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AK Party's Democratization Perspective:

Plus and Minuses

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The Civil-Military Relations

Particularly during its first two terms (2002-2012), AK Party adopted a range of constitutional and legal democratization reforms connected with the EU accession process covering issues such as freedom of thought, faith, expression and assembly; the legal and practical improvements regarding the Kurdish issue; opening process on the Alawite question; a new libertarian stress and vision on minority rights; and diminishing, even eliminating the prerogatives of the military which historically and conventionally dominated the civil, social and cultural sphere in Turkish politics.

Within the context, the civil-military relations throughout the history of modern republic, particularly since the multi-party regime by 1950s has been worth to discuss more deeply as of expressing the baseline which the various components of the democratization issue directly and prerequisitesly depend on.

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

Thus, Turkey since the 19th century, became a country that feel the effects of the military in all the spheres, as the earliest modernized institution in the country. By that, the army has taken the leadership of direction over society and politics. Rapid radical transformation requires an active role on the armed forces. Hence, it has become a tradition for the army forces to regard the project of modernization and the republican regime as collateral not only in the narrow sense, but also as the guardian of the state. In this context, Duverger (1965: 49) says that the armies permanently have a potential for making coup because of their well-equipped and disciplinary structures. The size and boundaries of political influence of an army vary according to the political culture, socioeconomic structure and level of institutionalization of the political system in that country. However, The Turkish Parliamentary (TBMM) Research Commission Report (2012) codes the most important motives of the militarization activity as the presence of silent or visible consent, which operates on the intellectual, political, economic and social level in the process of militarization.

The civil-military relations established in Turkey during the presidencies of Atatürk and İnönü are related to the totalitarian-penetrative model in which the soldiers are in the domain of the ruling party (Hale, 1996: 261). In this period, Turkey was a one-party state and the military was a supportive factor. Transition to multi-party regime has revealed so many effects in different institutions. One of the areas where these effects have been seen is the interaction of the army with politics. Thus, during the multi-party period, Turkish politics has been subjected to military interventions every ten years.

The definition of *national security*, which has already been widely considered in the 1961 Constitution, has been described as the creation of an imaginary enemy by virtue of the 1982 Constitution, which protects itself against internal and external enemies, whose existence is permanently kept on the agenda and threatens the so-called threat to society. So, the army has become more autonomous (İnal, 2017: 69).

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

The European Union assessed Turkey's progress in civil-military relations from 1998 to 2000 and emphasized that civilian control over the army was insufficient. In all subsequent progress reports after 2000, the influence of the NSC (MGK) on Turkish political life was emphasized and stressed that the NSC is the main actor in determining national security policy and plays an active role in many issues that concern political life (Yıldız, 2010: 89; cited by İnal, 2017).

In the face of these criticisms, the AK Party government has made important reforms in order to make civil-military relations more democratic and to balance it in favor of civilians through the 7th Integration Package. With these reforms, it was aimed that the NSC would perceive the army as an establishment and to terminate some functions with the executive authorities (Bayramoğlu, 2004: 109-110, cited by İnal, 2017).

In this context;

1. The General Secretary of the NSC was elected from among the civilians and it was aimed at removing the general secretariat's administration from the army. In addition, the authority of appointment of the NSC General Secretary was taken from the Chief of General Staff and given to the Prime Minister (NSC General Secretariat, 2003).
2. The meeting of the NSC is held every two months by changing the meeting frequency once a month. Thus, the activity of the Board, which did not specify the agenda, was tried to be deactivated.
3. Amendment to the Law on the National Security Council and the Secretariat General of the National Security Council is the most important reform carried out by the 7th Integration Package.

With this amendment, the authorities of the NSC have gained only a recommendation on the issue of the establishment, determination and implementation of the national security policy, and a clear initiative has been presented to the Prime Minister and the Council of Ministers on the implementation of NSC resolutions. Thus, the NSC has become just a legal advisory body (Yıldız, 2010: 92, cited by İnal, 2017). Parallel to the changes made in the powers of the NSC, the duty of the NSC Secretary General is limited to carrying out the secretariat services of the establishment and fulfilling the duties given by the board and the laws.

The package also contained the regulations towards auditing of the military budget by the Court of Accounts thereafter and removal of jurisdiction of military courts on the crimes, specified in Article 58 of the Military Criminal Code, committed by the civilians during peace time. These two changes are serious democratic steps taken in the field of civilianization of the state process (Secretariat General for EU Affairs, 2007: 38-39).

Besides, with the 8th Package, which was accepted on May 2004, the NSC representatives from The Radio Television Supreme Council (RTÜK) and the Higher Education Council (YÖK) were removed, trying to reduce the effectiveness of military on education and media. In addition, the provision "the law on the control of the state property owned by the armed forces on behalf of the Grand National Assembly is regulated by law in accordance with the confidentiality principle required by national defense services" has been removed from the article regarding the Court of Accounts. Finally, Article 143 of the Constitution was abolished and the legal existence of the State Security Courts was abolished and an important step was taken in the field of criminal justice (Turkish Grand National Assembly, 2004: 11).

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

However, one of the most important turning points in civilianization of the Turkish politics has been the September 12 referendum of 2010. With this constitutional amendment package, the structure of the Constitutional Court (AYM) and the High Council of Judges and Prosecutors (HSYK) have been changed, the powers of the military courts have been limited, the civil courts have been allowed to appeal against the decisions of the Supreme Military Council (YAŞ), the trial of the ones who carried out the 1980 coup was

opened, the jurisdiction of the President of the Grand National Assembly and the senior military bureaucrats has been given to Constitutional Court and the right to individual referral to the Constitutional Court was granted (Hakyemez, 2010).

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

What is more, in 2013; the regulation amending article 35 of the Turkish Armed Forces (TSK) Internal Service Law was accepted. By this crucial change, the definition regarding the mandate of the Armed Forces has been shifted from “to ensure the protection of the Turkish homeland and Republic of Turkey” to “to defend the Turkish homeland against the threats coming from abroad, to provide deterrence with strengthening of the military power, to do missions abroad by the decision of the Turkish Grand National Assembly and to help ensure international peace”.

In addition, by the Homeland Security Package accepted in March 2015, the Police and Gendarmerie's Duty and Authority has been reorganized and redefined, paving the way for increase of the civilian control over gendarmerie. With this package, the appointment, relocation and appointment of the gendarmerie personnel in the provinces was tied to the Minister of Interior, and the appointment of gendarmerie commanders except of the general-level was to be made by the Governor (EU Commission, 2015).

As a general view, hence, Hale and Özbudun (2010: 141) makes the relationship between the armed forces and the government, with the beginning of the AK Party government in three rounds: i) controlled disagreement period, from 2002 to the end of 2006; when the military accepted the legitimacy of the government and the policy maker's authority in the debate, even in controversial cases, while continuing to pressure the government such as secularism and the protection of the unitary state; ii) challenge and crisis period, as appeared clearest in the 2007; April 27th press release on the website of the army commanders were opposed to the government; iii) withdrawal period, after 2007; even if the tension between the army and the AK Party government persists, the commanders agreed that they should stay behind.

The New Political Envisagement and Human Rights Issue

By the new political envisagement, civil society became more active, apparent and effective in shaping and affecting the socio-political issues through reinforcement of accountability and checking mechanisms within the democracy frame.

In this context, numerous legislative measures have been taken to ensure compliance with international human rights legislation. Unprecedented practices have been adopted in terms of ensuring civilian control of the military bureaucracy. At the same time, efforts have been made to build a political structure based on fundamental rights and freedoms in order to strengthen the rule of law and normalize social life. On the other hand, legislative amendments have been made in order to create solutions for the problem of multiple human rights, such as the extension of the freedom of ethnic and religious minorities and the freedom of expression in the context of international norms.

The first and most critical step taken by the AK Party, sitting on the seat of power in November 2002, has been ending the 23-yearlong state of emergency on November 30, 2002. Thus the eastern and southeastern region have been liberated from the pressure of the extraordinary regime, ensuring start of normalization of the social and cultural life. Focusing on the reforms to be carried out in the European Union progress process, the government decided in September 2003 to support the implementation of human rights reforms

via Reform Monitoring Group. The Convention on the Rights of the Child / the Protocol on the Optional Protocol to Children's Armed Conflicts, which is part of international legislation on the protection of the rights of the child, was ratified by Turkey in October 2003. In the same year, the Gendarmerie Human Rights Violations Investigation and Evaluation Center (JIHIDEM), working under the Ministry of Interior, was established. This institution has been to prevent human rights violations caused by staff working in military units and to develop law enforcement and human rights awareness within the society (EU Commission, 2003).

Procedures for military courts have been harmonized with the civil courts, with the amendment made in January 2004, the Military Penal Code and the Law on the Establishment of Military Courts and the Rules of Procedure.¹ The ratification of the Protocol No. 13 of the European Convention on Human Rights, which lifted the death penalty in all circumstances, was completed (The Official Gazette, 2004) and entered into force in October 2005. One of the arrangements that extend the rights of detainees, the Regulation on Arrest, Detention and Questioning has been amended in January 2004. The registry system of the detained persons has been renewed and the medical examination of the detainees has been opened to the outside of the police forces' surveillance.

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

Legal changes have been made in order to broadcast and learn languages and dialects outside of Turkish in newly language courses to be opened (The Official Gazette, 2003); and radio and television broadcasting in languages such as Kurdish, Arabic, Laz, and etc (The Official Gazette, 2009). The new Press Law has been passed, the practices that have led to the closure of publishing houses and the confiscation of the means of printing have been abolished and a series of arrangements have been made in order to strengthen the freedom of the press.

The so-called twin contracts; The United Nations "International Convention on Personal and Political Rights" and the "International Convention on Economic, Social and Cultural Rights" have been ratified and transformed into domestic law text within the scope of Article 90 of the Constitution. Turkey has ratified the European Social Charter and has implemented regulations to ensure gender equality. Work has continued to extend the freedom of belief and worship to include the demands of religious minority groups. In order to prevent nonviolent thinkers from being condemned in the context of freedom of expression, it was emphasized in September 2004 that they were amended in Article 216 of the Turkish Penal Code and that punishment should be implemented solely if the action turned into an open and close danger in terms of provoking hatred and enmity (TGNA, 2004). While closing of the political parties have been made difficult, the conditions for establishing associations become easier, correspondingly. Amendments to the Law on Meetings and Demonstrations have largely abolished the provisions preventing freedom of peaceful assembly. Along with the new Law on Associations, which came into force in November 2004, the public authority over the associations has been significantly alleviated (Gökalp, 2005).

Turkey, which seeks to strengthen its domestic legal system through international human rights mechanisms, signed the Optional Protocol to the UN Convention against Torture in September 2005. In July 2005, the Law on the Handicapped was adopted in order to protect and promote the rights of persons with disabilities. In this context, it is striking that this kind of discrimination is one of the crime categories that fall under

¹ See: Ministry for EU Affairs, Political Reforms-1. http://www.abgs.gov.tr/files/rehber/04_rehber.pdf

the scope of the Turkish Penal Code (TCK) at the same time as securing the right of the disabled to not be discriminated in social life.

The circular issued by the Ministry of Justice in January 2006 included instructions on prosecution offices to consider European Convention on Human Rights (ECHR) legislation in the context of press freedom and freedom of expression and demanded monthly monitoring of criminal investigations onto the visual and written media. In September 2006 another amendment to the Housing Law removed discriminatory provisions against the Romans (Ministry for EU Affairs, 2006).

During this period, special courses were opened and broadcasts were opened in languages and dialects other than Turkish, as noted above. For the first time in the history of TRT, two channels of broadcasting in Arabic and Kurdish have been active (Hürriyet, 2009). Legislative amendments have been put into effect in prisons, allowing for meetings in languages other than Turkish. In this context, by expanding the field of democratic politics, political parties have been allowed to make propaganda in languages other than Turkish. One of the most critical breaking points within this period is; as a result of the 2007 referendum, the president was to be elected by the society directly herein after which would bring a more democratic and open process regarding the democratic participation norms (TGNA, 2007).

An important step was taken to remove the headscarf ban in the educational institutions, which is one of the chronic human rights problems of Turkey. As the result of the decision of the Parliament in February 2008, the amendments of the Article 10 of the Constitution regulating the “equality under the law” and Article 42 regulating the “right for education” have been made in guaranteeing the individual and public liberty. This process has been nourished by the regulation within the Democratization Package in 2013, removing the headscarf ban in public sphere, as well (Prime Ministry Undersecretariat of Public Order and Security, 2013). Within the context of strengthening the legal measures for the protection of freedom of expression in 2008, Article 301 of the Turkish Penal Code has been amended and it has been subject to the permission of the Minister of Justice to initiate criminal investigations under the scope of the article. Thanks to the amendment made in Law No. 5737 on the Law on Foundations, the scope of freedom of association has been enlarged and new provisions have been introduced such as the acquisition of property of foundations, the provision of income from abroad and the facilitation of cooperation with foreign foundations.

The Alevi Workshops, launched in 2009, have been welcomed with interest as the main problems of Alevis come on the agenda and produce permanent solutions.² It has been expected that along with the Alevis, for the Assyrians, Nusayris, Yezidis and Chaldeans also, new steps are to be taken towards the realization of legal regulations in order to benefit from worship, education and organization in the direction of their religious beliefs.

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

² For the Alevi Workshop (2009) full notes, see: <http://www.farukcelik.com.tr/images/editor/1.pdf>

Future Projections

Indeed, these are all showing that democratization first needs change of minds in which Turkish political culture has reached at a certain level in terms of neither imposing an identity nor identifying a definition on *desirable* citizen. The attained level no longer could accept an understanding of the state that denies needs and demands of the citizens, accusing them, rejecting their demands and needs, authorizing the public sphere and making this field a hell for those who are not akin to the self-defined *desirable* and *acceptable* citizen profile which it defines. Thus; new reforms, new rights and freedoms would inevitably take its place in Turkey's agenda, as politics gains more power as a way of solving problems as a method of seeking a right.

The most important issue that is problematic in this regard is the question whether fully reflected of all these legal proceedings into the practice. In addition to structural problems, it seems that the military and civil bureaucracies still do not give up their traditional attitudes and habits that will make it difficult for the human rights reforms to be implemented in its proper and spiritual manner.

Completion of the new constitutional process apart from the political controversies, the peaceful settlement of the Kurdish problem, which constitutes the most important human rights issue of the country, must be achieved and the civilian control of the state must be fully realized.

Nevertheless, there has recently been a confusion on the future projections of AK Party's next policy implications concerning expansion of basic civil rights and realm of freedom including also the following path of Kurdish issue and other various identity-based prospects, which figures and comprises an open-ended potential tension line, even unacceptable waves of violence as lastly seen in Taksim Gezi Park incidents or recent ditch efforts like other terrorist attacks performed by the PKK, which in the last analysis were illegitimate assaults to the democratic norms and institutions.

Hence it should be noted that the most efficient projection to avoid and eliminate the mentioned violent attempts is creating a human-oriented formulation to security-freedom balance which will serve as marginalization of all the terror-backed entities or political stands.

In this regard, the development of peaceful means based on human rights law to include political, cultural and economic freedoms should be accelerated. The right to education in the mother tongue should be implemented in such a way as to encompass all educational institutions and to be sufficiently expanded. Recognition of the right of defense and right of usufruct in public services in mother tongue via legislation process made in 2013 is a positive development in this regard (Al Jazeera Türk, 2013).

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

All legal instruments to strengthen civilian control of the armed forces and to abolish military intervention tools and bases to civilian political sphere should be used effectively.

In this context, it has been widely expected that the September 12 and February 28 coup investigations should be completed in line with the rule of law and fair trial criteria, hence vitally punishment of coup crimes as a *sine qua non* condition for settlement and institutionalization of democracy within the country. Therefore, the ascertainment of alleged crimes by an independent and impartial trial will strengthen the confidence in the rule of law.

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

In this respect, without excepting a grand vision towards regaining the social cohesion, albeit ideological differentiations among different social and political bases, one should reconsider the way and depth of reformist mould including, even starting by adoption of an entirely new constitution to regenerate a social belonging sense for all the components of the society. The human rights values, which are the most important references of this new, civil, participatory constitution, must be guaranteed for all and the reform process must continue uninterruptedly, accordingly.

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