



Middle East
Centre

THE STATE OF DEMOCRACY IN TURKEY

INSTITUTIONS, SOCIETY AND FOREIGN RELATIONS



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The State of Democracy in Turkey: Institutions, Society and Foreign Relations

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Introduction

Katerina Dalacoura & Hakan Seckinelgin

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Turkey is facing a critical political turning point. The rupture of the Gezi protests of May–June 2013 was followed by a spate of corruption allegations against the AKP (Justice and Development Party) in December 2013 and the unleashing of a power struggle between the AKP and the Fethullah Gülen movement. The successes of the AKP in the local elections of March 2014 and in the vote of August 2014, which saw its leader, Recep Tayyip Erdoğan, rise to the presidency with a large percentage of the vote, were followed by the loss of a parliamentary majority in the national elections of June 2015. The failure of the political parties to form a government after the vote meant that the country went through new elections in November 2015. The AKP won the elections with increased majority. These developments are taking place within an increasingly troubled domestic context, with the peace process between the government and the Kurdish minority collapsing and the ugly spectre of violence and war once again haunting the country. Violence and war are also affecting Turkey from the south, with the Arab uprisings of 2011 having unleashed turmoil in the Middle East region as a whole and particularly in neighbouring Syria.

The current juncture of Turkish history, following 13 years of uninterrupted AKP parliamentary dominance, offers an interesting vantage point from which to ponder the question of Turkish democracy. The balance sheet, as always, is a mixed one. The political success of the AKP has been impressive: it is rarely that a party has increased its majority while in government, as the AKP did in the second and third contests it faced, in 2007 and 2011, following the initial victory of 2002. The length and endurance of the AKP's electoral success have eliminated the need for coalition governments. This has offered the country a period of extended political stability which has not only allowed the economy to thrive but may also have contributed to the maturation and smoother functioning of state institutions and political processes. More intangibly, popular engagement and a sense of participation may possibly turn out to have increased the sense of ownership of the political process in wide segments of the Turkish public.

The greater positive contribution to Turkish democracy of the 13 years of AKP government, however, must be that it has broken the Kemalist establishment's hold on power. Whatever our assessment of the values, practices and ideas of any given political formation or party, we must agree that democracy requires political pluralism. If democracy is seen as the most important value and goal for a polity, then alternation in

government is necessary. The AKP has represented a counter-narrative to the Kemalist establishment in Turkey, being, as it is, a party with Islamist roots (though it rejects the label of an Islamist party itself). It has also embodied the advent of a political, social and economic counter-elite. The defanging of the Turkish military and its being dragged down from its pedestal as the guardian of the Turkish state have been the main outcome of this alternation. Whatever the true motives behind this development, it can only be a positive one, given that in a democracy there must be civilian oversight of the army. The same can be said about the opposition to the AKP: it is admittedly in a position of weakness currently but when that is overcome, and it reaches the point of being able to challenge the AKP, it will have done so on the back of its own efforts to convince and mobilise the Turkish public – not with the support of the Kemalist establishment or a sense of entitlement.

The other side of the balance sheet, however, is long and growing at an alarming rate. If the arrival of a counter-narrative and a counter-elite is a healthy sign, their continuing dominance is beginning to be problematic in itself: to put it simply, the AKP has been too powerful for too long for the good of Turkish democracy. There are two issues here: majoritarianism and Islamisation. With each year of its being in government, the AKP has used the support of the majority of the electorate to disregard the views of and indeed trample on the minority. The rule of law, freedom of the press and the separation of powers have increasingly suffered, as seen in the Ergenekon trials and the witch-hunt against the Fethullah Gülen movement. Turkey is notorious for imprisoning and persecuting its journalists. The government, particularly in the person of prime minister and later president Erdoğan, is emitting a more and more intolerant and authoritarian discourse. An additional worrying sign is a creeping Islamisation not only of the public sphere but also of social life, education and culture. The areas of women, gender and sexuality are of particular concern here. Even in the complex sphere of foreign policy, one can observe a sectarian (Sunni) element in operation. With regard to the most important problem facing Turkish democracy, namely the Kurdish issue, hopes that there would be progress in resolving it were dashed in 2014–15. In addition, Turkey remains divided along ideological, as well as ethnic, lines, with the split between Kemalists and Islamists – and the suspicion, unease and disquiet it brings with it – remaining unbridgeable. This is an obstacle to the smooth running of a democratic polity which requires a considerable degree of consensus and cooperation.

The major questions which surround the future of democracy in Turkey are about institutions and attitudes. The progress achieved over the past few decades, and, indeed, over the past few years, in that direction must not be underestimated. However, the flaws and problems remain profound, and there has been regression in many areas. It is clear that institutions are still not sufficiently robust and the toleration of difference not sufficiently developed for Turkey to be said to have achieved the status of a mature democracy.

It is to address as many aspects of the above issues as possible that the Middle East Centre and the Chair in Contemporary Turkish Studies at LSE organised a panel discussion and a workshop on the state of democracy in Turkey on 19–20 March 2015. The panel addressed the questions of women, popular attitudes towards democracy and state–civil society relations. The workshop focused on state institutions and the rule of law (the constitution; the judiciary, the legislature and the separation of powers; security sector reform); civil society and political culture (the political opposition; minority issues; LGBT rights and gender); and the question of democracy in the context of foreign relations (the influence of international norms and institutions on legal reform, the impact of the EU accession process and the question of the Middle East). We were honoured by the attendance of an impressive range of academic participants, although unfortunately Professor Talip Küçükcan of Marmara University was unable to attend.

A selection of the papers presented at the panel and workshop is published here, under the auspices of the Middle East Centre. They do not represent all our discussions but focus on some of their key aspects. Deniz Kandiyoti's paper on the gender wars in Turkey argues that the politicisation of gender issues is 'triggered by the fact that stirring up moral anxieties over women's conduct and propriety had become one of the key pillars of the AKP's populist discourse: a discourse that pits a virtuous "us" – the real people – against an immoral "them"'. The paper tracks the gains in terms of women's rights in the early years of the AKP and their unravelling in the later AKP period. Examining the impact of legal reform and the role of civil society on human rights, Emma Sinclair-Webb 'reflects on how Turkey's presentation of legislative changes as progress under the scrutiny of the EU, UN and Council of Europe helped skew the facts and divert attention from the lack of institutional underpinning for reform, the lack of political accountability, judicial independence and oversight mechanisms, and other structural factors with implications for a culture of rights'. She argues, in a nutshell, that 'a legalistic approach has substituted for a real commitment to reform'. Meltem Müftüler-Baç argues that 'in 2015, it is possible to witness a different outcome: a stalled negotiation process with dim prospects for Turkey's accession to the EU, and a backsliding into authoritarianism in the country'. She tracks the impact of political conditionality by the EU on domestic democratic reform in Turkey and its unintended consequences, which include majoritarian authoritarianism. Since 2011 in particular democratic consolidation 'has taken a nosedive'. Yaprak Gürsoy, writing on security sector reform in Turkey, argues that despite some gains in civil–military relations (though civilian control over the military is not complete), reform in the police and intelligence sectors has not resulted in democratisation, mainly because the motives behind the reform have been politically charged, with the aim of 'creating loyal security services'.

The Gender Wars in Turkey: A Litmus Test of Democracy?

Deniz Kandiyoti

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Introduction

On a freezing cold day on 21 February 2015 a group of men wearing skirts marched towards the iconic Taksim square:¹ they were protesting the brutal attempted rape and murder of Özgecan Aslan, a 20-year-old student from Mersin, whose mutilated and partly burnt body was discovered in a riverbed on 13 February. This came on the heels of nation-wide demonstrations staged by women's groups: among their striking slogans was 'Özgecan is not our lament but our rebellion.'

Gruesome sexual assaults and murders of women are, alas, quite commonplace throughout the world. These seldom lead to overtly political contestations. In Turkey, however, things rapidly escalated into full-blown attacks on the current regime and its policies. How do we account for this hyper-politicisation? Does the realm of gender-based violence and women's rights serve to articulate deeper layers of disaffection? What does that tell us about the state of democracy in Turkey?

Before moving on to these critical questions, I would like to examine briefly the range of reactions elicited by this tragic event, since they provide some important clues about the struggles over the soul of the Turkish polity. One set of reactions focused on how to segregate women better in order to protect them from such assaults (such as proposals for women-only pink buses or separate carriages on the subway system). Some politicians, such as Aysenur Islam, the family and social policies minister, even called for the reinstatement of the death penalty, which was abolished in 2004 as a part of the democratisation process set in motion to meet European Union standards.

A diametrically opposed reaction came from those who mounted a virulent critique of the type of society and mentality that puts women in peril *unless* they are segregated. A great furore was created by the president's own words when he stated that he condemned violence against women because 'men are the custodians of women' (*kadınlar erkeklerin emanetidir*) and have a duty to protect them.² This triggered howls of protest

¹ Hürriyet Daily News, 'Turkish Men Wear Skirts in Protest for Victimized Women', *Hürriyet Daily News*, 21 February 2015. Available at <http://www.hurriyetdailynews.com/turkish-men-wear-skirts-in-protest-for-victimized-women.aspx?pageID=238&nID=78661&NewsCatID=339> (accessed 6 October 2015).

² Ezgi Başaran, 'Feministim, Size Emaneti Gösteriyorum!', *Radikal*, 18 February 2015. Available at http://www.radikal.com.tr/yazarlar/ezgi_basaran/feministim_size_emaneti_gosteriyorum-1295587 (accessed 6 October 2015).

from women's rights defenders at the demeaning implications of this statement, and a demand for rights, not protection. Feminists were reprimanded by the president for having 'no relation to our religion and our civilisation' (*ya senin bizim dinimizle medeniyetimizle ilgin yok ki*). He also bitterly resented the politicisation of this issue, apparently unaware that this might be the harvest of seeds planted under AKP (Justice and Development Party) rule.

These debates had clearly struck a chord. On 8 March, International Women's Day, television channels were beaming not only demonstrations and events (including a men's run 'against violence') but an announcement by the prime minister, Ahmet, that he was embarking on a new 2016–19 action plan on 'Fighting Violence against Women'.³ The president delivered an address vowing to make the elimination of violence against women his personal mission – in the same way, he said, that he had earlier put his weight behind a campaign to combat smoking.

In what follows, I would like to argue that the politicisation marking these debates was in no small measure triggered by the fact that stirring up moral anxieties over women's conduct and propriety had become one of the key pillars of the AKP's populist discourse: a discourse that pits a virtuous 'us' – the real people – against an immoral 'them'. Before elaborating on this theme, it may be pertinent to chronicle the gradual unravelling of women's rights between 2002 and 2015.

On a Slippery Slope: The Unravelling of Women's Rights

During the early years of the AKP regime the women's movement in Turkey achieved significant gains in the sphere of legal reforms. Between 2002 and 2004 a vigorous campaign led by a coalition of women's and sexual liberties groups – the Platform for the Reform of the Turkish Penal Code – resulted in the adoption of a draft law on 26 September 2004. With the reform of the civil code in 2001 that preceded these amendments, the most progressive pieces of legislation since the republican reforms of Kemalist Turkey were adopted.

Turkey was accepted as a candidate for EU membership in December 1999 and was therefore required to bring its legal, political and economic system into alignment with EU standards. Quite clearly, the women's movement had seized this moment as a window of opportunity to press for further demands. However, the members of the group that had initiated demands for reform – the Women's Working Group on the Penal Code (WWRG) – were stonewalled in their attempts to seek a dialogue with the new AKP government and finally had to resort to a public media and lobbying campaign, expanding their initiative to form a broader national platform. These efforts were successful.

³ Anadolu Agency, 'Turkish Leaders Celebrate Women's Day, Promise Better Living Conditions', *Daily Sabah*, 8 March 2015. Available at <http://www.dailysabah.com/nation/2015/03/08/turkish-leaders-celebrate-womens-day-promise-better-living-conditions> (accessed 6 October 2015).

At this stage, support for gender-equality platforms played well for Turkey in the international arena. During the first term of the AKP (2002–7) Turkey took a lead role for the empowerment of women in the US-led Broader Middle East and North Africa Initiative (BMENA) in the context of the Democracy Assistance Dialogue (DAD). The reforms of its civil and penal codes furthered its attempts to meet the criteria for EU accession, accelerating the already existing efforts of the women's movement in Turkey. In 2009, a Parliamentary Committee on Equal Opportunities for Men and Women was established for the first time. Turkey was the first country to ratify the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO), the Istanbul Convention, in 2012.

This intensive period of engagement of women's non-governmental organisations (NGOs) with state authorities goes some way towards explaining the mood of utter consternation provoked by then Prime Minister Recep Tayyip Erdoğan when, in the course of a consultation meeting with women's NGOs (some 60 organisations were present) on 18 July 2010, he declared: 'I do not believe in the equality of men and women. I believe in equal opportunities. Men and women are different and complementary (*mütemmin*).'

This intervention signalled that regardless of Turkey's signatory status to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Prime Minister had chosen to nod in the direction of *fitrat*, an Islamic tenet that attributes distinct and divinely ordained natures to men and women.⁴ Women's principal, and preferably sole, vocation should be home making and motherhood. This has now become such an established tenet of public discourse that the period when it still had shock value seems like a distant memory.

Institutional changes followed. The General Directorate of Women's Status and Problems, the national machinery for the promotion of gender equality, established as a requirement of the CEDAW process, was created in 1990. Women's NGOs were actively incorporated in policy formulation and in lobbying activities. The General Directorate was abolished in 2011 and replaced by the Ministry of the Family and Social Policies, where discrimination against women was placed alongside the protection of children, the disabled and the elderly, clearly marking it out as a social welfare issue. Women were being cast primarily as objects of 'protection' rather than fully fledged civic subjects.

This already polarised context was further inflamed by the fact that the embarrassing Uludere incident in December 2011 (where 34 Kurdish smugglers were killed near the Iraqi border after the Turkish military mistakenly thought them to be Kurdistan Workers' Party (PKK) militants) was rather unexpectedly turned into a debate about abortion and a Turkish woman's right to choose. Speaking to a 26 May 2012 meeting of the AKP's women's branches in Ankara, the Prime Minister made a connection between abortion and the murder of 34 civilians. 'I see abortion as murder', he told the gathered women. The Prime Minister further suggested that abortion and Turkey's

⁴ Deniz Kandiyoti, 'A Tangled Web: The Politics of Gender in Turkey', 50.50 *Inclusive Democracy*, 5 January 2011. Available at <http://www.opendemocracy.net/5050/deniz-kandiyoti/tangled-web-politics-of-gender-in-turkey> (accessed 6 October 2015).

high rate of caesarean section (C-section) births, which he claimed make it harder for a woman to give birth again, were part of a 'hidden' plot to reduce Turkey's population. The Health Minister compounded matters by stating that women who had become pregnant as a result of rape should still give birth, and let the government take care of their babies. Predictably enough, this led to women's protest demonstrations bearing slogans such as 'Prime Minister Hands off Our Bodies' and, more mischievously, 'Tayyip the Vagina Vigilante' (*Tayyip Vajina Behçisi*).

It is worth noting that that no significant legal changes followed these debates. There is little need for changes on the statute books for actual practices to change on the ground. It is now a matter of routine that public hospitals work with *de facto* directives that restrict access to abortions⁵ and discourage C-sections. However, despite Erdoğan's declared aim to raise 'a pious generation', overt legislative actions such as lowering the age of veiling in schools to 10 years old were gradual and sporadic (although new legislation has been gathering pace in the field of education). Instead, public space became saturated with messages and exhortations (which I have dubbed *amr-bil maruf* by stealth elsewhere)⁶ targeting the life worlds of citizens by monitoring their lifestyle choices, such as limiting access to alcohol, proscribing displays of intimacy in public or attempting to ban co-ed dorms for university students. It is perhaps no surprise that youth protests (including the forms of expression in evidence during the Gezi events of the summer of 2013) targeted the hectoring and moralistic tone of the head of state on occasions when he took on the role of the strict and scolding paterfamilias.⁷ However, the special appeal held by the policing of the comportment of women cannot be simply attributed to enforcing norms of Islamic modesty but constitutes, as I shall attempt to show, an important part of a multi-faceted political field.

The Siren Song of Populism: Drawing a Veil over Class ?

When Turkey's deputy prime minister, the soft-spoken and urbane Bülent Arınç, declared in the summer of 2014, during a public address marking the Bayram festivities at the end of Ramazan, that women should refrain from laughing in public and must remain chaste (*iffetli*) at all times, he created quite a stir in both the local and international media.⁸ If we take the trouble to analyse his address more closely, the Deputy Prime Minister's injunction against female laughter turns out not to be a

⁵ Some cases have received a great deal of publicity because of the deleterious consequences for the women concerned: Dilara Gürcü, 'Erkek ellerini Ayşe Kocaoğlu'nun bedeninden çektik, sıra geri kalan tüm kadınların kürtaj hakkında!', *Blog Yazarları*, 26 February 2015. Available at <http://t24.com.tr/yazarlar/dilara-gurcu/erkek-elleri-ayse-kocaoglundun-bedeninden-cektik-sira-geri-kalan-tum-kadinlarin-kurtaj-hakkinda>, 11357 (accessed 6 October 2015).

⁶ Deniz Kandiyoti, 'The Travails of the Secular: Puzzle and Paradox in Turkey', *Economy and Society* 41/4 (2012), pp. 513–31.

⁷ Deniz Kandiyoti, 'Contesting Patriarchy-as-Governance: Lessons from Youth-Led Activism', *50.50 Inclusive Democracy*, 7 March 2014. Available at <http://www.opendemocracy.net/5050/deniz-kandiyoti/contesting-patriarchy-as-governance-lessons-from-youth-led-activism> (accessed 6 October 2015).

⁸ Agence France-Presse in Istanbul, 'Turkish Deputy Prime Minister Says Women Should Not Laugh Out Loud', *Guardian*, 29 July 2014. Available at <http://www.theguardian.com/world/2014/jul/29/turkish-minister-women-laugh-loud-bulent-arinc> (accessed 6 October 2015).

simple call for Islamic propriety, but part of a broader package containing some of the key ingredients of the AKP's populist appeal. First, he introduced a touch of nostalgia for an age when 'young girls used to blush and lower their eyes when someone looked at them' – presumably an age of superior Ottoman morality unsullied by the evils of modern Turkey. More intriguingly, he condemned the excessive use of cars, and the consumption of lots of petrol, as well as the frequent use of mobile phones. This was clearly a call against consumerism and frivolous leisure, pointing to women as the perpetrators of such acts of frivolity and waste. Could the Deputy Prime Minister have been reassuring his conservative popular base that he endorses the Islamic values of sobriety and lack of ostentation by targeting women as reckless consumerists? If so, why?

Populism AKP-style relies heavily on a distinction between 'us', the 'real' people (God-fearing, AKP-voting Sunni Muslims), and a 'them' consisting of all political detractors and ethnic and religious minorities, cast as potentially treasonous 'others'. It is the person of the leader who represents 'the national will' and creates a direct bond with the people, bypassing the cumbersome institutions that provide the checks and balances characterising modern democracies – hence his current drive for an executive and powerful presidency.

This populism also rests upon a politics of *ressentiment* that encourages the projection of hatred onto groups or classes seen as privileged and exclusionary and as oppressors of the national 'underdog'. The country's metropolitan, secular middle classes have long been routine targets of this discourse. However, they are currently eclipsed by the members of the so-called 'parallel state', a reference to the Gülen movement that is seen to be behind the alleged corruption scandal that erupted on 17 December 2013. The leader routinely plays up his humble origins, uses street language, projects a macho image and mocks the educated classes.⁹ This, no doubt, serves to cement the identification between the leader and the popular masses.

However, after over a decade in power, deepening class cleavages between the AKP ruling elite and their less advantaged followers have become glaringly evident. These have been papered over with reference to shared religiosity and cultural affinity as well as dislike and mistrust of assorted 'others', seasoned with messianic faith in the Turks' vocation as leaders of all Muslim nations. This latter imagery was flamboyantly on display when the President greeted Mahmoud Abbas on a state visit flanked by 16 costumed warriors representing the states founded by the Turks.

⁹ During the presidential campaign of 2014 he derided the opposition candidate, who is a professor and speaks three foreign languages, by interjecting 'So what? Are we looking for an interpreter?' Mocking diplomats and others as 'monser' (from the French *mon cher*) is part of the same arsenal.

The story of capitalist accumulation in Turkey under the AKP is no longer a tale of self-reliant, pious Anatolian entrepreneurs making their way in a new market economy, but one of sustained government intervention in the economy in support of politically privileged entrepreneurs.¹⁰ No corruption scandal was needed for ordinary citizens to take note of the luxurious homes, expensive cars and lavish lifestyles of the new rich. Indeed, the sight of expensively veiled women in designer sunglasses, driving SUVs and talking on their mobile phones, is quite commonplace. This raises alternative interpretations of the Deputy Prime Minister's intervention concerning women's laughter: invoking women's comportment and (lack of) propriety is a useful means of consolidating support across classes around a deeply shared value – the control of women.

Protecting the Deserving: The Populist Deal for Women

How do women voters respond to the AKP's political message? An exit poll conducted during the presidential elections in the summer of 2014 showed that 55 per cent of women voters had voted for Erdoğan as against 48 per cent of men. Simply put, Erdoğan would not have got through at the first round if it hadn't been for the female vote. This finding may come as a surprise on the back of my earlier analysis that suggests we have been witnessing an unravelling of women's rights. It is therefore important to capture the complex dynamics behind women's loyalty to the AKP, which rests on both a new sense of entitlement and a deep familiarity (if not comfort) with a patriarchal trade-off that offers conditional protection in exchange for acquiescence and consent.

Having come to power with a resounding majority, the AKP was able to embark on publicly funded social welfare programmes. Welfare entitlements that made up 0.5 per cent of GDP in 2002 rose to 1.5 per cent of GDP by 2013. Sixty per cent of welfare recipients are women. The family is key to benefit provisions in Turkey and women are principally targeted as mothers and as carers of children and the elderly, sick and disabled.¹¹

Moreover, women are not just passive consumers of benefits but also active participants in daily interfaces with public bodies at the local level. For instance, municipalities which previously provided only limited charity aid and in-kind poverty relief now have significant financial resources at their disposal and offer additional social services and benefits. In Istanbul, the most populous city, for instance, a wide network of Neighbourhood Lodges (*Semt Konakları*) tied to different districts offer diverse amenities, from soup kitchens, showers and laundries to health (screening services, vaccination and advice) and educational services (vocational training for adults, literacy classes for women, nurseries and tutorial help for school-age children), not to mention cultural activities such as concerts, conferences and excursions. Women of the popular classes, especially those of rural extraction, experience a new sense of 'citizenship through

¹⁰ Ayşe Buğra and Osman Savaşkan, *The New Capitalism in Turkey: The Relationship between Politics, Religion and Business* (Cheltenham, 2014).

¹¹ For a collection of essays on the gendered impacts of social policy see Saniye Dedeoğlu and Adem Yavuz Elveren (eds), *Gender and Society in Turkey: The Impact of Neoliberal Policies, Political Islam and EU Accession* (London, 2012).

entitlement'. Furthermore, although the funding for these activities comes from taxpayers' money, sometimes augmented by charitable giving, the recipients perceive it as the exclusive result of party largesse – a belief no doubt cemented by the distribution of in-kind help for winter fuel and basic foodstuffs from party coffers, especially during election periods.

Nonetheless, the proof of women's loyalty does not lie in voting behaviour only, but in their demonstration that they are among the worthy who have absorbed the party's message about their God-given vocation as mothers and home makers and as those who understand that only the deserving will be protected. Two starkly contrasting episodes illustrate this proposition. The first relates to an alleged attack on a veiled woman in front of Istanbul's Kabataş dock at the height of the Gezi protests. Although later challenged by CCTV footage as possibly bogus, this incident had the then Prime Minister fuming over the affront to 'our sister', which demonstrated the violent, barbaric and anti-religious disposition of the protesters.¹² An earlier episode concerns the case of a woman demonstrator who in June 2011 climbed on a panzer during a protest in Ankara and was savagely beaten by the police, suffering a hip fracture.¹³ The Prime Minister, belittling the incident, asked at a public meeting: 'was she a girl or a woman, I don't know' (*kız mıdır kadın mıdır, bilemem*). By casting aspersions on her virginity he left his listeners in no doubt that he thought her of small virtue, as would be expected from her unseemly, unfeminine behaviour. The message could not be clearer: only the deserving (our sisters) are worthy of protection; the rest, and especially women with the audacity to break the norms of modesty and to protest in public, put themselves in jeopardy.

The case of Özgecan Aslan occasioned deep revulsion and despair not only because of the gruesome nature of her murder but because she was so blatantly 'innocent'; a 20-year-old commuting between home and college who fought her assailant and paid with her life. She was seen not only as the victim of an individual rapist/murderer but as a martyr of a regime that had made women's lives cheap in the process of spinning out its dangerous, polarising discourse for electoral gain. This latest episode of violence ignited all the pent-up fury (and grief) of sections of society that were feeling trampled upon and could no longer recognise themselves in the 'New Turkey' taking shape by fiat and, increasingly, through coercion. This is how the tragedy of Özgecan Aslan's murder became an inadvertent litmus test of the state of Turkish democracy itself.

¹² Barçın Yinanç, 'Turkey Presents Sex, Lies and Kabataş', *Hürriyet Daily News*, 10 March 2015. Available at <http://www.hurriyetdailynews.com/turkey-presents-sex-lies-and-kabatas.aspx?page-ID=449&nID=79409&NewsCatID=412> (accessed 6 October 2015).

¹³ 'Başbakan: "O kadın, kız mıdır kadın mıdır?"', *CNN TÜRK.com*, 4 June 2011. Available at <http://www.cnntrk.com/2011/yazarlar/06/04/basbakan.o.kadin.kiz.midir.kadin.midir/618955.0/> (accessed 6 October 2015).

The Trajectory of Legal Reform for Advancing Human Rights in Turkey and the Role of Civil Society

Emma Sinclair-Webb

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This paper is based on observations from working on Turkey for international human rights organisations over more than a decade, during which Turkey first pursued and then cooled to its European Union (EU) accession bid.¹ The conditionality of the accession process seemed a decade ago to constitute the best means for the country to democratise its institutions and reform its laws and practices, but today the state of Turkey's judiciary and media, its political leaders' resistance to accountable governance and their willingness to muzzle critics all point to the failure of the process.

The paper looks back critically at Turkey's law-making culture over the last decade with respect to advancing the protection of human rights. It reflects on how Turkey's presentation of legislative changes as progress under the scrutiny of the EU, UN and Council of Europe helped skew the facts and divert attention from the lack of institutional underpinning for reform, the lack of political accountability, judicial independence and oversight mechanisms, and other structural factors with implications for a culture of rights. The paper also briefly addresses a certain wishful idea of civil society on the part of intergovernmental bodies as the effector of change and conduit by which democratic laws, attitudes and institutions could emerge.

Changing the Legal framework

As a prerequisite for EU accession, the Copenhagen criteria point to 'stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.² To this end, the first AKP (Justice and Development Party) government received huge praise when, back in 2004, it consolidated on the move made by its predecessor coalition government in abolishing the death penalty in wartime as well as peacetime. It went on that year to rewrite the Penal Code and Criminal Procedure Code entirely, and to continue the previous government's effort at passing a series of

¹ The author has worked as Turkey Researcher for Amnesty International (2003–7) and as Senior Turkey Researcher for Human Rights Watch (2007 onwards). The paper was prepared in March 2015 and makes only passing reference to developments in Turkey after that period.

² For accession criteria as described by the European Commission, see the website http://ec.europa.eu/enlargement/policy/glossary/terms/accesion-criteria_en.htm (accessed 28 July 2015).

‘harmonisation laws’ intended to bring Turkey’s laws into alignment with those of EU countries and the terms of the *acquis communautaire*.³ Commentators were astounded by the pace of change and the ambitious scope of it.

To mention a few significant measures in the period 2002–5, military control of the National Security Council, a key body that had been able to direct previous governments, was ended. The jurisdiction of military courts was reduced. Particularly impressive in view of Turkey’s notorious record on torture were steps to reduce police detention times, accompanied by the political message stressing zero tolerance of torture and the abolition of incommunicado detention. In the penal code the legal definition of torture was extended and the increase in penalties for the crime seemed to spell a resolution to stamp out the practice.

As has been well documented, women’s rights groups played an important and well-coordinated role in improving the legislation protecting women from killings in the name of honour by reducing scope for sentence reductions, getting marital rape recognised as a crime, getting rid of discriminatory language, and increasing penalties for sexual assault and rape in the penal code.⁴

An optimistic focus on these aspects certainly distracted attention from sections of the new penal code outlining so-called crimes against the state and terrorism imported from the old code in revised form. It was at that point difficult to foresee how, just a couple of years after the new penal code became law, there would be a huge increase in the use of these laws (especially provisions relating to membership of armed organisations). Also unforeseen was the fact that the police practice of extracting statements from suspects coercively was to be replaced with an alliance between the police and the courts in dramatically increasingly the (abusive) use of wiretapping and surveillance powers.

Very often too after old laws got incorporated into the new penal code, the government averted criticisms with the argument that a particular provision should not be judged until a pattern of implementation had emerged. This was frequently said, for example, to justify not abolishing the slightly revised article on ‘insulting and deriding Turkishness’ incorporated into the new 2004 penal code from the old one, and in 2008 again slightly revised in wording but not repealed. Extremely slow criminal proceedings in Turkey’s courts meant that any pattern could take years to emerge, even as a spate of cases appeared and writers such as Orhan Pamuk and Hrant Dink were among

³ The body of European law and regulations making up the *acquis* is divided into thematic chapters: http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm (accessed 28 July 2015). Among numerous publications discussing Turkey’s nine harmonisation packages and other legal amendments is Ergun Özbudun and Ömer Gençkaya, *Democratization and the Politics of Constitution Making in Turkey* (Budapest, 2009). The AKP government published a very favourable 2013 summary of legal changes made in *The Silent Revolution: Turkey’s Democratic Change and Transformation Inventory, 2002–2012* (Ankara, 2013) Available at <http://www.kdgm.gov.tr/snetix/solutions/KDGM/resources/uploads/files/ingilizce.pdf> (accessed 28 July 2015).

⁴ For a summary of some of the gains, see a description by one of the organisations, Women for Women’s Human Rights: ‘National Advocacy’. Available at <http://www.wwhr.org/national-advocacy/> (accessed 28 July 2015).

those prosecuted under this article.⁵ Dink was assassinated on 19 January 2007 after having been repeatedly convicted under this article.

Beyond the wholesale revision of the penal code and criminal procedure code, the practice of changing a lot of laws at once, beginning with the harmonisation law packages and continuing with other omnibus bills offering revisions to multiple and often unrelated laws, entrenched a mode of law-making which, for various reasons, was problematic even where the content of the amendments was positive. While aimed at demonstrating commitment to the EU accession process, assorted laws drafted within ministries in a process lacking transparency and without proper debate were merged into unwieldy omnibus bills, which turned out to be impenetrable to the parliamentarians who passed them. The bills typically contained substantive and highly significant changes to some laws buried among technical or procedural revisions of others, making it difficult to second guess what was intended with a law and to separate out the important aspects.

The explanations of the laws offered by the bureaucrats who had drafted them did not elaborate sufficiently on the implications of the revisions, but rather embodied a degree of political spin aimed at presenting the bills in Brussels as evidence of progress and further conformity with norms in EU countries. The ruling party's parliamentary majority meant that such bills passed through the parliamentary commission stage and then the general assembly itself often without proper debate or scrutiny by parliamentarians, let alone public consultation or wider debate.

The media, and in particular a handful of journalists with legal expertise, have played an important role in creating what public debate there has been in Turkey about the content of proposed legislation, and probably also explaining that content to most politicians themselves. Law faculties and professors have played almost no independent public role in enlightening the public in Turkey on the content and implications of laws. I would argue that these criticisms broadly apply regardless of whether the legal reform in question has been more or less positive.

Pushing through sweeping laws risks also becoming a means of justifying negative existing practices by codifying them in law (with the March 2015 domestic security law a case in point). All in all, a legalistic approach has substituted for a real commitment to reform. It has proved diversionary because it has forced Turkey's bar associations and civil society groups, and Turkey's EU interlocutors, to spend an inordinate amount of time engaging with the wording of a plethora of laws termed reform packages, to assess conformity with EU standards, European Court case law and the European Convention. Mechanisms for oversight of implementation of laws and for scrutinising the consequences of a legal amendment after it passed into law have been largely absent.

⁵ Amnesty International, 'Turkey: Article 301: How the Law on "Denigrating Turkishness" Is an Insult to Free Expression', Public Document, March 2006. Available at <http://www.refworld.org/pdfid/44c611504.pdf> (accessed 28 July 2015). Human Rights Watch, 'Turkey: Government Amendments Will Not Protect Free Speech', 16 April 2008. Available at <https://www.hrw.org/news/2008/04/16/turkey-government-amendments-will-not-protect-free-speech> (accessed 28 July 2015).

Swathes of legislation claimed to represent reform initiatives have provided the sense that there is movement and change afoot, something on the table to discuss even in the face of restrictive or abusive practices perpetuated elsewhere. I would argue that this legalism, which cannot be said to constitute a holistic response capable of addressing the substance of Turkey's rights issues, has also substituted for real social policy solutions and even substitutes for political will to effect change.

The growing authoritarianism of the past two years in Turkey has served to demonstrate how repeated legal amendments can also be blown away in a moment with more laws in a context where legislation is not the outcome of a reform-driven political orientation and lacks institutional underpinning. The pattern in Turkey has been constant amendment of laws by means of more laws, and frequent backtracking. It is worth briefly reviewing the legal advances and setbacks of the past decade to demonstrate this.

Reversing Reform

One of the first signs of a backward slide on legislative reform efforts came just one year after the new penal code had entered into force in mid-2005, with the government's amendments to the anti-terror law. As in many other countries, this was reactive legislation, passed straight after three days of violent protests in late March 2006 in which 14 people, including children, died in the southeast during clashes with police. The clashes had been prompted by the Diyarbakir funerals of Kurdistan Workers' Party (PKK) members killed in Muş. At the time the Turkish government ignored human rights groups' criticisms of the amendments.⁶

Terrorism law amendments were followed in 2007 by revision of the law on the powers and duties of the police. Both laws were amended in such a way as to increase penalties and widen the powers of the security forces, including increasing the use of firearms and powers to stop individuals and check their ID. This contributed to a rise in complaints of ill-treatment.⁷ Part of this was in response to the complaint by the police that the new criminal procedures introduced in 2005 had meant they now lacked sufficient powers to fight crime. Both moves contributed practically and symbolically to giving greater initiative to the police, which in turn strengthened their role in criminal investigations. It is no coincidence that 2007–8 marked the start of a pattern of arbitrary use of terrorism laws in Turkey, justified by Court of Cassation precedent rulings, resulting in prosecution and prolonged pre-trial detention of individuals who joined protests, and then more generally of political activists, students and journalists.⁸

⁶ Amnesty International, 'Turkey: Briefing on the Wide-Ranging, Arbitrary and Restrictive Draft Revisions to the Law to Fight Terrorism', 12 June 2006. Available at www.proasyl.de/fileadmin/proasyl/fm_redakteure/Newsletter_Anhaenge/116/LawtoFightTerrorism.doc (accessed 28 July 2015).

⁷ Human Rights Watch's December 2008 report on police violence documented the impact of the 2007 amendments: 'Turkey: Rising Police Violence Goes Unpunished', 5 December 2008. Available at <http://www.hrw.org/news/2008/12/05/turkey-rising-police-violence-goes-unpunished> (accessed 29 July 2015).

⁸ Human Rights Watch, *Turkey: Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey* (New York, 2010). Available at <http://www.hrw.org/sites/default/files/reports/turkey1110webwcover.pdf> (accessed 28 July 2015).

Parliamentary bills amending multiple laws in the interests of ‘harmonisation’ proceeded through a period of mass arrests and trials (multiple mass trials of Kurdish demonstrators and activists on terrorism organisation membership charges from 2008 onwards, plus the Ergenekon and Balyoz (Sledgehammer) trials).⁹ In an indication of the lack of synchronisation between rhetoric and facts, the government championed legal reform packages focused on improving the functioning of the criminal justice system as thousands found themselves the unfortunate victims of arbitrary prosecution and incarceration pending trial.¹⁰ Mass arrests of Kurds were also happening at a time when the government had openly stated that it was committed to a peace process with the Kurds. Ministry of Justice judicial reform packages tweaking laws concerning criminal procedure and due process, in response to the plethora of European Court rulings against Turkey and finding a pattern of violations of the right to fair trial, went on over the period 2011–13 simultaneously with a mass of new fair-trial violations.

Turning to the past two years, we see a flood of new legislative reforms in the wake of the government’s efforts to strip away the powers of its former ally, the Fethullah Gülen movement, and suppress investigation of corruption allegations implicating ministers and President Recep Tayyip Erdoğan’s own family.¹¹ Laws have amended the structure, composition or powers of institutions such as the Higher Council of Judges and Prosecutors, the National Intelligence Agency (MIT), the top courts and some lower courts, the police force and the gendarmerie.¹² Through repeated revision of Turkey’s much-criticised internet law, the government attempted to impose new restrictions and facilitate the removal of online content.¹³ All such laws contain fundamentally problematic provisions either directly contravening or against the spirit of the European Convention and ignoring the case law of the European Court. A highly contested omnibus bill known as the ‘Domestic Security package’, further increasing police powers and undermining judicial oversight of arrest, became law in March 2015.¹⁴

⁹ Human Rights Watch, ‘Turkey: Kurdish Party Members’ Trial Violates Rights’, 18 April 2011. Available at <https://www.hrw.org/news/2011/04/18/turkey-kurdish-party-members-trial-violates-rights> (accessed 28 July 2015). For an op-ed on the Ergenekon trial, see Emma Sinclair-Webb, ‘The Turkish Trial that Fell Far Short’, *New York Times*, 6 August 2013. Available at http://www.nytimes.com/2013/08/07/opinion/global/the-turkish-trial-that-fell-far-short.html?_r=0 (accessed 28 July 2015).

¹⁰ Human Rights Watch’s statements on the reform bills include ‘Turkey: Draft Reform Law Falls Short’, 13 February 2012. Available at <https://www.hrw.org/news/2012/02/13/turkey-draft-reform-law-falls-short> (accessed 6 October 2015).

¹¹ For more on aspects of the background to the Erdoğan–Gülen movement split not elaborated here, see Mustafa Akyol, ‘What You Should Know about Turkey’s AKP–Gülen Conflict’, *Al Monitor*, 3 January 2014. Available at <http://www.al-monitor.com/pulse/originals/2014/01/akp-gulen-conflict-guide.html> (accessed 29 July 2015).

¹² Revisions to all these laws are summarised in Human Rights Watch, ‘Turkey’s Human Rights Rollback’, 29 September 2014. Available at <https://www.hrw.org/report/2014/09/29/turkeys-human-rights-rollback/recommendations-reform> (accessed 28 July 2015).

¹³ Constanze Letsch, ‘Turkey Pushes Through Raft of “Draconian” Internet Restrictions’, *Guardian*, 6 February 2015. Available at <http://www.theguardian.com/world/2014/feb/06/turkey-internet-law-censorship-democracy-threat-opposition> (accessed 29 July 2015).

¹⁴ For a detailed summary of the content of the bill, see Human Rights Watch, ‘Turkey: Security Bill Undermines Rights’, 11 December 2014. Available at <https://www.hrw.org/news/2014/12/11/>

The Turkish government's line on many of these laws that have been passed has been to insist that the letter of the draft law and the intent behind it are alignment with the EU and the Council of Europe. To criticisms of the domestic security bill, leading government figures repeatedly argued its conformity with EU norms, Prime Minister Ahmet Davutoğlu commented: 'Show us just one article that violates EU standards; show just one clause that is against universal democratic standards.'¹⁵ Further evidence of this official line came with the publication in March 2014 in the *Official Gazette* of a long document the government termed a 'human rights action plan', outlining many planned reforms at a moment when the government passed many other laws to suppress the corruption scandal.¹⁶ There is still a preoccupation at a high level with maintaining that the aim is EU standards even as the government pursues measures that take Turkey in the opposite direction.

Above all, law-making in Turkey has repeatedly demonstrated a tendency to slip back to a default position where the state authorities arm themselves with special powers or amend existing laws to widen powers enabling them to sidestep rules. The default position is laws that cancel or take precedence over other laws (as several of the laws passed last year demonstrate). Thus, periodically, the police law gets changed to offer the police more powers to stop people and potentially detain them, and to enable the executive to bypass judicial authority and oversight by invoking ill-defined concerns about public order. State security courts get abolished (in 2004) but in name only, and are replaced with a similar system of specially authorised courts, which in turn get abolished (March 2014) but then reintroduced less than a year later (February 2015). There are countless other examples, including laws effectively preventing investigation of politicians, public officials and intelligence officers, accompanied by a crackdown on judges and prosecutors who embark on investigations conflicting with government interests.

The reasons for these cycles of more or less restrictive law-making, it may be suggested, lie once again in the absence of coherent reform policy on rights-based issues. For the foreseeable future, a clientelist political culture, an absence of robust institutions to conduct oversight and monitoring of implementation of laws, and a culture

turkey-security-bill-undermines-rights (accessed 28 July 2015). See also Amnesty International's response to its March 2015 passing into law, 'Turkey: New Bill Gives Police "Draconian" New Anti-Protest Powers', 27 March 2015. Available at <http://www.amnesty.org.uk/press-releases/turkey-new-bill-gives-police-draconian-new-anti-protest-powers> (accessed 28 July 2015).

¹⁵ Davutoğlu quoted in *Hürriyet Daily News*, 'Security Bill Fully Complies with EU Norms, Davutoğlu Pledges, Challenging Opposition', *Hürriyet Daily News*, 10 February 2015. Available at <http://www.hurriyetdailynews.com/security-bill-fully-complies-with-eu-norms-davutoglu-pledges-challenging-opposition-.aspx?pageID=238&nID=78163&NewsCatID=338> (accessed 28 July 2015). For the Human Rights Watch response to Davutoğlu on domestic security bill conformity with EU standards, see Emma Sinclair-Webb, 'Is Turkey Just Copying the EU in Increasing Police Powers?', *Hürriyet Daily News*, 14 February 2015. Available at <http://www.hurriyetdailynews.com/is-turkey-just-copying-the-eu-in-increasing-police-powers-.aspx?pageID=238&nID=78328&NewsCatID=396> (accessed 28 July 2015).

¹⁶ 'Turkish Government Unveils Blueprint to Boost Rights, Freedoms', *Hürriyet Daily News*, 4 March 2014. Available at <http://www.hurriyetdailynews.com/turkish-government-unveils-blueprint-to-boost-rights-freedoms.aspx?pageID=238&nid=63164> (accessed 29 July 2015).

of impunity undermine the impact of positive legislation. The judiciary in Turkey has always been a barometer of politics. Developments over the past year (mass rotations and executive interference, and most recently decisions to try judges and prosecutors on the basis of decisions conducted in their professional capacity) have not set the judiciary on another path and may have considerably worsened the situation by further eroding the judiciary's independence. Even the right of individual petition to the constitutional court may now provide less possibility of redress than it did last year.

The Role of Civil Society

Turning to civil society, what role have human rights groups been able to play in relation to the swathes of laws three AKP governments have passed in the name of reform?

In the run-up to securing candidacy for EU accession at the end of 2005, the first AKP government demonstrated unprecedented interest in engaging with domestic and international human rights groups with which previous governments had had minimal or no contact, and which were widely regarded by public officials and most politicians in Turkey as working against the country's interests. In 2004, human rights groups had several meetings with then Prime Minister Erdoğan, Foreign Minister Abdullah Gül and the Reform Monitoring Group (comprised of key ministers), and separate meetings with those ministers – Interior and Justice. Even meetings with the heads of the top courts were part of this picture. These meetings provided a forum for transmitting messages about human rights reforms directly.

Government engagement with human rights groups happened because of a perception that the groups had power at that moment to influence the EU in providing a more or less positive or negative impression of Turkey, and because the government itself was ready at that time to adopt a reform language. While some individuals really wanted this engagement and to follow a reform agenda, others were clearly at the time either ideologically uncomfortable with talking to people they regarded as enemies of the state, or concerned that any implication that they might be capitulating to foreigners might play badly with nationalist sentiment. While there was a spectrum of views about human rights among government officials, this level of engagement was not repeated after 2004, and it became almost impossible for leading international human rights NGOs to get a meeting with Erdoğan after that period.

The years 2003–5 thus saw a brief opening, and then a reversion to the default position of the government mainly being closed to human rights NGOs and any critical elements of civil society. Nevertheless, criticisms of Turkey's human rights record by civil society groups and by the EU were regularly reported in the media and thus continued to reach a public.

By the time of the third AKP government, engagement with civil society organisations closer to its own constituency turned into active efforts to co-opt them and even, in some cases, to set up government organised non-government organisations (GONGOs). This has been particularly evident with the demise of the Gülenists and is arguably

motivated too by an interest in seeing EU funds for civil society reach government client organisations. Simultaneously, Erdoğan's and the third AKP government's increasing moves to muzzle the media would also ensure that criticism of the government in most press organisations and TV channels decreased over the same period.

There is much to say about the implications of being kept out in the cold for the development of critical civil society in Turkey. For a long time, the impossibility of engagement with a bureaucracy and state institutions well insulated against the influence of citizens' initiatives certainly contributed to the particular trajectory taken by groups working on hard-hitting, politically charged subjects like human rights. With any form of citizens' initiative being cut off after the 1980 military coup, and in the wake of the deepening ideological political divisions in the 1970s, the human rights NGOs that emerged in Turkey in the 1980s were understandably marked by a political colouring. They had initially been centres for left (and later also religious conservative) oppositionists to congregate in after the closing down of politics, the phobic suppression of Kurdish identity, and the restriction of the headscarf. If they seemed to outsiders to be maximalist and sometimes inward-looking in their aims, and quite at odds with the liberal humanist orientation of Amnesty and other international groups, they were responsive to the conditions they found themselves in and were shaped by those conditions. Solidarity mattered more to them than messages advocating the government adopt international legal norms. They were more alert to an official culture which meant government authorities claimed adherence to international law obligations on paper while turning a blind eye to a proliferation of abusive prosecutions of their critics.

There is also much to say about domestic human rights groups' changing approaches, style of activism, and engagement with each other and with international groups. In the period 2003–6, there were considerable efforts at working together across the political spectrum, and some of these relationships and forms of cooperation have survived. The move towards greater professionalisation of critically engaged civil society has been a long process, which has partly been assisted by the increasing funds available to run projects from major donors such as the EU, and smaller contributions from other donors and embassies. All in all, groups do not benefit from the range of donors that other countries do, and there are still bureaucratic obstacles to running associations and foundations in Turkey.

Despite the fact that the EU promotes the idea of boosting civil society as a means of promoting human rights and democracy, and constantly encourages consultation with civil society in terms such as 'promoting dialogue' and 'capacity building',¹⁷ there is often a mismatch of expectations and outcomes. Although there is a range of civil society organisations, with the minority being critical groups working on critical issues such as rights-related themes, policy solutions to politically sensitive issues or efforts at redefining citizenship, the paradox is that they are often better known by the EU and embassies than by the authorities in Turkey. With the growing government and

¹⁷ See the EU delegation's website page on civil society development, where many of these terms are promoted: <http://avrupa.info.tr/eu-and-civil-society/civil-society-development.html> (accessed 29 July 2015).

presidential intolerance of dissenting voices, these groups have been increasingly marginalised and sidelined over the past few years.

Mainly restricted to political and ethno-religious networks and solidarities (mostly reflected at the national level), those who work with these groups still often see the route to contributing positively to change as being through direct participation in political life. Many civil society activists and individuals in rights-based organisations and think tanks have opted to go into politics (and the general election in June 2015 was no exception).

Also important to fit into this picture is the established tradition in Turkey's mainstream civil society organisations of being highly corporatist and instrumental in transmitting the dominant ideology. While in the past Kemalist civil society organisations would call on the society to uphold the values of the Republic, today parts of the AKP-supporting civil society have begun to do something of the same sort: directly issuing public calls to support the 'national will' (Erdoğan and the AKP) and becoming directly engaged (as were the Kemalist groups) in a process which seems to spell support for a party-state model.¹⁸

The process of evolving from occupying a more critical position to being part of a kind of support base and voice for the government raises interesting questions about the notion of civil society, promoted in European Commission circles as the conduit for democracy and respect for human rights. Currently, the choice most groups working on human rights related issues face in relation to the state is either being co-opted or being completely rejected. As such, it is difficult to claim that the role of this part of civil society has developed in Turkey over the past decade despite its undoubted vibrancy and the fact that there is arguably more 'activism' in Turkey than in most western European countries.

The civil society most capable of recalibrating the relationship between citizen and state has taken the form of social movements and campaigning alliances, more outward looking and with wider aims than human rights groups or NGOs working consistently on issues. The Gezi Park sit-in and protests were a distinct and important manifestation of citizen dissatisfaction with top-down governance as well as with Erdoğan himself and will undoubtedly have a continuing significance in Turkey across the political spectrum. A resonance of Gezi was felt in the countrywide protests over the murder of student Özgücan Aslan by an alliance of women's groups which brought the issue of violence against women to centre stage in February 2015. The Kurdish political movement which combines the features of a huge social movement with a growing political representation (aside from the armed movement that spawned it) still possesses the greatest potential to bargain with the state.

¹⁸ Civil society groups close to the AKP formed a 'national will platform': see <http://www.milliradeplatformu.com/> (accessed 29 July 2015).

Backsliding into Authoritarianism in Turkey: The European Union Accession Process and the Limits of Political Conditionality

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Introduction

On 14 December 2014, the European Union high representative, Federica Mogherini, and the EU commissioner responsible for enlargement, Johannes Hahn, issued a joint statement criticising the multiple arrests of journalists in Turkey as ‘incompatible with the freedom of media, which is a core principle of democracy’.¹ The statement infuriated the Turkish president, Recep Tayyip Erdoğan, who responded on 17 December: ‘We do not care if the European Union admits us as a member or not ... The EU should mind its own business.’² This was similar to his reaction to the EU’s criticism of the ban on Twitter and YouTube in the same year. The then Prime Minister Erdoğan responded to that criticism on 20 March 2014: ‘We’ll eradicate Twitter. I don’t care what the international community says. Everyone will witness the power of the Turkish Republic.’³ It is clear that Turkish government officials tend to see the EU’s criticisms of Turkey’s democratisation as meddling in the country’s internal affairs. This is, of course, puzzling as Turkey is negotiating for EU accession, and Turkish ability to conform to EU democratic principles is a precondition for its membership.⁴

When the accession negotiations with the EU began in 2005, it looked as though Turkey had finally entered, seemingly irreversibly, on a road towards democratic consolidation. Both internal developments in the country and its accession process to the EU at the time pointed towards a future for a democratic Turkey closely integrated into the European order. However, in 2015 we are witnessing a different outcome: a stalled negotiation process with dim prospects for Turkey’s accession to the EU, and a backsliding into authoritarianism in the country.⁵

¹ ‘Turkey Media Arrests: Mogherini Leads the EU Criticism’, *BBC News*, 14 December 2014. Available at <http://www.bbc.com/news/world-europe-30471996> (accessed 7 October 2015).

² ‘Erdoğan Says EU Cannot Teach Turkey Democracy’, *Today’s Zaman*, 17 December 2014. Available at http://www.todayszaman.com/national_erdogan-says-eu-cannot-teach-turkey-democracy_367282.html (accessed 7 October 2015).

³ Terrence McCoy, ‘Turkey Bans Twitter and Twitter Explodes’, *Washington Post*, 21 March 2014. Available at http://www.washingtonpost.com/news/morning-mix/wp/2014/03/21/turkey-bans-twitter-and-twitter-explodes/?tid=hp_mm (accessed 7 October 2015).

⁴ Meltem Müftüler-Baç, ‘Turkey’s Political Reforms: The Impact of the European Union’, *Southeast European Politics and Societies* 10 (2005), pp. 16–30.

⁵ For further information, see Meltem Müftüler-Baç and E. Fuat Keyman, ‘The Era of Dominant Party Politics’, *Journal of Democracy* 23 (2012), pp. 85–99, and E. Fuat Keyman, *Turkey’s Transformation and Democratic Consolidation* (London, 2013).

This prompts the following question: does the EU's political conditionality have unexpected consequences for democratic consolidation in a country such as Turkey?

The EU's political conditionality is seen as an important factor in inducing political change in the acceding countries.⁶ The Treaty on European Union is clear that democracy is a *sine qua non* for EU accession and that democratic principles and fundamental rights are a precondition for membership, as: 'These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'⁷ Lavenex and Schimmelfennig explore the EU's role in promoting these values and democratic principles in its external environment, the 'extension of [the EU's] internal rules and policies beyond formal membership',⁸ combined with an ability to transform a non-member country's implementation of European values. This is precisely why Turkey's backsliding into authoritarianism is important in order to assess the limits of political conditionality.

The key questions that emerge in this context are as follows: first, how would one assess the impact that a policy instrument such as the EU's political conditionality has on Turkey's democracy? Second, are the suboptimal outcomes of political conditionality *unintended consequences*? And third, for political conditionality to work, are there other internal preconditions in the acceding/candidate states that need to be evaluated as preconditions themselves? This paper evaluates these questions through the specific experience of Turkey's process of democratisation, in particular with regard to its backsliding into a political system of authoritarian majoritarianism.

Backsliding into Authoritarianism

The Turkish–EU relationship has become an increasingly troubled one. First and foremost, Turkey is an uneasy fit with Europe, given its identity as a liminal country, seen neither as an integral part of Europe, nor as completely outside it. This liminal state, neither in nor out, has complicated Turkey's relations with the European countries,⁹ as well as its incorporation into the European order as an equal partner. Second, the EU has been an effective player in Turkish political changes in line with the premises of the political conditionality literature,¹⁰ which more or less agrees on the positive aspects of

⁶ Frank Schimmelfennig and Hanno Scholtz, 'EU Democracy Promotion in the European Neighbourhood: Political Conditionality, Economic Development and Transnational Exchange', *European Union Politics* 9 (2008), pp. 187–215.

⁷ Treaty on European Union, Article 2. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M/TXT> (accessed 7 October 2015).

⁸ Sandra Lavenex and Frank Schimmelfennig, 'EU Rules Beyond EU Borders: Theorizing External Governance in European Politics', *Journal of European Public Policy* 16/6 (2009), pp. 791–812 at p. 791.

⁹ Bahar Rumelili, 'Constructing Identity and Relating to Difference: Understanding the EU's Mode of Differentiation', *Review of International Studies* 30/1 (2004), pp. 27–47.

¹⁰ For a detailed look at this literature, see Frank Schimmelfennig, Stefan Engert and Heiko Knobel, 'Costs, Commitment and Compliance: Latvia, Slovakia, Turkey', *Journal of Common Market Studies* 4 (2003), pp. 495–518, and Schimmelfennig and Scholtz, 'EU Democracy Promotion'.

the EU's transformative power.¹¹ Yet the Turkish case might provide the first major falsification of these theoretical insights, through the backlash of anti-democratic forces and the increasing drift into authoritarianism since 2011. This would be particularly important for an understanding of the extent to which the EU's transformative power could work, especially in order to assess the EU's possible impact on the democratic transformation under way in Middle Eastern countries and the western Balkans.

When the European Commission evaluated Turkey's ability to meet the political aspects of the Copenhagen criteria in 2004, it concluded that 'Turkey *sufficiently* fulfils the Copenhagen political criteria'.¹² This fitted well with the Turkish government's objectives, as they had prioritised EU accession since 2002 with extensive political and legal reforms. The newly elected government in 2002, under Erdoğan's rule, firmly declared its commitment to democracy and saw the EU accession process as a tool with which to transform Turkey into a democratic country. This is illustrated by Erdoğan's declaration in 2002: 'We are meeting the Copenhagen criteria to elevate the living standards of our people. That is our real aim'.¹³ As a result, Turkey seemed on the road to democratic consolidation, with multiple reforms adopted swiftly as negotiations unfolded. However, especially since 2011, democratic consolidation in Turkey has taken a nosedive, with the country's rankings in democracy, rule of law and the rights and freedom indexes declining steadily. For example, in the Reporters Without Borders' rankings for freedom of the press, while Turkey was 98th out of 180 countries in 2005, it slid down to 154th out of 180 in 2014, with a small upward movement to 149th in 2015.¹⁴ Similarly, the Freedom House report on Turkey for 2014 still listed the country as partly free, with three and a half out of seven for freedom ranking, four out of seven for civil liberties and three out of seven for political rights, while its press ranked as not free.¹⁵ In freedom ranking, civil liberties and press freedom, Freedom House detects a downward trend in Turkey since 2011.

¹¹ Tanja Börzel and Didem Soyaltin, 'Europeanisation in Turkey. Stretching a concept to its limits?', *KFG Working Papers* No. 36, Research College "The Transformative Power of Europe", Berlin: Freie Universität Berlin, 2012.

¹² European Commission, 'Communication of 6 October 2004 from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession [COM(2004) 656 final – Not published in the Official Journal]'. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:e50015> (accessed 7 October 2015).

¹³ "Turkey rejects 2005 for EU Accession talks", *BBC news*, December 6, 2002. <http://news.bbc.co.uk/2/hi/europe/2549909.stm> (accessed 12 October 2015).

¹⁴ Reporters Without Borders, *2015 World Press Freedom Index*. Available at <https://index.rsrf.org/#!/index-details/TUR> (accessed 7 October 2015).

¹⁵ Freedom House, 'Turkey: Freedom in the World 2014'. Available at <https://freedomhouse.org/report/freedom-world/2014/turkey-0#.VKr8XnvQN2A> (accessed 7 October 2015).

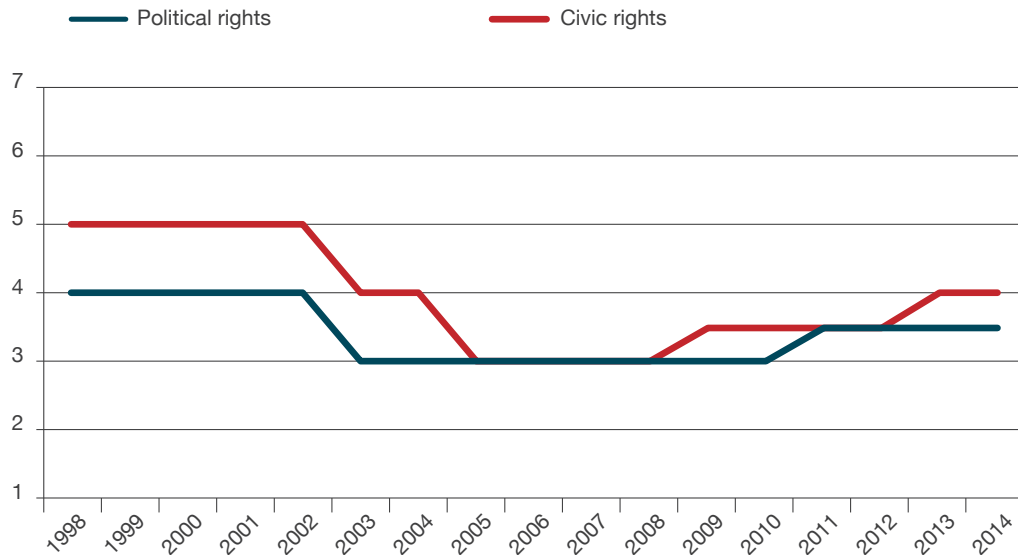
Figure 1. Freedom House Rankings for Turkey, 1998–2014¹⁶

Figure 1 shows that between 1998, when the first Freedom House progress reports were prepared for Turkey, and 2005, when accession negotiations began, Turkey's political rights and civil liberties improved, and with the onset of negotiations, they stabilised at round three out of seven; yet there was a decline later. Civil liberties worsened after 2008, sliding further down after 2013, and even though Turkey always remained in the partly free category, political rights too show a marked deterioration. These results resonate with the Economist Intelligence Unit's evaluation of democratic credentials, shown in Figure 2. According to this index, Turkey's level of democratic development remained the same as that of eastern European countries until 2011, but then began to diverge.

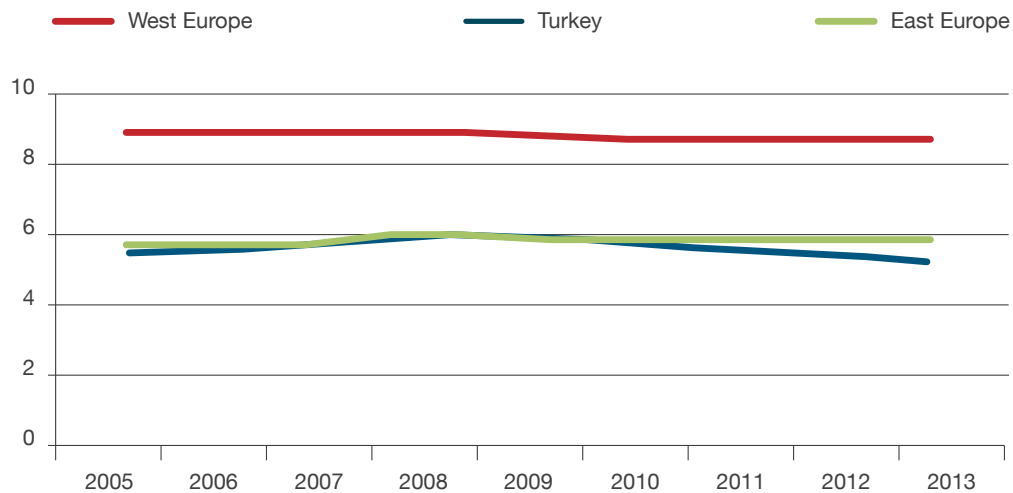
These rankings illustrate that Turkey's democratisation stalled and then began to revert to its starting point of the 1990s. The EU's institutions were vocal in their joint criticism of the backsliding into authoritarianism in Turkish politics. For example, the European Parliament (EP) adopted a resolution on 15 January 2015, in response to the journalists' arrests, which stated that 'A free and pluralistic press is an essential component of any democracy', and called on Turkey to

provide ample and transparent information on the allegations against the defendants, to grant the defendants full access to the incriminating evidence and full defense rights, and to ensure the proper handling of the cases to establish the veracity of the accusations without delay and beyond reasonable doubt.¹⁷

¹⁶ In Freedom House rankings, 7 is the worst ranking.

¹⁷ Güven Özalp, 'European Parliament Accepts Resolution on Freedom of Expression in Turkey', *Hürriyet Daily News*, 15 January 2015. Available at <http://www.hurriyetdailynews.com/european-parliament-accepts-resolution-on-freedom-of-expression-in-turkey-.aspx?PageID=238&NID=77021&NewsCatID=359> (accessed 7 October 2015)

Figure 2. Economist Intelligence Unit Democracy Index for Turkey, Western Europe and Eastern Europe, 2005–13



The discomfort in the EP about Turkey's backsliding into authoritarianism is important, as the EP frames the political discussion around Turkey, and has the final say on the Turkish accession treaty. In the EP debate on Turkey in March 2014, a German MEP, Alexander Graf Lambsdorff, declared: 'There are more journalists in jail in Turkey than in China or Iran and now the Prime Minister wants to close down YouTube and Twitter because people are saying things he doesn't like',¹⁸ reflecting the general view in the EP, as most of the resolutions adopted there criticising the Turkish backsliding had around 470 MEPs' approval.

This is an unexpected result for a country negotiating for accession, as all other countries that have negotiated and become members of the EU, especially in eastern Europe, seem to have been relatively political committed and to have stayed on the course of democratic consolidation.¹⁹ Yet this does not seem to be the case for the Turkish experience. As a result, in an unprecedented fashion, Turkey is perceived as a candidate country that is increasingly moving away from the EU's political norms while it is paradoxically negotiating for accession to the EU. So what might be the key factors that set Turkey apart from other countries negotiating for accession?

¹⁸ Magda Fahsi, 'European Parliament Uneasy about Turkey's EU Bid, Citing Corruption and Internal Strife', *MintPress News*, 18 March 2014. Available at <http://www.mintpressnews.com/european-parliament-uneasy-about-turkeys-eu-bid-citing-corruption-and-internal-strife/186810> (accessed 7 October 2015).

¹⁹ Tanka A. Börzel, 'Coming Together or Drifting Apart? Political Change in New Member States, Accession Candidates, and Eastern Neighbourhood Countries', *Maxcap Working Paper* 3 (May 2014).

Turkey's Own Democratic Dilemmas

When the Justice and Development Party (AKP) government came to power in 2002, it received around 36 per cent of the national vote. In the next two general elections, the AKP vote steadily increased, and in the 2011 elections, close to 50 per cent of the vote was for the AKP. Its leader, Recep Tayyip Erdoğan, became the first publicly elected president in August 2014, again with around 50 per cent of the popular vote. The electoral performance of the AKP enabled it to become the first party in Turkish politics from 2002, and its hold over the country's political development has been described as a 'dominant party politics'²⁰ and 'majoritarian authoritarianism'.²¹ The AKP's 'electoral hegemony'²² increasingly enabled it to adopt legal changes and measures that were detrimental to democratic consolidation. What began as a journey into democratic consolidation in 2002 in Turkey seemingly ended up with another type of authoritarianism.

The major ailment acting as an obstacle to democratic consolidation in the country could be seen as the lack of systemic checks and balances in the political structure. Specifically, the absence of a credible and organised opposition, and inherent structural deficiencies such as the lack of a clear separation of powers between the legislature, the executive and the judiciary, turned out to be the key factors in the backsliding into authoritarianism in Turkey. These factors were coupled with the control of state institutions such as the judicial organs by the political elite, in this case the ruling party. To see a specific example of this control, one could look at the changes adopted since the beginning of 2014 in the independence of the judiciary. As a result of legal changes since 2013, political control of the key judicial institutions – the courts, the Council of State (Danıştay), the Supreme Council (Yargıtay) and finally the Constitutional Court (Anayasa Mahkemesi) – was increased. In all of these institutions, the government stepped in, influencing the selection of members as well as the rulings and decisions. As a result, the independence of the judiciary – a key principle in democracies – was clearly violated. For example, the increased political control of judicial institutions led to a declaration in January 2014 by the Speaker for the Turkish Parliament, Cemil Çiçek of the ruling AKP, that: 'Article 138 of the Constitution is not functioning ... Article 138 of the Constitution is dead in this country.'²³ Since this particular Article guarantees the independence of the judiciary in Turkey and guards the principle of the separation of powers, Çiçek was basically warning that the government was in control of the judiciary along with the executive and the legislature.

²⁰ Keyman, *Turkey's Transformation*.

²¹ Ergun Özbudun, 'The AKP at the Crossroads: Erdoğan's Majoritarian Drift', *South European Society and Politics* 19 (2014), pp. 155–67.

²² Müftüler-Baç and Keyman, 'Era of Dominant Party Politics'.

²³ Serkan Demirtaş, 'Turkish Parliamentary Speaker Çiçek Deplores End of Court Independence', *Hürriyet Daily News*, 4 January 2014. Available at <http://www.hurriyetdailynews.com/turkish-parliamentary-speaker-cicek-deplores-end-of-court-independence.aspx?pageID=238&nID=60549&NewsCatID=338> (accessed 7 October 2015).

When one looks at the legal changes adopted throughout 2013 and 2014, it seems as though Çiçek's warning is to the point. In 2014, a reform package was adopted for the selection of judges and prosecutors for the Supreme Council of Judges and Prosecutors (HSYK). The EU has been most vocal about the selection process as being too politically driven and controlled. Some changes had already been adopted on 12 September 2010 through a constitutional amendment after a referendum. Nonetheless, the presiding role of the justice minister over the HSYK has remained, blurring the separation of the judiciary from elected government officials, that is, the executive. With a new legal change adopted in June 2014, the government's control over the HSYK and the minister of justice's powers over the institution were increased. Similarly, with the legal decrees adopted throughout 2014, executive powers over the four key judicial institutions listed above were enhanced. The independence of the judiciary is one of the most important elements of democratic consolidation, since it acts as part of a system of checks and balances on elected officials. Yet the perception of such a judicial oversight of elected officials in Turkey is one of 'judicial control' and a curtailment of the powers of elected officials – the key representatives of democracy in the country. This brings us to the diverging perceptions of democracy in Turkey and in the EU.

Turkish politicians emphasise democracy as a manifestation of popular will through electoral results, a key argument being that as long as a political party is elected to power by a majority of the voters, it has the prerogative to rule as it sees fit. It is, of course, beyond doubt that voters have the ultimate say in politics, but to disregard other institutions and the separation of powers is detrimental to democratic consolidation. This view was summarised by Kalaycıoğlu as follows:

Since the 20th century, all regimes in the world – except a few rentier monarchies such as Saudi Arabia – are populist regimes widely backed by the masses; they operate with the mass mobilization of the people. This implies that an understanding of democracy based on ballot box results is no longer a valid argument to consider a regime as 'democratic' or legitimately hold on to political power through the crystallization of the popular will.²⁴

This is precisely why systemic deficiencies in checks and balances become an important element in a democratisation process. If there are no credible controls over elected officials, no matter how strong their electoral support is, that political system cannot be seen as a democracy. It might be this divergence in defining what democracy means between Turkey and the EU that lies at the heart of the problem.

²⁴ Gülten Üstüntaş, 'AK Party Turns to Be a Major Obstacle Before Democracy in Turkey', *Today's Zaman*, 8 November 2014. Available at http://www.todayszaman.com/national_ak-party-turns-to-be-a-major-obstacle-before-democracy-in-turkey_363867.html (accessed 7 October 2015).

Conclusion

Turkey's backsliding into authoritarianism since 2011 is perplexing given its place in the EU's enlargement process. Despite the many obligations the country had as a candidate for the EU, it diverted from the route of democratic consolidation and was increasingly labelled as a prime example of majoritarian authoritarianism. Whether it was the lack of the EU's credibility as an anchor for Turkey or the domestic forces at play in the country that led to this situation is yet to be analysed. However, the Turkish experience since 2011, in which individual rights and liberties are compromised and the basic pillars of liberal democracy, such as the independence of the judiciary, are shaken, indicates a reversal of the political reforms under way since 2002. This paper has argued that it is the systemic deficiencies in Turkish politics, where effective checks and balances are missing, or have been eliminated to consolidate political power in one grasp, could be seen as the main structural factor in holding democratic consolidation in Turkey down. This is a paradoxical outcome for EU conditionality on the one hand, and for the democratisation literature on the other hand. The question that remains open is as follows: could the Turkish experience of democratisation slowly leading to an illiberal democracy highlight some of the theoretical loopholes of the political conditionality literature?

Security Sector Reform in Turkey: The Military, Intelligence and Police during the AKP Era

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Introduction

Since the Justice and Development Party (AKP) came to power in 2002, reforms in the security sector, and especially in civil-military relations, have been a priority. In this period of more than a decade, the powers, autonomy and functions of key institutions in the security sector have been redefined, with legal amendments and major changes in the behavioural patterns of actors. Some of the reforms in the area of civil-military relations brought the Turkish legal structure close to being an ideal-type democracy. However, an overall assessment of these changes, not only in civil-military relations but also in the police and intelligence, clearly shows that they have not resulted in democratisation.

First, the political decision to control the military, and the judicial proceedings aimed at deterring and punishing interventionist military personnel, have occurred according to subjective criteria and with politically charged motivations. Even though the end result of these processes seems to be positive, the means of achieving them have obliterated the rule of law, and hence the basic principles of democracy. Second, the manner in which political actors control the police and intelligence also demonstrates that the guiding motivation is not democratisation but creating loyal security services. The most recent internal security law passed in parliament gives unprecedented power to the police, raising concerns over basic principles of human rights, freedom of speech and of association. Altogether, developments in the security sector draw a bleak picture and, despite some gains in the area of civil-military relations, they demonstrate the continuation of undemocratic practices, especially in the area of police and intelligence.

Democratic Achievements in the Area of Civil-Military Relations

The constitutional and legal reforms in civil-military relations have covered a wide range of areas since the early 2000s. The tutelary powers of the armed forces over elected politicians have been severely restricted by several amendments to the 1982 Constitution, the Law of the National Security Council (NSC) and other laws and regulations. With these reforms, the NSC lost its dominant role in the security sector and its tutelage over civilians. The duty of the Turkish Armed Forces (TAF) to intervene against internal threats was abolished and the task of the TAF became primarily defence against foreign enemies. Moreover, civilian oversight of the military budget

through the Court of Auditors was guaranteed, and the military courts' jurisdiction was restricted so that they could not try civilians and military personnel if they committed general crimes.

Besides these legal reforms, important changes also took place in practice. The High Military Council meetings, which decide on personnel appointments and promotions, began to be chaired by the prime minister in 2011. Accordingly, from August 2010 the government had played a more active role in personnel decisions, even causing the chief of staff to resign over a possible disagreement with civilians before the August 2011 meeting. Another significant change in practice has been in the procedures that were followed in the preparation of the National Security Policy Document (NSPD). In the past, the military bureaucracy of the NSC had been responsible for this document and identifying internal and external threats. In 2010, for the first time, civilians took charge of authoring the NSPD, limiting another of the tutelary powers of the armed forces.¹

While the significance of reforms in civil–military relations should not be underestimated, it cannot be claimed that civilian control over the military is complete. As of February 2015, for instance, the military is responsible to the prime minister, not the Ministry of National Defence, and parliament does not debate the military budget in detail (even though it has the legal right to do so). Despite these shortcomings, however, in important respects Turkish civil–military relations have come close to being those of a democracy, and the era of military interventions in politics has come to an end for the foreseeable future.

Politicisation of Court Cases against Military Officers and the Annihilation of the Rule of Law

Critical in civil–military relations after 2007 were the Ergenekon and Balyoz (Sledgehammer) investigations. In these court cases, around 600 retired and active-duty military officers and civilians were accused of planning to stage coups against the AKP in the early years of its rule. In 2012 and 2013, after several years of investigations and trials, the Specially Authorised Courts that tried the cases decided that the majority of the suspects were guilty and condemned hundreds of people to various years in prison. Among those that received life sentences were a former chief of the General Staff and commanders of the armed forces. This was an exceptional and highly symbolic outcome of the trials in a country that has witnessed two military coups d'état (1960, 1980) and two military interventions that forced the governments of the day out of power (1971, 1997). Arguably, one of the political consequences of the cases was to advance the continuing democratisation process by cleansing the military of coup plotters, strengthening the hands of civilians in reforming civil–military relations and reshaping the public's attitudes towards the military.

¹ For more information on these amendments see Yaprak Gürsoy, *Türkiye'de Sivil-Asker İlişkilerinin Dönüşümü* (Istanbul, 2013), and 'From Tutelary Powers and Interventions to Civilian Control: An Overview of Turkish Civil–Military Relations since the 1920s', in Carmen Rodriguez, Antonio Avalos, Hakan Yılmaz and Ana I. Planet (eds), *Turkey's Democratization Process* (London and New York, 2013), pp. 253–73.

However, from the very beginning, the investigations were criticised for being political and obliterating the rule of law. Suspected individuals were kept in custody for days without any formal charges, prominent individuals with severe health problems were detained in unacceptable conditions, and well-known journalists and civil society activists (some of them quite outspoken in their opposition to coups) were accused of being part of a clandestine organisation. Most of those who had been implicated, including civilians, had been linked together as members of a terrorist organisation, although they were from very different backgrounds with no apparent connections. The evidence that had been used in the indictments was also widely suspected of being forged. Especially in the Balyoz case, some of the evidence against the accused was later proven to be completely fictitious.²

Later events also demonstrated that the coup investigations were carried out by public prosecutors who were allegedly part of the movement led by Fethullah Gülen. At the beginning of the AKP's rule, the Gülen movement and the AKP were implicitly allied and worked together in several key areas.³ A moderate and modern preacher as well as an opinion leader, Gülen has millions of followers inside and outside Turkey. The movement funds schools all over the world, and has connections with the media, businessmen and civil society organisations. Gülen was a resident of Turkey, but in 2000 he was accused of covertly attempting to bring down the state, leading him to remain permanently in Pennsylvania, USA, where he already resided due to health problems.⁴ Although President Recep Tayyip Erdoğan was not linked with the movement, in the initial years the party was encouraged by its media and business network. In return, it is believed that Gülen's followers were allowed by the AKP to increase their influence in state organs, especially in the judiciary and police.

Since 2011, the AKP's relations with the Gülen movement have shattered. The two forces were united initially in their mutual disdain for the military. However, as time went on it became clear that on several issues, such as Turkey's tactics in the Middle East and the solution to the Kurdish issue, Erdoğan and Gülen were on opposite pages.⁵ In the winter of 2013, the AKP attempted to close down supplementary schools in order to deprive the Gülen movement of its core base in these facilities. In response, on 17 December 2013 alleged Gülen prosecutors began a corruption investigation that implicated government ministers. The next month, the prosecutor's office stopped trucks supposedly carrying arms to the Syrian rebels. The gendarmerie (which functions as a police force in rural areas) and the prosecutor's office wanted to search the trucks, but the Turkish National Intelligence Agency (MİT) did not allow it. The raid on the trucks and the corruption investigations were perceived as attacks against the government by the Gülen movement. After the corruption investigation, government

² For political consequences of the Ergenekon investigation see Yaprak Gürsoy, 'The Changing Role of the Military in Turkish Politics: Democratization through Coup Plots?', *Democratization* 19/4 (August 2012), pp. 735–60, and 'Turkish Public Opinion on the Coup Allegations: Implications for Democratization', *Political Science Quarterly* 130/1 (Spring 2015), pp. 103–32.

³ Berna Turam, *Between Islam and the State: The Politics of Engagement* (Stanford, 2006).

⁴ Joshua D. Hendrick, *Gülen: The Ambiguous Politics of Market Islam in Turkey and the World* (New York and London, 2013).

⁵ Ruşen Çakır and Semih Sakallı, *100 Soruda Erdoğan X Gülen Savaşı* (İstanbul, 2014).

ministers were changed, and since then, there have been attempts to cleanse the police and judiciary of suspected Gülen supporters.

After the rift between the Gülenists and the AKP, the decisions of the court cases against the military were overturned. In June 2014, the Constitutional Court reversed the Balyoz decision and all of the accused were released from prison. The Court of Appeals also overturned the verdicts and the case was retried, leading to the acquittal of all suspects in April 2015. Similarly, in March 2014, the Constitutional Court ruled that the rights of a number of Ergenekon suspects had been violated, and released suspects from prison. This verdict was based on the fact that the first instance court, which sentenced suspects in August 2013, did not write its detailed ruling for almost a year. Furthermore, the Specially Authorised Courts which tried the cases were closed down, and the detention periods had been reduced by previous reforms. The Specially Authorised Courts were considered as a Gülen stronghold. The fact that the cases against the military officers were tried in these courts was perceived as evidence that the Gülenists were behind the investigations and the cases. But now, by closing down the courts, the government was depriving the movement of its base in the judiciary. For the Ergenekon and Balyoz cases in particular, the decision to free convicted people in 2013, but not earlier, when many observers were pointing to the irregularities, had demonstrated the political nature of the matter from the very beginning; only now the government had switched sides, supporting the rights of the military officers against the Gülen movement. The involvement of politics in a matter of law shows that the military had come under civilian control through a process that damaged democracy rather than protecting it.

New Laws Regarding the Intelligence and Police

The showdown between the public prosecutor and the MİT in the searching of the trucks heading for Syria in January 2014 was only one of the incidents that brought the Gülen movement and the MİT up against each other, and proved that the intelligence service had become a loyal security service of the AKP government in general and President Erdoğan in particular. It was reported in the foreign press that the chief of the MİT, Hakan Fidan, who used to be Erdoğan's private advisor, was taking independent action in the Middle East following the Arab uprisings and continuing to function as Erdoğan's primary aide in foreign policy.⁶ At home, Fidan's activities drew attention when, in September 2011, voice records were revealed of him and a MİT official meeting with Kurdistan Workers' Party (PKK) leaders in Oslo almost two years earlier. Subsequently, in February 2012, the prosecutor responsible for investigating the activities of the alleged urban wing of the PKK, the Kurdistan Communities Union (KCK), called Fidan and other MİT members to testify in the case.

⁶ Adam Entous and Joe Parkinson, 'Turkey's Spymaster Plots Own Course on Syria', *Wall Street Journal*, 10 October 2013. Available at <http://www.wsj.com/articles/SB10001424052702303643304579107373585228330> (accessed 19 February 2015). David Ignatius, 'Turkey Blows Israel's Cover for Iranian Spy Ring', *Washington Post*, 17 October 2013. Available at http://www.washingtonpost.com/opinions/david-ignatius-turkey-blows-israels-cover-for-iranian-spy-ring/2013/10/16/7d9c1eb2-3686-11e3-be86-6aeaa439845b_story.html (accessed 19 February 2015).

The AKP government initially dodged the bullet by removing the Gülenist prosecutor from his position and dismissing or sending to remote parts of the country thousands of police officers. Also, within 10 days of the prosecutor's attempt to investigate Fidan, the law on the MİT was changed by parliament to require the approval of the prime minister to try the chief of the MİT. The new article of the law was applied retrospectively to all continuing investigations, freeing Fidan from a possible trial.⁷ Erdoğan declared that the incident was an illegal attempt to bring about chaos and serve Turkey's enemies. His defence demonstrated the special place that the MİT has been accorded in Turkish domestic and foreign policy today.

In April 2014, a new MİT law, envisioning more comprehensive changes in the agency's functions, was approved by parliament in order to prevent similar incidents occurring in future. However, certain provisions of the law were criticised by opposition parties, human rights groups and other observers for creating an 'intelligence state' and giving extraordinary powers to the agency.⁸ Among the articles that caused concern are the following:⁹

- The duties of the MİT were expanded so that the agency would be responsible for matters involving national defence, the fight against terrorism and national security.
- In these matters the agency can collect, analyse and record data from any individual or institution, including tapping phone calls. Those (such as journalists) who do not want to share information with the MİT can be tried and receive prison sentences of up to four years.
- No institution can use legal statutes pertaining to its own status in order to refuse sharing documents or information with the MİT. Yet the agency itself can keep its activities secret.
- Legal cases against intelligence officials can be opened by public prosecutors only when the institution itself decides that it is necessary. The chief of the MİT can be tried only if the president approves it. This article changed the 2012 law which had stated that the prime minister must approve the trial of the undersecretary of the MİT. Yet, because Prime Minister Erdoğan was elected president in August 2014, essentially it is still Erdoğan who decides whether the undersecretary can be tried.
- Anyone who publishes leaked information regarding MİT officials and the agency's activities can receive prison sentences of up to 10 years.¹⁰

⁷ 'Devlet İstihbarat Hizmetleri ve Milli İstihbarat Teşkilatı Kanununda Değişiklik Yapılmasına Dair Kanun', *Türkiye Büyük Millet Meclisi*, 17 February 2012. Available at <http://www.tbmm.gov.tr/kanunlar/k6278.html> (accessed 19 February 2015).

⁸ 'Turkey's Spy Agency Granted Extraordinary Powers, as President Gül Approves MİT law', *Hürriyet Daily News*, 25 April 2014. Available at <http://www.hurriyetdailynews.com/turkeys-spy-agency-granted-extraordinary-powers-as-president-gul-approves-mit-law-.aspx?pageID=238&nid=65584> (accessed 19 February 2015).

⁹ 'İşte Yeni MİT Yasası', *Milliyet*, 17 April 2014. Available at <http://www.milliyet.com.tr/iste-yeni-mit-yasasi/gundem/detay/1868696/default.htm> (accessed 19 February 2015).

¹⁰ For the details of the new law see 'Devlet İstihbarat Hizmetleri ve Milli İstihbarat Teşkilatı Kanununda Değişiklik Yapılmasına Dair Kanun', *Türkiye Büyük Millet Meclisi*, 14 April 2014. Available at <http://www.tbmm.gov.tr/kanunlar/k6532.html> (accessed 18 April 2014).

The new law suggests that in national security matters, the MİT has replaced the previous role of the military. Just as the NSC used to have a large range of duties, now the intelligence agency is responsible for security and defence matters broadly defined. Similarly, as the NSC used to have unprecedented powers over other state institutions, obliging them to share information and documents, the MİT now presides over all security activities in a manner that dominates other institutions. Despite similarities, however, there is an important difference between the NSC and the MİT pertaining to their relations with the current government. Although the military worked with certain political parties and governments more in tandem than others, relations with the last government were obviously not harmonious. This situation is reversed in the case of the MİT. The intelligence agency, now equipped with new powers and immunities, works in accord with the AKP government.

Another institution that the government is trying to bring under its control is the police. From the foundation of the Turkish Republic, the laws that guided the authority and functions of the police prioritised state security over individual rights and freedoms. Over the years, the powers of the police were expanded to control citizens and prevent opposition to the state ideology, in the name of public order. Although a few democratic steps were taken at the beginning of the 2000s to limit the powers of the police, overall during the AKP era the basic tenets of the body of legislation did not change.¹¹ More recently, with the rift between the Gülen movement and the AKP, the government has tried to bring the police under its direct control by dismissing officers perceived to be in opposition.

In March 2015, parliament passed a new internal security package, with the intention of strengthening the hands of the law enforcement agencies. The gendarmerie came more under the authority of the Ministry of Interior rather than the military. Although this might be seen as a positive development from the perspective of civil–military relations, the fact that governors would be able to oversee and determine the promotion and appointment of gendarmerie personnel suggests that the forces are ‘likely to be used as another tool for the government to suppress the opposition’.¹² Moreover, more endemic problems with regards to the gendarmerie, such as its wide-ranging policing and military functions, as well as its responsibilities to more than one authority (military, national and local government and judiciary), still continue. According to the opposition in parliament, the articles of the law package on the gendarmerie were enacted in order to prevent the forces being used by the judiciary for a possible attack against the interests of the government, as happened during the search of the MİT trucks in 2014.¹³

¹¹ Zeynep Gönen, Zeynep Başer, Mehmet Uçum and Biriz Berksoy, *The Spirit of the Police Laws in Turkey: Legislative Discourses, Instruments and Mentality* (Istanbul, 2013).

¹² Lale Kemal, ‘Internal Security Package and Gendermerie’, *Today’s Zaman*, 29 January 2015. Available at http://www.todayszaman.com/columnist/lale-kemal/internal-security-package-and-gendarmerie_371135.html (accessed 18 April 2015).

¹³ Çiğdem Toker, ‘İç Güvenlik Paketi ve “Jandarma” Rahatsızlığı’, *Cumhuriyet*, 11 February 2015. Available at http://www.cumhuriyet.com.tr/koseyazisi/211263/ic_Guvenlik_Paketi_ve_Jandarma_Rahatsizligi.html (accessed 18 April 2015).

Another set of articles in the package changed the laws on the duties and authorities of the police, raising serious concerns over basic democratic rights of taking part in peaceful organisations or of the freedom of speech. Some of the controversial articles in the law are the following:¹⁴

- It would be possible for the police to search people and vehicles without a warrant.
- The police could use firearms when they suspect that an assailant is going to attack even when she or he does not possess a lethal weapon.
- In public meetings, demonstrations and rallies, those who possess slingshots and marbles, cover their faces, and wear clothes, carry banners or shout slogans that belong to or are similar to those of illegal organisations would face prison sentences ranging from several months to five years.
- The police would be able to use dyed water in dispersing protesting crowds.
- It would become possible to detain individuals for 24 hours in cases of crimes committed alone, and protestors for 48 hours in cases involving mass incidents, without the authorisation of a prosecutor.
- The governor, who is appointed by the government, would be able to give direct orders to the police.¹⁵

These provisions give unusual powers to the police in order to prevent any public protest, rally or demonstration. The government argues that the articles in the law are similar to regulations in some EU countries and do not pose any threat to democracy. Although it is possible to find analogous clauses in EU countries' laws, it is the overall package that raises concerns, not single items that are similar to other countries' practices. Since the Turkish police is known to violate human rights, the new law does not give any optimism that it will use its authority in a manner that protects individuals.¹⁶ Quite to the contrary, if the government succeeds in fully controlling the police and the gendarmerie, these forces would repress dissent and opposition demonstrations even when they are entirely peaceful.

¹⁴ 'İç Güvenlik Paketi'nde öne çıkan maddeler', *BBC*, 3 February 2015. Available at http://www.bbc.co.uk/turkce/haberler/2015/02/150203_tasari_basliklar (accessed 19 February 2015). Human Rights Watch, 'Turkey: Security Bill Undermines Rights', *Human Rights Watch*, 11 December 2014. Available at <http://www.hrw.org/news/2014/12/11/turkey-security-bill-undermines-rights> (accessed 18 April 2015).

¹⁵ For the full articles of the law, see 'Polis Vazife ve Salâhiyet Kanunu, Jandarına Teşkilat, Görev ve Yetkileri Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun', *Türkiye Büyük Millet Meclisi*, 27 March 2015. Available at <http://www.tbmm.gov.tr/kanunlar/k6638.html> (accessed 18 April 2015).

¹⁶ Emma Sinclair-Webb, 'Is Turkey Just Copying the EU in Increasing Police Powers?', *Hürriyet Daily News*, 14 February 2015. Available at <http://www.hurriyetdailynews.com/is-turkey-just-copying-the-eu-in-increasing-police-powers-.aspx?pageID=449&nID=78328&NewsCatID=396> (accessed 18 April 2014).

Conclusion

When it comes to the matter of security sector reform, the record of the AKP government is mixed. Although in civil–military relations important democratic steps have been taken, the reform packages involving the intelligence agency and the police suggest that the main goal of the government has not necessarily been democratisation. The government demolished the tutelage of the military, which ideologically stood against the AKP and threatened to curb the powers of the elected parliament and the government. The legal changes that took place in this regard were important for the further democratisation of the country. However, when it came to the trial of suspected coup plotters, the government collaborated with members of the Gülen movement in the judiciary, leading to a situation where possibly innocent people were denied due process and imprisoned for years simply because they had opposed the government and the Gülen movement. Then, when the AKP and the Gülenists parted company, the government switched sides, facilitating the release from prison of all Ergenekon and Balyoz suspects. The politicisation of those court cases from their inception in 2007 until today obliterated the rule of law, damaging democracy.

The AKP government's approach to the security sector indicates that the main goal is creating loyal services. The tutelage of the military was eradicated, serving this purpose. The government's close relations with the MİT and its infringement of the internal affairs of the police, as well as the new laws passed by the government, point in the same direction. With a trustworthy group of security forces, all opposition to the AKP – whether from Kemalist, Gülenist, Kurdish or liberal origins – would be limited in its ability to express its disagreements and criticisms freely.

Endemic problems with the MİT and police, such as the failure of oversight by elected officials and the judiciary, have not been created during the AKP era.¹⁷ The disregard for individual rights, the prioritisation of public order, the treatment of citizens as potential criminals, the broad definition of national security, the use of torture and unnecessary force, and the lack of transparency in security activities by all segments of the security sector, including the military, intelligence and the police, were inherited from the past. The fact that some headway was made with regard to civil–military relations does not change the outcome: the government since 2002 has done little to overcome these problems in other security sector institutions and, in the past few years, has added more undemocratic legislation and practices to the list.

¹⁷ Biriz Berksoy, *Military, Police and Intelligence in Turkey: Recent Transformations and the Needs for Reform* (Istanbul, 2013).

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