this regard, the environment to meet the requirements for the settlement

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The dichotomous and ambivalent situation of achieving social modernization on one side, while having structural failures to make its modernity more democratic, liberal, plural and multicultural on the other, has been a systemic obstacle for deepening and consolidation of Turkish democracy

can serve as leverage for politics to build political-economic institutionalism in a country. Such as Kant's reputed "perpetual peace"³ based on democratic/liberal values in foreign affairs, which assumes there is a positive correlation between the democratization of political cultures and improvement towards peaceful struggles in international politics. Moreover, processes regarding the transformation of the sociological base in the form of urbanization, globalization and postmodernism within the political-economic and philosophical contexts respectively, create a new view for the assessment of the democratization of politics. By this means, apparency and efficiency of a transparent and independent civil society could set itself to manage the legal and political relationship between the state and the individual and to insure the preservation of basic rights pertaining to the individual and the society as a whole, against any sort of abuse. As the sociological dynamics have to be more open and transparent to allow access for all individuals, the identity-based issues come to the fore with the new challenging questions, such as pluralism and multiculturalism.

Taking into consideration the above, when adapting the democratization waves of the world political culture to the Turkish experience, an inconsistent picture emerges. Namely, the inter-war period was the foundation period of a new state, which mainly resorted to the top-down approach in the creation of a new nation. This was in contrast to the period of efforts for consolidation of democratic institutionalism throughout the Western world, towards which the new republic also aspired. Thus, it can be stated that the Turkish experience has been through both a historic and unparalleled process in terms of democratic mentality and methods, which have been an ever-repeating structural deficiency for the Turkish political culture in the following periods. The consequence here has been important and critically deliberating, leading to challenge and question the structural grounds and root causes; which facilitate un-

of democracy in political culture is related with the economic sphere, sociological transformation, international politics and communicative processes as well. The liberal democratic notion tries to get a consistent system of equations by taking the combination of the interrelated multiplier effects to get a democratic institutionalism, both at the national and global scale. Therefore, the political transition in favor of democratization within a country works vis-à-vis an optimal level of economic development; which means in a mutually reinforcing frame, economics



As a part of the democratization process, the AK Party government abolished the State Security Courts (DGM), through which the military tried cases involving crimes against the security of the state.

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derstanding of the fluctuant and non-institutional democratization path that has been experienced in Turkey over time. As Schumpeter calls democracy as ‘institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote,’⁴ Turkey, with its fragile civil political culture regarding the democratic governance, lacks the *sine qua non* conditions towards institutionalization of democracy. The dichotomous and ambivalent situation of achieving social modernization on one side, while having structural failures to make its modernity more democratic, liberal, plural and multicultural on the other, has been a systemic obstacle for deepening and consolidation of Turkish democracy. This has manifested itself in three main bases: i) democratic struggle and subsequent regime breakdowns with total damages to the political, economic and social development process of the country, ii) emergence of identity-based conflicts, iii) problem of the strong state mode of governing.⁵

While becoming more globalized in its economic, cultural and foreign relations; being profoundly affected by the Europeanization process resulted in the emergence of new perspectives on political culture forming a new urbanized sociological structure. This had direct impacts, along with political-economic dimensions such as the growth of new, mainly small- and medium-sized, economic actors together with all the socio-economic implications to the urban transformation process in Anatolian cities. In addition, a post-modernized

Turkey since the 19th century has been a country that felt the effects of the military in all spheres, as it was the earliest modernized institution in the country. By that, the army has taken the leadership of direction over society and politics

context has opened up a new field for political identities; all of which may appear as an indication of development on the one hand, while as a fragility in terms of generating substantive democracy based on a genuinely *pluralistic* political order which will gain meaning in relation to the infrastructure of the country, on the other hand. But, in any case, the transformation has led to the increasing power shift in Turkey by its political-economic base and mentality codes towards the sphere

of bureaucratic governance and civil society. What is certain is that it will not be able to sustain a state-centric secular, homogeneous modernity pattern in Turkey for much longer.

The democratization perspective and transformation in Turkey within the AK Party era can be historically classified in three main stages. The first is 2002-2007, a period which can be seen as mostly dominated by EU accession process and democratization reforms in parallel. The second period is 2007-2013, which can be stated as the phase of the evolution of the Copenhagen criteria into the Ankara criteria –the initiated reform process to be institutionalized in line with the internal dynamics of the country particular to the Turkish case (such as civil-military relations, new political, legal and cultural envisagement including the Kurdish issue, minority rights, problematic of freedom concerns etc.). And the last one is from 2013 to today, a full-blown period with new developments –internally and externally- and a rippled path on the issue of democratization.

When dealing with the first two periods together, the priority agendas to be faced with are the transformation of the nature of civil-military relations and the new political, legal and cultural envisagement emerging on the basis of human rights and sphere of freedoms. In this regard, AK Party adopted a range of constitutional and legal democratization reforms connected with the EU accession process covering issues such as freedom of thought, faith, expression and assembly, the legal and practical improvements regarding the Kurdish issue, opening process on the Alevite question, a new libertarian stress and vision on minority rights, and diminishing, even eliminating the prerogatives of the military which historically and conventionally dominated the civil, social and cultural sphere in Turkish politics.

As Öniş puts, certainly, the most important dimension of change in a positive direction has been a dramatic decline in the power and influence of the mil-

itary in Turkish politics, Turkey has experienced frequent breakdowns of its democratic regime by military interventions and even in normal times, the military's active involvement in Turkish domestic politics, self-declared guardianship position on issues relating to secularism and national unity as well as its constitutional standing and institutional standing over civilian political actors such as the status of the Chief of the Armed Forces and the National Security Council (NSC).⁶

Parallel to the civilianization of civil-military relations, a new door was also opened in which the old Kemalist reflexes with its hardline interpretations based on strict "secularism" politics and one-dimensional identity politics gradually began to lose power and influence within the state structure, and left its place to a more diversified understanding. So, within the context, the civil-military relations throughout the history of the modern republic, particularly since the multi-party rule of the 1950s and transformation process in the last ten years are worth discussing more deeply, expressing the baseline, which the various components of the democratization issue directly and depend on as a prerequisite.

The Civil-Military Relations and Transformation

As modern armies become professional, they have achieved an important and sustained position within the public bureaucracy and society as well. This position has been on the agenda of many countries, regardless of the developed-developing distinction. However, while the system of institutionalization and civil society is in a better situation in modern countries, the functioning of the decision making and implementation mechanisms are found to be less effective, limited, and defined, leaving the routine only for exceptional circumstances; the effect of the army in the countries that are in the process of modernization has created more and more situations that can go beyond the borders.

Thus, Turkey since the 19th century has been a country that felt the effects of the military in all spheres, as it was the earliest modernized institution in the country. By that, the army has taken the leadership of direction over society and politics. Rapid radical transformation requires an active role from the armed forces. Hence, it has become a tradition for the armed forces to regard the project of modernization and the republican regime as collateral not only in the narrow sense, but also as the guardian of the state. In this context, Duverger says that armies always have a potential for instigating coups because of their well-equipped and disciplinary structures. The size and boundaries of the political influence of an army vary according to the political culture, socioeconomic structure and level of institutionalization of the polit-

ical system in that country.⁷ However, the Turkish Parliamentary (TBMM/TGNA) Research Commission Report codes the most important motives of the militarization activity as the presence of silent or visible consent, which operates on the intellectual, political, economic and social level in the process of militarization.⁸

The civil-military relations established in Turkey during the presidencies of Atatürk and İnönü are related to the totalitarian-penetrative model in which the soldiers are in the domain of the ruling party.⁹ In this period, Turkey was a one-party state and the military was a supportive factor. Transition to multi-party governance has revealed many repercussions in different institutions. One of the areas where these effects have been seen is the interaction of the army with politics. Thus, during the multi-party period, Turkish politics has been subjected to military interventions every ten years.

The definition of *national security*, which was already widely considered in the 1961 Constitution, has been described as the creation of an imaginary enemy by virtue of the 1982 Constitution, which protects itself against internal and external enemies, whose existence is permanently kept on the agenda and maintains the so-called “threat to society.” So, the army has become more autonomous.¹⁰

This catastrophic and negative environment was ready to change by the 2000s as a result of domestic and international dynamics. The changing international environment with the end of the cold war, the spread of globalization and democratization as well as the importance of civil society and the EU membership process, while having new internal dynamics in the form of a strong party rule which made serious improvements in the political, economic and social situation of the country. In the first years of the 2000s, there was an acceleration in Turkey’s EU accession process. Many steps have been taken in order to regulate military-civil relations by reducing the political position of the army, which was contrary to the democratic standards that the EU insists on in this period, within the framework of constitutional and legal reforms. In order to have a stable and institutionalized democracy based on the Copenhagen criteria, civilian politics, which should be adopted in the EU adjustment process, became inevitable, so that relations between civilian and military authorities changed in favor of civilians.

The European Union assessed Turkey’s progress in civil-military relations from 1998 to 2000 and emphasized that civilian control over the army was insufficient. In all subsequent progress reports after 2000, the influence of the NSC (MGK) on Turkish political life was emphasized and stressed that the NSC is the main actor in determining national security policy and plays an active role in many issues that concern political life.¹¹


In the face of these criticisms, the AK Party government made important reforms in order to make civil-military relations more democratic and to balance it in favor of civilians through the 7th Integration Package. With these reforms, it was aimed that the NSC would perceive the army as an establishment and to terminate some functions with the executive authorities.¹²

In this context: (i) The General Secretary of the NSC was to be elected from among the civilians aiming to distance the general secretariat's administration from the army. In addition, the authority of appointment of the NSC General Secretary was taken from the Chief of General Staff and given to the Prime Minister,¹³ (ii) The frequency of NSC meetings was changed from once a month to once every two months, thus the activity of the Board, which also would not specify the agenda, was reduced, (iii) Amendment to the Law on the National Security Council and the Secretariat General of the National Security Council was the most important reform carried out by the 7th Integration Package.

With this amendment, the authorities of the NSC have gained only a recommendatory power on the issue of the establishment, determination, and implementation of the national security policy and a clear initiative has been presented to the Prime Minister and the Council of Ministers on the implementation of NSC resolutions. Thus, the NSC has become just a legal advisory body.¹⁴ Parallel to the changes made in the powers of the NSC, the duty of the NSC Secretary General is limited to carrying out the secretariat services of the establishment and fulfilling the duties given by the board and the laws.

The package also contained the regulations towards auditing of the military budget by the Court of Accounts thereafter and removal of the jurisdiction of military courts on the crimes, specified in Article 58 of the Military Criminal Code, committed by civilians during peacetime. These two changes are serious democratic steps taken in the field of civilianization of the state process.¹⁵

Besides, with the 8th Package, which was accepted on May 2004, the NSC representatives from the Radio Television Supreme Council (RTÜK) and the Higher Education Council (YÖK) were removed, trying to reduce the influence of the military on education and media. In addition, the provision that “the law on the control of the state property owned by the armed forces on behalf of the Grand National Assembly is regulated by law in accordance with the confidentiality principle required by national defense services” has been



The first and most critical step taken by the AK Party has been ending the 23-year long state of emergency on November 30, 2002

As one of the most large-scaled regulative frameworks within the latest period, the Democratization Package in 2013 has created various fields for the democratic civil societal norms, including legal and administrative regulations

removed from the article regarding the Court of Accounts. Finally, Article 143 of the Constitution was abolished and the legal existence of the State Security Courts was abolished and an important step was taken in the field of criminal justice.¹⁶

Another important development was the abolition of the Protocol on the Security, Public Order and Assistance Units (EMASYA), which was signed between the army and the security organization in 1997 and gives the military the authority to intervene in social events when it is deemed necessary; which indirectly and potentially opens the way for a coup. In this context, in 2010, the EMASYA protocol, which was criticized in European Union reports, was abolished.¹⁷

However, one of the most important turning points in civilianization of the Turkish politics has been the September 12 Referendum of 2010. With this constitutional amendment package, the structure of the Constitutional Court (AYM) and the structure of High Council of Judges and Prosecutors (HSYK) have been changed, the powers of the military courts have been limited, the civil courts have been allowed to appeal against the decisions of the Supreme Military Council (YAŞ), the trial of those who carried out the 1980 coup was opened, the jurisdiction of the President of the Grand National Assembly and the senior military bureaucrats has been given to the Constitutional Court and the right to individual referral to the Constitutional Court was granted.¹⁸

The subsequent Progress Reports by the EU Commission were addressed to civilian-military relations, stressing the increasing convergence towards the Copenhagen criteria for the democratization of political relations. In this context, points of criticism regarding the ongoing effects of the military on the civil and educative sphere were addressed via legal regulations taken through 2012 to 2015. One of the legacies of the 1980s coup atmosphere to control the society, courses on National Security Information given at all the high schools throughout the country, was abolished by the AK Party government on January 25, 2012,¹⁹ which also demonstrated a symbolic change of pattern for the civil democratization perspective.

What is more, in 2013, the regulation amending the Article 35 of the Turkish Armed Forces (TSK) Internal Service Law was accepted. By this crucial change, the definition regarding the mandate of the Armed Forces has been



Following the abolishment of the ban on government employees wearing a head scarf in government buildings, four female MPs attended a parliament session on October 31, 2013 wearing headscarves for the first time.

ADEM ALTAN / AFP / Getty Images

shifted from “to ensure the protection of the Turkish homeland and Republic of Turkey” to “to defend the Turkish homeland against the threats coming from abroad, to provide deterrence with strengthening of the military power, to do missions abroad by the decision of the Turkish Grand National Assembly and to help ensure international peace.”

In addition, by the Homeland Security Package accepted in March 2015, the Police and Gendarmerie’s Duty and Authority has been reorganized and redefined, paving the way for the increase of the civilian control over the gendarmerie. With this package, the appointment and relocation of the gendarmerie personnel in the provinces was tied to the Minister of Interior, and the appointment of gendarmerie commanders except at the level of the Generals are to be made by the provincial Governor.²⁰

As a general view, hence, Hale and Özbudun make the relationship between the armed forces and the government, with the beginning of the AK Party government in three rounds: i) controlled disagreement period, from 2002 to the end of 2006, when the military accepted the legitimacy of the government and the policymaker’s authority in the debate, even in controversial cases, while continuing to pressure the government on issues such as secularism and the protection of the unitary state; ii) challenge and crisis period, as appeared clearest in April 27, 2007 press release on the website of the army commanders, which made clear their opposition to the government; iii) withdrawal pe-

riod, after 2007, even though the tension between the army and the AK Party government persisted, the commanders agreed that they should remain in the background.²¹

The New Political Envisagement and Human Rights Issue

By the new political envisagement, civil society became more active, apparent and effective in shaping and affecting the socio-political issues through reinforcement of accountability and checking mechanisms within the democracy frame. In this context, numerous legislative measures have been taken to ensure compliance with international human rights legislation. Unprecedented practices have been adopted in terms of ensuring civilian control of the military bureaucracy. At the same time, efforts have been made to build a political structure based on fundamental rights and freedoms in order to strengthen the rule of law and normalize social life. On the other hand, legislative amendments have been made in order to create solutions for the problem of multiple human rights, such as the extension of the freedom of ethnic and religious minorities and the freedom of expression in the context of international norms.

The first and most critical step taken by the AK Party, sitting in the seat of power in November 2002, has been ending the 23-year long state of emergency on November 30, 2002. Thus the eastern and southeastern regions were liberated from the pressure of the extraordinary regime, ensuring the start of normalization of the social and cultural life. Focusing on the reforms to be carried out in the European Union progress process, the government decided in September 2003 to support the implementation of human rights reforms via the Reform Monitoring Group. The Convention on the Rights of the Child/The Protocol on the Optional Protocol to Children's Armed Conflicts which is part of international legislation on the protection of the rights of the child was ratified by Turkey in October 2003. In the same year, the Gendarmerie Human Rights Violations Investigation and Evaluation Center (JIHIDEM), working under the Ministry of Interior, was established. This institution has been to prevent human rights violations caused by staff working in military units and to develop law enforcement and human rights awareness within the society.²²

Procedures for military courts have been harmonized with the civil courts, with the amendment made in January 2004, the Military Penal Code and the Law on the Establishment of Military Courts and the Rules of Procedure.²³ The ratification of the Protocol No. 13 of the European Convention on Human Rights, which lifted the death penalty in all circumstances, was completed²⁴ and entered into force in October 2005. One of the arrangements that extend the rights of detainees, the Regulation on Arrest, Detention and Questioning has been amended in January 2004. The registry system of the detained

persons has been renewed and the medical examination of the detainees has been opened to surveillance independent of the police force.

The Law on Information, which was prepared for securing the right to obtain information, was enacted. Law on the Compensation of Losses Resulting from Terror and Terrorist Struggle has been accepted in July 2004 and access to search for victims has been opened. The Turkish Criminal Law (TCK) was rewritten in accordance with the basic principles of the international human rights law and adopted in September 2004 as new. The Turkish Penal Code introduced significant penal sanctions for crimes committed against genocide and humanity, which are among the crimes defined in international criminal law. The new TCK, which includes measures to prevent the punishment by torture and ill-treatment, is generally being considered as consistent with international standards.²⁵

Legal changes have been made in order to broadcast and learn languages and dialects apart from Turkish with new language courses opened,²⁶ with radio and television broadcasting in languages such as Kurdish, Arabic, Laz being established.²⁷ The new Press Law has been passed, the practices that have led to the closure of publishing houses and the confiscation of the means of printing have been abolished and a series of arrangements have been made in order to strengthen the freedom of the press.

The so-called twin contracts –The United Nations International Convention on Personal and Political Rights and the International Convention on Economic, Social and Cultural Rights– have been ratified and transformed into domestic law text within the scope of Article 90 of the Constitution. Turkey has ratified the European Social Charter and has implemented regulations to ensure gender equality. Work has continued to extend the freedom of belief and worship to include the demands of religious minority groups. In order to prevent non-violent thinkers from being condemned in the context of freedom of expression, it was emphasized in September 2004 that they were amended in Article 216 of the Turkish Penal Code and that punishment should be implemented solely if the action turned into an open and close danger in terms of provoking hatred and enmity.²⁸ While the closure of political parties has been made more difficult, the conditions for establishing associations have become correspondingly easier. Amendments to the Law on Meetings and Demonstrations have largely abolished the provisions preventing freedom of peaceful

Noting all the developments regarding the expansion of the field of cultural and political rights, it should be stressed that strangely, the most troubled process that the country has recently entered into is precisely in this period

assembly. Along with the new Law on Associations, which came into force in November 2004, public authority control over the associations has been significantly alleviated.²⁹

Turkey, which seeks to strengthen its domestic legal system through international human rights mechanisms, signed the Optional Protocol to the UN Convention against Torture in September 2005. In July 2005, the Law on the Handicapped was adopted in order to protect and promote the rights of persons with disabilities. In this context, it is striking that this kind of discrimination is one of the categories of crime that fall under the scope of the Turkish Penal Code at the same time as securing the right of the disabled to not be discriminated against in social life.

The circular issued by the Ministry of Justice in January 2006 included instructions to the Office of Prosecution to consider the European Convention on Human Rights (ECHR) legislation in the context of press freedom and freedom of expression and demanded monthly monitoring of criminal investigations into the visual and written media. In September 2006, another amendment to the Housing Law removed discriminatory provisions against the Romany people.³⁰

During this period, special courses and broadcasts were opened in languages and dialects other than Turkish, as noted above. For the first time in the history of TRT, two channels of broadcasting in Arabic and Kurdish have been active.³¹ Legislative amendments have been put into effect, allowing for meetings in languages other than Turkish in prisons and the right of defense in languages other than Turkish. In this context, by expanding the field of democratic politics, political parties have been allowed to make propaganda in languages other than Turkish. One of the most critical breaking points within this period is, as a result of the 2007 referendum, the president was to be elected by the society directly hereinafter which would bring a more democratic and open process regarding the democratic participation norms.³²

An important step was taken to remove the headscarf ban in the educational institutions, which has been one of the chronic human rights problems of Turkey. As the result of the decision of the Parliament in February 2008, the amendments of the Article 10 of the Constitution regulating the “equality under the law” and Article 42 regulating the “right for education” have been made in guaranteeing the individual and public liberty. This process has been nourished by the regulation within the Democratization Package in 2013, removing the headscarf ban in the public sphere, as well.³³ Within the context of strengthening the legal measures for the protection of freedom of expression in 2008, Article 301 of the Turkish Penal Code has been amended and it has been subject to the permission of the Minister of Justice to initiate criminal in-

vestigations under the scope of the article. Thanks to the amendment made in Law No. 5737 on the Law on Foundations, the scope of freedom of association has been enlarged and new provisions have been introduced such as the acquisition of property of foundations, the provision of income from abroad and the facilitation of cooperation with foreign foundations.

The Alevi Workshops, launched in 2009, have been welcomed with interest as the main problems of Alevis come on the agenda and produce permanent solutions.³⁴ It has been expected that along with the Alevis these changes will also apply to the Assyrians, Nusayris, Yezidis and Chaldeans, new steps are to be taken towards the realization of legal regulations in order to benefit from worship, education and organization in the direction of their religious beliefs.

As one of the most large-scaled regulative frameworks within the latest period, the Democratization Package in 2013 has created various fields for the democratic civil societal norms, including legal and administrative regulations. The core critical improvements regarding civil rights, other than the subjects mentioned above are as follows; facilitation of organization of political parties, removing barriers to membership in political parties, increase of penalty in the case of crimes with hatred in Turkish Penal Code, expanding the scope of discrimination offenses and increasing deterrence, formation of the Anti-discrimination and Equality Board, taking opinions of political parties, professional organizations and trade unions furthermore when meeting place and route are determined, extending the duration of meetings and demonstrations, removal of Government Commissar on meetings and demonstrations, creation of opportunity to teach different languages and dialects at private schools, giving legal assurance to personal data, establishing a Law Enforcement Surveillance Commission for the police force, return of Mor Gabriel Monastery (Deyrulumur) property to the Monastery Foundation, establishment of the Institute of Romance Language and Culture.³⁵

Noting all the developments regarding the expansion of the field of cultural and political rights, it should be stressed that strangely, the most troubled process that the country has recently entered into is precisely in this period. The most problematic and deadlocked topic of the recent history of Turkey, efforts to solve the Kurdish issue entirely on a social consensus base, was accelerated.



It is certain that these illegitimate initiatives, which were experienced at the same time as the greatest social, political, legal, cultural and economic barriers of Turkey's near historical testimony were at the point of being eliminated, is no coincidence



Resisting the July 15 coup attempt, people gather on top of a Turkish army tank at Atatürk Airport in Istanbul on July 16, 2016. DEFNE KARADENİZ / Getty Images

In this regard, the last ring of the process, which had been through several attempts before but could not be achieved due to various reasons, was the “solution process,” on a broader frame and basis called the “democratic opening,” which would later be referred to by the then Prime Minister Erdoğan as the “national unity and brotherhood project.” The government’s commitment to finding a peaceful solution led it to make direct negotiations with the leader of the PKK Abdullah Öcalan, openly declared for the first time by Erdoğan in 2012. Öcalan, who was arrested in 1999, brought to Turkey and allowed to meet with his lawyers and his family only, was to be allowed to meet with BDP/HDP delegations on a regular basis. Various state institutions and intelligence officials also held regular meetings with Öcalan in this period to end the violent process. And these efforts gave its first concrete fruit on March 21, 2013, in Nevruz with Öcalan’s call to PKK “to bring all its military elements out of Turkey.” Following this call, the PKK took a ceasefire decision. This process, called the “solution process,” had overcome a series of crises in itself. Despite all of this, in 2015, Öcalan’s call to congress to make a decision to leave the military elements of PKK with the letter written on Nevruz again came to the point of making a congress call.

While the process was still on and hopes were looking towards a solution, the first important sign of what the future years would bring was given on February 7, 2012. The leak of Oslo peace talks held with the PKK, by the National Intelligence Service (MİT), in order to end the armed conflict entirely and the state prosecutors subsequently summoning of the undersecretary of the MİT

Although the official declaration of the state of emergency took place after the coup attempt, at the intersection time period of July 15, with the trench war process the country had already lived up to extraordinary circumstances with many unusual incidents that would shake any country at any historical time

in February 2012 were indications of a new and difficult phase for Turkey. Following this, Turkey witnessed the Taksim Gezi Park incidents, attempts to spread the violence throughout the country in May 2013, and just within that year, the initiative to take power by the Gülenist organization illegitimately via its control on the judiciary and security mechanism in the events of December 17-25, 2013.

It is certain that these illegitimate initiatives, which were experienced at the same time as the greatest social, political, legal, cultural and economic barriers of Turkey's near historical testimony were at the point of being eliminated, is no coincidence. For, the statements of the PKK officials in the early days of the assassination of three PKK women in Paris, the question marks created by the Gezi incidents and the repercussions of the power initiatives of the Gülenist civil-military bureaucrats to the peace process, were among the crises encountered.

The biggest crisis affecting the peace process was the entry of the ISIS to Kobani in September 2014, a northern district of Syria, just near the Turkish border. Women and children escaping from Kobani were sheltered in Suruç, Şanlıurfa. The HDP counterpart stated that the government should follow a more active policy for helping Kobani. On the news that Kobani is likely to fall, the HDP Central Executive Committee called for action and took to the streets with harsh and threatening calls by Demirtaş, co-chairman of HDP. In the end, forty-one people lost their lives in the violence that took place from October 6-8, 2014. Three soldiers who were shopping in a bazaar in Yüksekova were shot in the back, and the police chief was attacked in Bingöl. Eventually, the events ended in one night with a letter sent by Abdullah Öcalan to HDP, but the Kobani incidents surely were the greatest breaking point that the peace process had experienced up to this point.

The violent action by the PKK again started up, it began with Kobani and became systematic after the June 7, 2015 general elections. This new strategy, known as "trench efforts," was implemented by the PKK as a new urban

There is a need for producing a new strategy on the methods to meet the institutional democratic deficit, which would have the potential of being one of the most fragile points for the country in the near future

war, which as was understood later, had been prepared for while the solution process was still ongoing. The struggle of the law enforcement officers to demolish mines and armed munitions laid down over time became a very difficult and challenging situation both for themselves and the people living in the region, which naturally meant a fragile environment in terms of preservation of human rights. The large bill being confronted was, the loss of lives, the relocation of civilian populations to other safe havens, destroyed houses and disrupted cities. Here it should be noted that Turkey, within this period, was sociologically shaken due to the fact that the soldiers they sent from almost every region lost their lives in such an asymmetrical situation created by the PKK, which, ironically had been interlocutor on the road to a peaceful solution. Hence, the long-term outcome is that no more constructive contact with the PKK, even the HDP³⁶ remains and the only response is to be a military one. This, of course, cannot give a concrete and clear picture of a permanent peace settlement. But nevertheless, contrary to some outside comments made, it does not constitute a situation similar to the 1990s, but rather that it indicates a new phase of transition and that a much clearer human-oriented and civil rights-based approach prevails throughout the operations performed by the state units compared with the past, which provide hopeful signs about the state's responses. The crucial point here is that while monitoring the state's systematic reflexes, the importance of punishment of individual rights violations originating from the state units with necessary criminal sanctions is maintained. Here it cannot be said that the state is adequately transparent to the public at the point of openness, which is one of the basic points that appeared in the reports of the European Commission and the penalties coming from the ECHR due to the inaction of the government towards these issues.³⁷

The process starting with the trench operations and ensuing developments within the period of just one year showed that Turkey was going to have a troubled process in political, economic and social terms. The Gülenist structure, an expansionist and schismatic organization within various departments of the state established over the previous 40 years, acted to seize power again through the military coup attempt on July 15, 2016, as a continuation of its power struggle that first appeared clearly in the December 17-25 period. The organization, which had been operating for many years with a secret strategic structuring method, had founded a considerable network due to the lack of merit-based appointing in the state apparatus and consequently consolidated

its power within the army, police, judiciary and intelligence agencies over the years. At first called a “parallel state structure” by then Prime Minister Erdoğan and then officially so³⁸ in the state’s documents, the Gülenist organization proceeded to evolve into a terrorist organization (known as FETÖ) in around two years,³⁹ as brutally confirmed by the coup attempt on July 15. The heavy loss of the attempt is as follows: 62 police, 6 soldiers, 183 civilians, a total of 251 losses, and 2196 injured people, just within 15 hours on that night. In 5 days, the state gave its first reaction by declaring a state of emergency on July 20, to be extended for the seventh time, as of May 2018, based on Article 120 of the Constitution regulating “the conditions in the case of widespread violent movements to remove democratic regime and fundamental rights and freedoms, or when public order is seriously deteriorated due to violence.”⁴⁰

Although the official declaration of the state of emergency took place after the coup attempt, at the intersection time period of July 15, with the trench war process, just in an 18 month period (June 2015-December 2016), the country had already lived up to extraordinary circumstances with many unusual incidents that would shake any country at any historical time.⁴¹ In the period between June 7, 2015 elections and the December 31, 2016 İstanbul Reina nightclub attack, 27 major terrorist attacks, including serious suicide bombings, were carried out by the PKK and the ISIS in various cities,⁴² which resulted in the death of 511 innocent people.

It would be necessary to mention that from the government’s standpoint, the assessment of the state of emergency, declared after the coup attempt, must be evaluated in totality, with comments to illuminate the integrated accumulation of experience achieved in a short period of time and dominated by the sense of salvation and survival for the state. Of course, the most important and primary issue of this situation is the complete removal of the FETÖ elements from the state structure.

The legal and administrative outcome in the one-year period (July 2016-July 2017), according to Bekir Bozdağ, Minister of Justice at that time, is: the number of people who have been committed to legal proceedings is 168,801, the number of detentions is 50,504, the number of released with judicial control is 48,371, and the number of arrest warrants is 8,069.⁴³ The number of dismissals and suspensions from various units of the state is 142,648, while 33,506 of these have been reinstated after the investigation. The actions have been implemented to achieve the ultimate goal of elimination of the subcomponents of the *parallel state*, including soldiers, policemen, teachers, academics, judges, prosecutors, experts, journalists and public officers of different degrees in various government institutions. In total, the proportion of dismissals within the state mechanism is 2.94 percent.⁴⁴ Additionally, one important aspect within this period is regarding the future of thousands of institutions affiliated with

the FETÖ, operational in many different areas. Lastly, The Ministry of National Education (MEB) announced that a total of 2,274 institutions affiliated with FETÖ were closed, just within the educational field.⁴⁵ The closed or confiscated institutions' operative range is so wide and diverse, including hospitals, hostels, study centers, foundations, associations, universities, unions, media institutions, radio and television channels, publishing houses and trading/commercial companies. This aspect, while on the one hand, is directly related with the economic dimension regarding both the negative macro and micro-economic impacts to the economy in terms of the real sector's sensitivities and employment market; on the other hand, has created a serious social cost stemming from the vital nature of economic necessities to individuals, families and the society. Thus, the state has to deal with all this and surely has to take into account, for the future projections as well as for today's requirements and realities, in a manner to minimize the current cost. The criticisms have been concentrated at this very point.

The post-coup attempt period is being completely managed via delegated legislation (KHK), being issued based on the state of emergency law. To clear up, neither taking the decision to declare a state of emergency, nor the issuance of delegated legislations based on it, can be described as illegitimate within the legal frame in terms of principle and procedure.⁴⁶ Namely, in efforts to remove the deep structural gap as soon as possible, the state is leaning on the constitutional framework and the area that social legitimacy has provided to it. But it is clear that there is a need for producing a new strategy on the methods to meet the institutional democratic deficit, which would have the potential of being one of the most fragile points for the country in the near future. Some reactions in the aftermath period of the coup attempt show the necessity of reconsideration of methods and the way in which KHKs are being operated. The crucial and risky points for a democratic stand, in this regard, are: (i) performing all the transactions through the regulatory transaction –the delegated legislations (KHKs)– that should normally be done by personal transactions, with the result that thousands of people can be removed from public service overnight with a KHK, and the same thousands of people in the event of a change of government can as easily be returned to public service with another KHK or with another law, and this could lead to confusion between the criminals and the innocents on the lists; (ii) labeling those dismissed due to membership of and/or affiliation to so-called terrorist organizations, without being devolved to the legal process; (iii) resorting to large volumes of legal and administrative measures without considering the highly probable mid and long-term social costs; (iv) outflow of the process beyond the scope of the KHKs, which is, in nature, legally legitimate by means of being directly based on the Article 121 and 91 of the Constitution which regulate the conditions of declaring the state of emergency and issuance of delegated legislations, but on a particular and specific subject.

It is possible to take a double-sided look –macro and micro perspectives– at those situations where the state structure is almost completely reversed. From a macro window, we reach a state survival-based perspective, stated by the government as a situation in which many implementations within the context of a state of emergency arise out of necessity and are executed for an interim period. A second window is to approach the situation from the micro-position, asking whether there is a systematic situation that opens the door for individual violations while attempting to provide a balance between freedom and security, and how to prevent individual violations within the process. Then the question is whether they have to be structurally mutually exclusive parameters. The answer to this question will at the same time be the answer to the question about the depth, diversity and the future of the democracy. But at the moment there is a sufficiently dusty brownout in this chaotic situation that makes it quite difficult to distinguish a black-and-white picture in positioning the democracy and making strict and definite provisions upon that base, although the situation has been treated by the western media in this way even from the first hours of the coup attempt.⁴⁷

It should be noted that the most efficient projection to avoid and eliminate similar illegitimate violent attempts is the creation of a human-oriented formulation to balance between security and freedom

Future Projections

Indeed, the most important and primary point to stress is that democratization first needs a change of mind which Turkish political culture has reached to a certain level in terms of, neither imposing an identity nor identifying a definition of a *desirable* citizen, no longer acceptance of understanding for the state that denies needs and demands of their citizens in an authoritarian manner, making the public sphere a hell for those who are not akin to the self-defined *desirable* and *acceptable* citizen profile. The three main issues which are related and contained within the sphere of identity, cultural rights and political rights points out a change of minds, which is a necessary and, by nature, long-term and bidirectional process. This is the only possible way that new reforms, new rights and freedoms would inevitably take their place in Turkey's agenda, as politics gains more power as a way of solving problems and a method of seeking citizens' rights.

Secondly, the way and methodology of thinking should be revised on the basis of what ought to be seen as the milestone of the issue and accordingly be debated. To do this, pointing out methodical and institutional frameworks

To make this process comprehensive for all the components of society, it is imperative that the public-civil society dialogue should be advanced in the coming period and that the opinions and proposals of civil society organizations should be taken into consideration adequately by the public administrative units

not given up their traditional attitudes and habits that make it difficult for the human rights reforms to be implemented in their proper and intentional manner.

Nevertheless, there has recently been confusion on the future projections of AK Party's next policy implications concerning the expansion of basic civil rights and the realm of freedom also including following the path of the Kurdish issue and other various identity-based prospects. This produces an open-ended potential tension line, even unacceptable waves of violence as recently seen in Taksim Gezi Park incidents or the trench efforts which in the last analysis, like other terrorist attacks performed by the PKK, were illegitimate assaults to the democratic norms and institutions. Hence it should be noted that the most efficient projection to avoid and eliminate similar illegitimate violent attempts is the creation of a human-oriented formulation to balance between security and freedom, in the sense of opening the doors of an environment conducive to dialogue which will serve to marginalize all the terror-backed entities or political stands.

In this regard, the development of peaceful means based on human rights law to include political, cultural and economic freedoms should be accelerated. The right to education in the mother tongue should be implemented in such a way as to encompass all educational institutions and to be sufficiently ex-

and arrangements while explaining a social phenomenon should be the starting point, instead of perceptions and abstract explanations. In this regard, the situation that the AK Party was trying to realize in the first two stages is precisely these institutional arrangements. Herewith, the point that overlaps when going to the third stage is that the traditional reflexes appear again and the confusion about the response that the AK Party will give to this new situation, hence the balance on reformism and security has neither theoretically nor practically been properly operated.

The third point linked to this regard is emerging questions on some basic issues and how to respond to them. For instance, one may seriously discuss the question whether all these legal proceedings and institutional arrangements have been reflected in practice. Moreover, in addition to structural problems, it seems that the military and civil bureaucracies still have

panded. Recognition of the right of defense and access to public services in the mother tongue, via legislation implemented in 2013, is a positive development in this regard.

Herewith, the necessary improvements should be made in order to protect cultural diversity and to develop the fundamental rights and freedoms of minority groups within the framework of international standards. Judicial reforms must continue uninterrupted, and the legal gaps between domestic law norms and international human rights law must be closed quickly. The legal provisions restricting freedom of expression should be cleaned out entirely in accordance with international standards and a permanent legal framework should be developed.

All legal instruments to strengthen civilian control of the armed forces and to abolish military intervention tools and bases to the civilian political sphere should be used effectively. In this context, it has been widely expected that the September 12 and February 28 coup investigations should be completed in line with the rule of law and fair trial criteria, hence vitally punishment of coup crimes as a *sine qua non* condition for settlement and institutionalization of democracy within the country. Therefore, the ascertainment of alleged crimes by an independent and impartial trial will strengthen the confidence in the rule of law.

To make this process comprehensive for all the components of society, it is imperative that the public-civil society dialogue, which has been successfully carried out in the preparation of various legal regulations that directly concern human rights, should be advanced in the coming period and that the opinions and proposals of civil society organizations should be taken into consideration adequately by the public administrative units.

In this respect, without excepting a grand vision towards regaining the social cohesion, albeit ideological differentiations among different social and political bases, one should reconsider the way and depth of the reformist model, starting by adoption of an entirely new constitution, holding apart from the political controversies, to regenerate a social sense of belonging for all the components of the society.

Historically speaking, because none of the three Republican constitutions of Turkey (those of 1924, 1961 and 1982) was made by a freely chosen and broadly representative constituent or legislative assembly through a process of inter-party negotiations, but rather were comprised of undemocratic texts solidifying the authoritarian state structure as well as bureaucracy and military tutelage,⁴⁸ Turkey's need for a civil compromise constitution will also mean getting rid of the undemocratic baggage of the past. ■

Endnotes

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36. HDP's high vote rate in the elections of June 7, 2015, and its entry into the parliament was read as a promising development for many people in terms of expansion of a peaceful and pluralistic politics which automatically would serve to marginalize the PKK. But the result was not so. HDP could not make a clear distinction between itself and the PKK which the peaceful democratic politics strictly requires, and even did not avoid calling for violence and being directly in contact with terror-backed entities both within the Kobani process and aftermath by various influential actors, even including the co-chairs of the party, Demirtaş and Yüksekdağ. But despite all, the process in which the government and even other political actors have not been able to deal with the HDP –as still having 54 members within the parliamentary– politically, creates a fragile structure for democratic politics and must be resolved within the democracy frame, surely by extracting all elements of violence.
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haber/gundem/fetopdy-silahli-teror-orgutu-olarak-tescillendi-260962.html. This situation also presents some results in the sense of slowness and lack of law reflex in the country. Of course, without forgetting that the legal mechanism has been paralyzed by being dominated by the parallel structure throughout the years, it is not surprising in this manner in which a photo comes out that feeds and explains each other.

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41. As an exemplary case to provide an insight: France's declared state of emergency, after the terrorist attack in Paris on November 13, 2015, lasted for 23 months, with the consequences; 4469 addresses raided, 25000 people have been watched/monitored, 19 sanctuary/place of worship were closed down, 75 zones were built up as security zones. Besides, the powers and restrictions imposed by the state of emergency were included in the new anti-terrorism law. According to the new arrangement, many powers of the judicial authorities were transferred to the governorships. Numerous security measures, such as address raids, calls, security zone announcements and house arrest, among the state of emergency applications, have been granted to the authorization of the governorships. Governorships will also have the authority to close the worship places including mosques. Any "writing," "speech," "idea and theory" that will support or propagate terrorism will be the reason for closing the worship places. "Fransa OHAL Bilançosunu Açıkladı," *Anadolu Agency*, (November 3, 2017), retrieved November 18, 2017, from <http://aa.com.tr/tr/turkiye/fransa-ohal-bilancosunu-acikladi/955991>; "Fransa'da OHAL Kalktı," *Euronews*, (November 1, 2017), retrieved November 18, 2017, from <http://tr.euronews.com/2017/11/01/fransada-ohal-kalkti>.

42. In 2015: June 5 Diyarbakır, July 20 Şanlıurfa-Suruç, October 10 Ankara. In 2016: January 12 İstanbul-Sultanahmet, January 13 Diyarbakır-Çınar, February 17 Ankara, March 13 Ankara-Kızılay, March 19 İstanbul-Taksim, April 26 Bursa, May 1 Gaziantep, May 12 Diyarbakır-Sur, June 7 İstanbul-Vezneciler, June 8 Mardin-Midyat, June 28 İstanbul-Atatürk International Airport, August 10 Diyarbakır-Sur, August 10 Mardin-Kızıltepe, August 15 Diyarbakır, August 18 Elazığ, August 20 Gaziantep-Şahinbey, August 26 Şırnak-Cizre, October 9 Hakkari-Şemdinli, November 4 Diyarbakır-Bağlar, November 11 Mardin-Derik, November 24 Adana, December 10 İstanbul-Beşiktaş Vodafone Arena Stadium, December 17 Kayseri, December 31 İstanbul-Ortaköy Reina Night Club.

43. "15 Temmuz'dan Sonraki Gözaltı ve Tutuklu Sayısı," *Vatan*, (July 7, 2017), retrieved December 12, 2017, from <http://www.gazetevatan.com/iste-15-temmuz-dan-sonraki-gozalti-ve-tutuklu-sayisi-1082736-gundem/>.

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46. According to Article 121 of the Constitution, the authority to issue the state of emergency delegated legislations belongs to the "Council of Ministers convened under the presidency of the President." Additionally, Article 91 regulates the necessity conditions of jurisdiction for issuance of delegated legislations, where in ordinary situations to be issued by the TGNA, whereas no need for this in extraordinary cases. In that case, there is no contradiction to Constitution in issuance of the delegated legislations after July 15. Because the Council of Ministers, which was convened under the presidency of the President, declared a state of emergency with the decision of July 20, 2016 and No. 2016/9064 before these KHKs were issued.

47. It will be questioned, in this sense, whether the reflexes of the western media and politicians are really based on a 'democratic sensitivity' to the issue or a manipulation of perception based on prejudices and bad intentions. For a detailed review on the subject, see, İsmail Numan Telci, İbrahim Efe, Tuncay Kardeş, İsmail Çağlar (eds.), *15 Temmuz Darbe Girişimi ve Batı Medyası*, (Ankara: SETA and Sakarya University Middle East Institute, 2017); and Sabiha S. Gündoğar and Ayşe Yırcalı, "Batı Darbe Testini Geçemedi," *Al Jazeera Türk*, (July 22, 2016).

48. See, Ergun Özbudun, "Turkey's Search for a New Constitution," *Insight Turkey*, Vol. 14, No. 1 (2012), pp. 39-50.