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**Civil Society and Democratisation**  
**in Turkey**

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## Abstract

This is an analysis of the contribution of civil society to democratisation in Turkey through participation in the political decision-making and legislative processes and its degree of success in exerting an influence on policy outcomes. It aims to uncover the causal processes and variables, which work between civil society and the political processes and investigates the relationship between the efforts of civil society to promote democratisation and the policy outcomes related to democratisation. This is an intensive case study for which ‘process induction’ approach of ‘Process Tracing’ method is applied. It focuses on two ‘issue-areas’ for investigation: security sector reform and judicial reform. Four civil society organisations—two domestic and two transnational—with specific democratisation programmes have been selected as cases to study. It has found that the influence of civil society on policy outcomes—particularly on those related to democratisation—in Turkey is negligible. Based on the findings of this research, it can only be argued that there is a ‘start’ or a ‘beginning’ for the civil society to have an influence, if anything, on the democratisation process in Turkey in general and on policy outcomes—related to *politics*—in particular. It is simply a modest positive step, slowly moving forward. Neither the Turkish political system allows this, nor the dominant political culture is prepared to relinquish a place, let alone a role as an actor in politics, or to accommodate civil society otherwise. Civil society, as a legitimate partner, is not recognised nor respected.

## Preface

*“The owl of Minerva takes its flight only when the shades of night are gathering.”*

Hegel, in *Philosophy of Right*, explains the purpose and essence of a preface as “to speak only externally and subjectively of the standpoint of the work which it introduces”. Also, criticisms, other than those which proceed from the scientific and objective treatment of the essential content, too, “must be viewed by the author as unreflective convictions [...]. [...] a matter of indifference” (2001: 20) he says. This is exactly what I needed to write this preface for.

My generation has been part of the *baby boomers* of the post-war period. They—we—are known with a tendency towards rejection of traditional values and a claim to a search for a redefinition and, if possible, imposition of them on societies. In the 1960s, this ‘crusade’ for a ‘new’ social—and economic—order based on ‘redefined’ values, sometimes took violent forms. However, since this ‘redefinition’ hardly materialized, the struggle remained stuck in—and limited to the *rejection* of—the existing order, whatever it was. Turkey, then, a *third wave* democracy in its infancy, was still striving to recover from the travails of the first *reverse wave* of the Turkish democracy. In a country trying to navigate a safe course through the uncharted waters of multiparty political regime, industrialisation, enlightenment, ‘reformation’ and perhaps above all nation-building—all at the same time—this ‘rejection’ was even more painful and took different forms. In the course of fifty or so years the Turkish army directly or indirectly—most of the time *directly*—intervened in politics and, vowing—and, apparently, believing so—to deliver the country out of all these travails, even took over the complete responsibility of running the country in 1960 and again later in 1980.

So, Turkish *baby boomers* grew up through a completely different life experience. As a young boy of a modest, lower-middle income family, in an era of pre-television, pre-internet, pre-social media, the memories of ‘family gatherings’ to listen to the ‘Yassiada’ trials of the early 1960s, broadcast live on the radio are still vivid in my mind. The newspapers with pictures of the deposed prime minister on gallows haunted me all these years; it was certainly not like the ‘Magpie on the Gallows’<sup>1</sup>. The 1960s left deep wounds, in one form or another, in the souls—if not bodies—of many in Turkey, and these wounds became even more infected rather than being healed as time passed.

In the summer of 1961, when I was a boy then, immediately before the constitutional referendum, running after the American-made GMC military trucks (which introduced the word ‘*cemse*’, for *any* military truck, into Turkish), for collecting the propaganda leaflets scattered by armed soldiers—in steel helmets—like confetti and piling them up as if we were making a *stamp collection*, was real fun. They looked like daisy flowers, in various bright colours and featured the words “YES to the Constitution” in large letters. I had wondered why the army needed propaganda and in such a way.

Joining the military did not make the experience less traumatic. The military intervened in 1971 again. This coincided with the cholera outbreak in late-1970, in Sagmalcilar, which later became Bayrampasa to erase the unwanted memories of this dreadful happening, as if changing the names would make the problems go away<sup>2</sup>. Prime Minister of the time explained the outbreak as “the will of God against which one cannot say anything.”<sup>3</sup> At this time, the whole city of Istanbul, as well as two other

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<sup>1</sup> ‘The Magpie on the Gallows’. By Pieter Bruegel the Elder. 1568

<sup>2</sup> By the same token, Taslitarla had transformed into Gaziosmanpasa in 1963.

<sup>3</sup> Senate of the Republic, Minutes of the Proceedings. 31 January 1971, Session 1, p 557. 14 September 2012.

[http://www.tbmm.gov.tr/tutanaklar/TUTANAK/CS\\_\\_\\_/t10/c063/b033/cs\\_\\_100630330577.pdf](http://www.tbmm.gov.tr/tutanaklar/TUTANAK/CS___/t10/c063/b033/cs__100630330577.pdf).

cities to its east, following the disturbances orchestrated by labour unions, had been put under *martial law* from mid-June 1970 on. I heard the Martial Law Commander<sup>4</sup>, for an explanation, suggesting “the communists, if it [was] a heaven, [would] open the doors to it [Socialist World] and everybody [could] see that it [was] really a heaven”. But wouldn’t explaining an epidemic with ‘the will of God’ also be representing a ‘mental’ door firmly shut, I thought. Besides, what was it that all these labour unions exactly wanted? Perhaps there was a connection between the cholera outbreak and the grievances which forced thousands to streets to protest, I speculated.

In 1974, military intervention by Turkey, in Cyprus, in order to save the Turkish Cypriot community from extermination looked like a perfectly justified action. Because the attempted military coup had been clearly instigated and orchestrated by the military junta in Greece. But soon after the operation ended, while the muzzles were still smoking, the Ecevit-Erbakan coalition government in Turkey collapsed, in November, over the differences of opinion about which course of action to follow to ‘solve’ the Cyprus problem. But, if they—two coalition partners—did not already know how to solve it even before the army landed on Cyprus, then why did they direct the army to land on the island in the first place, I questioned. The problem remains ‘unsolved’ in 2014, after 40 years.

When it came to 1977, main opposition party CHP leader Ecevit, had two private meetings, in deserted resort hotels—in the middle of winter--outside Istanbul, *away from the public eye*, with twelve MPs recently resigned from the governing AP.<sup>5</sup> He managed to convince them—but two—to support his party in return for chairs in the cabinet. As a result, the

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<sup>4</sup> Gen Faik Türün during a visit to Kuleli Military High School in Istanbul, addressing cadets, in April 1971.

<sup>5</sup> This is known as the Günes Motel affair in Turkish political history. One independent—former AP—MP Cemalettin Inkaya (Balıkesir) did not participate in the vote of confidence due to heavy pressure from his former colleagues and Orhan Atalay (Konya), while voting against his former party, refused a cabinet post in CHP government.

government lost vote of confidence in the Parliament, on the New Year's Eve. But wasn't this morally, even politically reprehensible? How could this political party, its leader—and these MPs who betrayed their constituencies—possibly expect to gain from such an obvious, gross violation of ethical behaviour. But, one MP did refuse to accept a ministerial post as a political 'kickback'. So, despite all odds, ethical behaviour was indeed possible.

When President Korutürk's term ended in April 1980, the Parliament started a marathon of one-hundred-and-fourteen tours to elect the new President of the Republic. But political parties failed to reach a consensus over the candidates in the course of five months, while an internal strife—almost tantamounting to a civil war—continued. The impasse was 'resolved' by the military take-over in September. Both candidates nominated by the majority party and the main opposition party were well-known retired generals. So actually it did not look like a matter of principle but that of conciliation and compromise between the political parties, overcoming their differences, perhaps also some animosity—even temporarily—and move on. But why didn't this happen, I asked myself.

The Constitution of 1982 was antithetical to the 1961 one in many respects. It reversed all democratic gains and depoliticised the society as a whole. *All* political parties were closed and several politicians were banned from politics for extended periods. But wasn't it the same armed forces who inspired both texts? Soon, when the country went into a referendum for lifting the ban on former politicians, it was the 'civilian' governing party leader who openly opposed this lifting. Perhaps being a 'democrat' had nothing to do with what one wore—civilian suits or military uniforms; if so, then, was it related to something else? Yet both constitutions received an overwhelming approval from the Turkish people—61.7,% and 91.4% respectively. It was puzzling.

Even more puzzling was the Atatürk Peace Award nomination in 1992, as announced by the Turkish Government, to be presented to Nelson

Mandela—but refused by him.<sup>6</sup> What was puzzling was not his refusal but the expectation of those that he would accept it. Established in 1986, in 1990 it was awarded to Gen Evren, leader of the 1980 military take-over and President of the Republic. In 1991 there was no nomination. So, Mandela was supposed to follow Gen Evren and, quite naturally, he did not.

The next episode of the military rule in the 1980s, rather than healing the wounds and scars left by previous administrations—civilians and military alike—opened new ones and further alienated large segments of society. In 1997, when the military orchestrated the effort to force the ‘conservative’ government out of office, new segments were added to this huge chunk of *estranged* groups. And finally, in the course of thirty or so years another element of the ‘Turkish’ society—Kurds—joined the club. When it came to 2007, the whole story of almost half a century appeared to have been reflective of an eclipse of reason, common madness based on an ideological *blood feud*.

The spokesperson for the government, in an April morning in 2007, held a press conference and said that “The General Staff [was] an institution answerable to the Prime Minister and [this institution] making statements, on any subject, against the government [was] unthinkable in a democratic state where the rule of law [applied].”<sup>7</sup> This was in response to a ‘press-release’—which would later to be known as the *e-memorandum*—posted on the official web-site of the Turkish General Staff, the day before, around midnight. “All those who [had] responsibilities should refrain from actions that would be incompatible with democracy and that would open wounds in the conscious of the Turkish nation” he added. This was like Caesar

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<sup>6</sup> The ANC explained that “Nelson Mandela has spent his whole life in the service of democracy, human rights and freedom from oppression”. Mandela, seven years later, in 1999, did accept the Atatürk Peace Award. 6 March 2013. <http://web.archive.org/web/20061001161737/http://www.anc.org.za/ancdocs/pr/1992/pr0412a.html>.

<sup>7</sup> Cemil Cicek, spokesman for the Turkish Government. 28 April 2007. Press conference. 14 September 2012. <http://arsiv.ntvmsnbc.com/news/406662.asp>.

*crossing the Rubicon*; things would (already did ?) completely change, forever, in Turkey. The *die was cast* in 2007. Three years later, in September 2010, the constitutional referendum effectively ended an era which continued about half a century, if not eighty or so years, as many would refer to it. However, in late 2010, immediately after the referendum, when I was to make a decision on which subject to write my dissertation, the Turkish political system was giving clear signs of a new *reverse wave*—albeit of different nature—rather than a *progress* towards democratic consolidation. The political system had certainly—and apparently irreversibly—been demilitarized but it was not getting democratised. Explaining this phenomenon looked like a major challenge and I decided to take this challenge.

Starting the very first day I stepped in the Istanbul Bilgi University—Kustepe campus—in 2005 (when I had to use all my persuasive ability to convince the taxi driver that it was safe to drive there), I was often asked two basic questions: Why a doctoral study, as a retired military officer, after a long and active professional life? Why Istanbul Bilgi University? And I had to answer a third question in the long and arduous *uphill battle*, first to find a subject for my thesis—four times by the way—then to decide the topic and a working title, and finally to defend my proposal for a dissertation: the basis of my preoccupation with *political culture*—either as the main impediment or the primary facilitator for civil society—and *political psychology*. Sometimes the way these questions were posed—implied, hinted, voiced or expressed otherwise—out of curiosity, was just natural, but sometimes it was troubling, even confrontational, but they certainly were fair.

Having served in an institution which traditionally—and, until recently, constitutionally—considered itself as the ‘guardian’ of the ‘Republic’ for over thirty years, I wanted to explain what went wrong and why, in Turkey; in an objective way, detached from the institutional culture I had been exposed to, adding the facts and perceptions from outside—i.e. from the ‘non-military’ world—to my insider experience and observations, using

scientific tools to blend them meaningfully, making the social phenomena related to democratisation in Turkey as understandable as possible.

The second question is relatively easier to answer. Because, I thought Istanbul Bilgi University would provide a much favourable environment in terms of *academic freedom* and freedom for *making mistakes*, teaching—in other words, leading the way to—*how* to think *critically*, rather than *what* to think, which is—I am not happy to state that—more or less common in majority of universities in Turkey. I was largely proven right in this expectation. Istanbul Bilgi University represents one of the very few *oases* of genuine academic freedom in Turkey. However, in perspective—and in fairness, at least based on my years in the Boston University in the 1990s, there is still some space for improvement *even* in Bilgi University.

You will find my comprehensive response to the third question, in this dissertation, as you can already imagine now, in quite a lengthy fashion I'm afraid. To make life easier for those who may not have that much time and patience, simply, I believe that 'civil society', in the widest sense of the term, is both the missing and the critical link in Turkey's struggle for a genuinely world-class democracy. The dominant political culture simply does not accept civil society as a legitimate player, let alone an equal partner, particularly in politics.

This research is about civil society and the concomitant processes of political decision-making and legislation in Turkey, as their interaction is reflected on the political decisions related to democratisation.

I talked to many actors—and others—who directly or indirectly participated in the decision-making and legislative processes—including those in the bureaucracy, supporting these processes or taking part otherwise. The starting point was the members of domestic and international civil society organisations, active in Turkey, which had clearly-delineated 'democratisation' programmes. I also participated in their activities—sometimes actively—made observations, reviewed their publications, read reports, press statements. I spent quite a lot of time in the Parliament, visiting MP offices, having tea with advisors or staffers, attending

Parliamentary Committee meetings, watching debates, taking notes, reviewing committee reports, draft legislation, tracing them through the labyrinths of politics. I visited foreign embassies which are active in supporting civil society in Turkey and encouraging more participation. My research even benefitted from working travels outside Turkey to get a real sense of the main 'trust' of international civil society organisations with government backing, and visits to the Dutch Parliament and MOD.

One of the senior academics I talked to, once exclaimed; “A *field study* in the (Turkish) Parliament, by a retired officer..! How come?”. He was right, it was not an easy task. However, I am truly indebted to all those, across the spectrum, who did not save any effort, even under the constant pressure of time, short deadlines and chaotic political life, to answer my questions and share their experiences, ideas, perceptions, concerns, worries, even sometimes stories of their private lives as related to their functions in the Parliament. Based on this first hand—direct—experience, now I have full confidence that Turkey soon will be heading towards a world-class democratisation; it is just over the horizon. I’m proud of being accepted as an honest person and having been provided access to so much intimate and perhaps—if not handled properly—*sensitive* information, I feel privileged.

One important caveat is timely here and the statement of it is a must for academic clarity. Many, if not most, of the individuals whom I interviewed were active in politics and/or are still in bureaucracy; many were well-known by the general public, hence naturally too concerned about their *public image* and/or career opportunities and potential risks involved. Therefore, there was an absolute need to assure them of the academic nature of the study and that it would be carried out in an honest and anonymous fashion, their privacy and confidentiality would be maintained both for individuals and institutions they were representing, if they chose so. In order to facilitate communication free from concern, tape recording was seldom used throughout the research and only hand-written notes were taken during interviews. However, despite repeated efforts, telephone contacts, face-to-face attempts for securing an appointment, it has proven impossible to have

access to the current or active members of the governing party (AKP) of any title and at any level, particularly—and most importantly—their MPs.

Although I did have ample opportunity to talk to those who served in the Justice and Development Party as MPs or cabinet ministers or advisors or who had first-hand experience as bureaucrats in the recent past, still I consider this lack of direct access to information—more importantly, to a unique ‘perspective’—a major weakness of the research which, I have to stress, was beyond my control. Also, some state institutions and bureaucratic organisations, again, which were critical for the purposes of this study have not been forthcoming for interviews or been accessible; among them, prominent is the Justice Academy of Turkey.

The findings of this research are based on a wide range of views expressed during about seventy interviews, talks listened to, meetings observed and many documents, reports, studies either signed or provided by various individuals. But the findings themselves, they are all *my own*. The conclusions based on these findings may or may not reflect—fully or partly—the views of individuals interviewed or of those organisations/institutions they were representing. In some cases the findings of the research are in clear contradiction with some commonly and explicitly stated views. In any case, any conclusions that may be reached, by the reader, as to the likely origin of the findings and conclusions of this research are completely accidental and do not reflect the views and official positions of neither the individuals nor the organisations—particularly civil society organisations and political parties—in any way.

Finally, I neither sought nor received funding from any source or assistance in any other form from any organisation, institution of any sort, or from an individual for this research.

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Let me close this unusually long preface also with Hegel: “The owl of Minerva takes its flight only when the shades of night are gathering” (2001: 20). Similarly, this study aims to understand the role and effect of civil society in ‘democratic transformation’ in Turkey by looking into its participation in the political decision-making, at a virtually historic critical juncture, as an episode of history unfolds and passes away, as the events, choices and actions of various actors are disclosed, with hindsight, rather than in a prescriptive or speculative way.

Now it is time for the owl to fly—as the dusk has already fallen—in a bright, gleaming darkness which came after the longest shadows of a very long day.

## Table of Contents

Chapter 1. Introduction .....	1
1.1. Conceptual framework .....	4
1.2. ‘Civic’ civil society .....	7
1.3. Approach, design .....	10
1.4. Order of the dissertation .....	12
Chapter 2. Conceptual Perspectives and Methodology .....	15
2.1. Democracy and democratisation .....	15
2.2. Democratisation as a process and cultural change .....	18
2.3. Actors in policy-making .....	28
2.4. Political decision-making, policy-making and legislation .....	39
2.5. Civil Society and ‘civic’ functions .....	45
2.6. Exerting influence .....	60
2.7. Summary of theoretical perspectives .....	65
2.8. Measuring influence and the research process .....	69
2.9. Controlling limitations: Participatory Action Research .....	75
Chapter 3. ‘Turkey’, Civil Society and Democratic Reform Process .....	81
3.1. ‘Learning’ democracy and democratic culture .....	82
3.2. Political parties and political leadership .....	108
3.3. Legislative process .....	122
3.4. TGNA Rules of Procedure ‘saga’ .....	163
3.5. EU role and influence on ‘reforms’ .....	172
3.6. Parliamentary ‘civil’ society .....	182
3.7. How civil society operates in Turkey .....	193
3.8. State of civil society in Turkey .....	204
3.9. Participation: Turkish Economic and Social Studies Foundation .....	214
3.10. Participation: Turkish Industry & Business Association .....	237

3.11. Participation: Heinrich Böll Stiftung Turkey .....	249
3.12. Participation: Centre for European Security Studies .....	257
3.13. ‘Uphill Battle’ for civil society .....	266
3.14. Civil society’s council and advice for ‘reform’ .....	277
Chapter 4. Civil Society and Reform Process in Turkey .....	280
4.1. Democratic reforms in Turkey .....	280
4.2. Security Sector Reform (National Security Council) .....	286
4.3. Judicial Reform (Constitutional Court and High Council of Judges and Prosecutors) .....	304
4.4. The outcome: Turkey after the reform .....	329
Chapter 5. Findings and Conclusions .....	342
5.1. Main findings .....	344
5.2. Processes and actors .....	347
5.3. Cultural hurdles and civil society .....	351
5.4. Role of the EU and global civil society .....	353
5.5. ‘Cemaat’ .....	354
5.6. Conclusion .....	356
Appendix A .....	359
Appendix B .....	361
Bibliography .....	365

## Abbreviations and Acronyms

- AFAD: Disaster Relief and Emergency Response Department. (*tur.* Afet ve Acil Durum Yönetimi Başkanlığı)
- AKP: Justice and Development Party. (*tur.* Adalet ve Kalkınma Partisi)
- ANC: African National Congress (of South Africa).
- AP: Justice Party. (*tur.* Adalet Partisi)
- BDP: Peace and Democracy Party. (*tur.* Barış ve Demokrasi Partisi)
- BST: Black Sea Trust for Regional Cooperation.
- CCEJ: Consultative Council of European Judges.
- CERI: *fre.* Centre d'Etudes de Relations Internationales.
- CHP: Republican People's Party. (*tur.* Cumhuriyet Halk Partisi)
- CMK: Code of Criminal Procedure-CCP. (*tur.* Ceza Muhakemesi Kanunu)
- CSO: Civil Society Organisation.
- DCAF: Democratic Control of Armed Forces. (Think-tank, based in Geneva, Switzerland)
- Demokrat Yargı *tur.* (Democratic Judiciary): Union of Judges and Prosecutors for Democracy and Freedom. (*tur.* Demokrasi ve Özgürlük için Yargıçlar ve Savcılar Birliği)
- ECHR: European Convention for Human Rights.
- ECtHR: European Court of Human Rights.
- EP: European Parliament.
- FP: Virtue Party. (*tur.* Fazilet Partisi)
- HCJP: High Council of Judges and Prosecutors. (*tur.* Hakimler ve Savcılar Yüksek Kurulu-HSYK)
- IAJ: International Association of Judges.
- IHOP: Human Rights Common Platform (*tur.* İnsan Hakları Ortak Platformu)

IPA: Instrument for Pre-accession Assistance.

IPU: Inter-Parliamentary Union.

IT: Information technology.

JAT: Justice Academy of Turkey. (*tur.* Türkiye Adalet Akademisi)

KCK: Group of Communities in Kurdistan. (*kur.* Koma Civaken Kurdistan)

MAIPD: Multi-Annual Indicative Planning Document.

MEDEL: *fre.* Magistrats Europeen pour la Democratie et les Libertes.

MG: Major-general.

MIT: National Intelligence Agency. (*tur.* Milli İstihbarat Teşkilatı)

MOD: Ministry of Defence.

MP: Member of Parliament (*tur.* Milletvekili, parlamenter)

NPAA: National Programme for the Adoption of the *Acquis*.

OGP: Open Government Partnership.

OPR: Office of Primary Responsibility.

PDD: Association of Parliamentary Advisors. (*tur.* Parlamento Danışmanları Derneği)

Pew: So-called ‘fact-tank’, research centre in USA.

POC: Point of Contact.

RIA: Regulatory Impact Assessment. (*tur.* Düzenleyici Etki Analizi)

RMG: Reform Monitoring Group.

RP: Welfare Party. (*tur.* Refah Partisi)

SIDA: Swedish International Development Cooperation Agency.

SIGMA: Support for Improvement in Governance and Management. (A common initiative of EU and OECD)

TACSO: Technical Assistance to Civil Society Organisations.

TCK: Turkish Penal Code. (*tur.* Türk Ceza Kanunu)

TGNA: Turkish Grand National Assembly. (*tur.* Türkiye Büyük Millet Meclisi)

TMK: Counterterrorism Law. (*tur.* Terörle Mücadele Kanunu)

Venice Commission: The European Commission for Democracy Through Law.

WVS: World Values Survey.

YARSAV: Union of Judges and Prosecutors. (*tur.* Yargıçlar ve Savcılar Birliđi)

YASADER: Association of Legislation. (*tur.* Yasama Derneđi)

YSK: Supreme Election Board. (*tur.* Yüksek Seçim Kurulu)

YUDER: Association of Legislative Staffers. (*tur.* Yasama Uzmanları Derneđi)

## Glossary

**Accession Partnership:** Document that defines the framework of the EU accession process by setting out key priorities—in which candidate countries need to make progress—and pre-accession assistance.

**Acquis communautaire *fre.*:** Cumulative body of European Community laws.

**Act (*tur.* kanun):** Legal instrument of writing that has probative value and executory force. It is passed by a legislature—Parliament.  
(Legislative act)

**Board of Spokesmen, TGNA (*tur.* Danışma Kurulu, TBMM):** It is established by the Rules of Procedure, not the Constitution. It is composed of the Speaker and one representative from each of the party groups. They draw up the plenary agenda, allocate time for debates, questions and inquiries and other legislative business.

**Black Sea Trust for Regional Cooperation (BST):** A grant-making programme of the German Marshall Fund. BST operates in Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Romania, Turkey, Ukraine, and Russia. It promotes, among other aims, strong, effective civic sectors.

**Bureau of the Assembly, TGNA (*tur.* Başkanlık Divanı, TBMM):** Consists of the Speaker, four Deputy Speakers, eight secretary members and five administrative members—currently total of 18 MPs. It is established by the Constitution (Art 94), but it has basically an administrative role; monitoring plenary votes and elections, correcting irregularities.

**Bylaw (*tur.* yönetmelik):** Rules issued for ensuring the application of laws

and regulations related to a particular field of operations or affairs. In the hierarchy of norms, they are below *regulations*.

Council of State (*tur. Danıştay*): The highest administrative court.

Court of Appeals or Court of Cassation (*tur. Yargıtay*): The last instance for reviewing verdicts given by courts of criminal and civil justice.

Court of Accounts (*tur. Sayıştay*): The court that carries out regularity (financial and compliance) and performance audits and prepares an enquiry into any losses to the public purse.

Decree (*tur. kararname*): Legislative text issued by the government—as authorised by the Parliament—according to certain procedures established in the Constitution, with the force of law. (Decree law).

Deputy (*tur. milletvekili*): Member of Parliament-MP.

Department (*tur. daire*): Division of a larger organisation such as a ministry.

Directorate (*tur. başkanlık*): Sub-division of a government ministry—or rather autonomous organisation—in charge of a particular activity in a particular field.

Draft Bill (*tur. kanun tasarısı*): Legislative initiatives submitted by the Government.

Ex officio *lat.*: by virtue of holding another office. (By right of office)

First-Instance Courts (*tur. Birinci-Derece Mahkemeleri*): Initial courts in which legal proceedings are begun or first heard.

FRIDE (*spa. Fundacion para las Relaciones Internacionales y el Dialogo Exterior*): European think-tank to inform policy and practice in order to ensure that the EU plays a more effective role in supporting multilateralism, democratic values, security and sustainable development.

Laws and Resolutions (*tur. Kanunlar ve Kararlar*): Department responsible for drafting and/or staffing or handling otherwise legislative texts.

Legislative Expert (*tur. yasama uzmanı*): Parliamentary employee specialised in legislative and law drafting procedures, working mainly in Parliamentary committees.

MATRA: A bilateral assistance programme of the Netherlands with the aim of

supporting social transformation in countries neighbouring Europe by contributing to development of an open, pluralist and democratic society.  
modus vivendi *lat.*: an agreement between those whose opinions differ—agree to disagree.

Obligatory right: A right in the protection of an interest through the obligation upon somebody else.

Plenary (session), TGNA (*tur.* Genel Kurul, TBMM): Session of the Parliament attended by all members of the parliament, MPs, in order to directly participate in decision-making and legislative processes.

posthumous *lat.*: occurring or published after death.

Potestative right: A right whereby a party may unilaterally affect the legal rights of another party/counterparty.

Presumption of innocence (*tur.* masumiyet karinesi): Unless a prosecutor can prove—beyond reasonable doubt—one is guilty, one is entitled to be acquitted or found ‘not guilty’. It is the responsibility of the prosecutor to prove one is guilty.

Primary Committee (*tur.* asli komisyon): The committee whose report is taken as the basis for Plenary debate, as designated by the Speaker.

Proposal of law (*tur.* Kanun teklifi): Legislative proposals submitted by deputies.

Quorum *lat.*: The minimum number of members necessary to conduct the parliamentary business. It is intended as a protection to unrepresentative action by a small number of members. TGNA convenes with at least one-third of the total number of members (184) and takes decisions by an absolute majority of those present. The quorum for decisions can, under no circumstances, be less than a quarter plus one (139) of the total number of members (Constitution Art 96). quorate *adj.*

Regulation (*tur.* Tüzük): They govern the mode of implementation of laws or designate matters ordered by law. In the hierarchy of norms they are below *laws*—or acts—and government decrees.

Secondary Committee (*tur.* tali komisyon): The committee that provides

views to the primary committee on relevant aspects or articles of the legislative text at hand, as designated and indicated by the Speaker.

STGM, Civil Society Development Centre (*tur.* Sivil Toplum Geliştirme Merkezi): STGM was formed in 2004, by a group of activists active in areas such as human rights, environment, women, youth, at national level. It aims to help improve civil society organisations to play a more effective role.

## Chapter 1 Introduction

*“The die is cast”. Caesar, 49 BC.*

*Democratisation*, that is, transition from an authoritarian or *less than democratic* political regime into a *more or less* democratic one is a complex, open-ended process. It is *complex* because many actors—with unequal powers, authority and legitimacy—are involved in this process and they are in a constant interaction under the fluctuating influence of various factors. Frequently shifting alliances between these actors make this interaction even more complex. It is *open-ended* because none of these actors—even the most powerful ones—can possibly have an absolute control over the factors under the influence of which they operate and a multiplicity of developments they—singly or in partnerships—are to respond in one way or another.

This study is about ‘one’ particular actor—civil society—and its role in the overall democratisation process in Turkey. Since democratisation process essentially—although not exclusively—takes place, at least is led through political decisions, I primarily aim to find out the influence of civil society on *policy outcomes*. Policy outcomes are decided through iterative interactions of domestic, foreign and transnational actors and/or coalition of actors, under the influence of domestic, international and global environmental factors. Civil society organisations—both as part of the domestic civil society and that of the global civil society—play a role in the policy-making process and/or exert influence otherwise, on policy outcomes.

I am not interested in any ‘civil society’ organisation but in those with clearly delineated ‘democratisation programmes’ because policy decisions related to essentially *politically sensitive*—i.e. potentially conflictual—

issues such as ‘democratisation’ and the processes through which they are made, I posit, are subject to completely different dynamics, involve different *set of actors* and develop under the influence of, and sometimes in the *grip* of distinctive factors than other issues of *non-political* nature, i.e. not primarily related to governance and politics.

However, because policy outcomes in a democratic political system come about through overlapping and mostly concurrent, even circular processes of *policy-formulation, legislation* and *decision-making*, I intend to arrive at some findings by ‘tracing’ these processes through which civil society organisations, in their democracy-enhancing role, function to influence these processes and eventually policy outcomes. Based on such findings, I will attempt to describe and explain; *how*, in *what* ways and to *what degree* civil society has been instrumental in affecting democratisation (if at all) in Turkey. If not, then *why*? Therefore, in terms of its goals this is a multi-purpose study: *descriptive, exploratory, explanatory* and *evaluatory*. It seeks to find out how the decision-making process works, how ‘individuals’ taking part in decision-making give meanings to their actions—both their own and others’, what issues (personal *versus* ‘institutional’ and role) concern them primarily, *what* effects—and *how*—will flow in response to and/or as a result of civic activity. It will also have an *evaluatory* outcome in terms of civil society’s democratisation programmes.

Two selected areas for research are *security sector* and the *judiciary*, particularly the cases of the National Security Council (NSC), integration of the Turkish General Staff (TGS) with the Ministry of National Defence, reorganisation of the Constitutional Court and the High Council of Judges and Prosecutors (HCJP). This selection is not arbitrary. Security sector is not limited to NSC, TGS and MOD, nor the judiciary is only composed of the Constitutional Court and HCJP. However, during the period of 2001-2013 which this research is focusing on, the political scene in Turkey has been dominated by political decisions and actions (and conflicts) in these areas, democratisation has been judged to a large extent by the perception of

success in these reforms and Turkey's European Union accession process has been largely affected by the security sector (2001-2007) and the judicial (2007-2013) reforms respectively.

This research—in terms of political decision-making—benefits from Foreign Policy Analysis (FPA) concepts such as *operational code*, image of the other—*mirror image*, *cognitive mapping*, *attribution theory* etc. for determining “the actual *contents of the beliefs and images* held by individual policymakers” (italics added) (Rosati 1995: 60-64) or “analogies and metaphors in decision-making” (Shimko 1995) because they are equally applicable to domestic decision-making processes as well. Kaarbo (2003) also finds such an approach “particularly amenable to using insights from foreign policy research regarding [...] domestic politics” (162). These concepts I consider helpful for the study of domestic decision-making because—although in a different context—after all it is the ‘individual’ or groups of individuals who operate in relation with others, under very similar conditions. FPA concepts are particularly relevant in the Turkish context where politics is believed to be conducted—mostly—in a ‘state of nature’ as it has come to be practised.

Apart from—but in connection with—idiosyncratic concepts common in both foreign and domestic politics; as suggested by Putnam (1988), among others, I also attempt to combine the domestic and international levels of policy-making. Describing his “two-level game”, he argues that “international negotiations sometimes enable government leaders to do what they privately wish to do, but are powerless to do domestically [...] enabling them to achieve otherwise unattainable objectives” (Putnam 1988: 433-34). For example, Hilman (1980) mentions negotiations, in 1974 and 1977, between Italy and the IMF, when “domestic conservative forces exploited IMF pressure to facilitate policy moves that are otherwise infeasible internally” (qtd. in Putnam 1988: 457). A similar observation can well be related to the two major reform areas studied in this research in the context of EU-Turkey relations.

## 1.1. Conceptual framework

Democratic development can occur in different directions and even established—consolidated—democracies may turn more liberal, inclusive or more illiberal, exclusive and unresponsive. This is related to what Dahl (1992) calls “civic competence”, that is, the ability for *periodic reform* and *renewal*. Weak civic competence leads to “hollow, poorly institutionalized democracy” (Diamond 1999: 49) or to O’Donnell’s “delegative democracy” (1994: 55-69). Almond (1989) argues that for a democracy to be consolidated, *elites*, *organisations* and the *mass public* must all believe that the political system they actually have in their country is worth obeying and defending. Consolidation thus takes place in two ‘dimensions’—norms and behaviour—and on three ‘levels’—elites, organisations and the mass public. This is part of the process what Almond calls “political socialization” (144-47).

*Democratic socialization* necessarily aims ‘internalisation’ of a *democratic culture*. This involves both *attitudes and behaviour*. Attitudes matter, but behaviour, as argued by Greenstein, “is a function of both the environmental situations in which actors find themselves and the psychological predispositions [attitudes] they bring to those situations in a kind of push-pull relationship” (1969: 7, 29).

Numerous domestic and international factors influence policy behaviour. However, these influences are channelled through the political apparatus of a government. Here, civil society in general and civil society organisations’ democracy programmes in particular have come into playing an increasingly vital role in inducing democratic norms, values and behaviour at all three levels. Civil society plays this role by influencing judgements about what is *good, right and desirable*. Therefore, I focus on the role of civil society, as a ‘democracy-enhancer’ on the ‘behaviour’ of decision-making politicians, i.e., the Government, political parties or individual MPs, and government policies as ‘outcomes’. The focus on behaviour does not necessarily mean that attitude is of less importance. I simply aim to focus on the processes/mechanisms by which civil society influences—or fails to

influence—the political behaviour hence policy outcomes, at the ‘Government’ and Parliament levels as reflected by ‘laws’ passed by the Parliament.

Here, in addition to the three *levels* referred to above, I postulate, a fourth—individual, idiosyncratic—level comes into the equation. And also there is a *longitudinal* dimension in attitudinal and behavioural change which works at all four levels, temporally, in a graduated, stratified and asynchronous fashion. *Behavioural* change precedes attitudinal change; at the elite level, change—any change, no matter it is behavioural or attitudinal—comes before that of the mass level; and yet, mass level cultural change is far more difficult, more painful and gradual to bring about and equally difficult to sustain unless it develops into an attitudinal change, i.e. internalised. Since mass level cultural change spreads across generations, civil society’s democratisation efforts in Turkey, in short to mid-term necessarily concentrate—as simple logic suggests—on the *most promising* segment of the political society, that is *elites*—in bureaucracy, political parties, the Government and the Parliament.

Nevertheless, civil society may mobilize the mass public for support—and pressure—that is critical for reforms, such as those related to democratisation, that may not be too appealing to politicians. Diamond (1999) argues that by disseminating the relevant information, civil society empowers citizens ‘against’ the decision-making elite—above all political leaders—who need—or are *in need of*—not only the support of, in general sense, but also the ‘stimulus’ from a mobilized public. But in order to achieve this, public must be “organized, structured and principled, committed not just to its myriad narrow interests but to larger, common civic ends” (220-221) in the forms of unions, human rights and other advocacy groups, social movements, think tanks—essentially becoming what we call *civil society*. The media, in the context of ‘public journalism’, must be understood as part of civil society rather than the private sector. Public journalism, by exposing facts, provides the information citizens need to make *informed decisions* and can cover public deliberation. The media, in

this sense, are better understood as part of civil society than of the private sector.

Diamond, among others, suggests “a parsimonious model of causal arrows running from elite negotiations to institutional democratisation”, and then, eventually “to democratic habituation”, at both elite and mass levels (1994: 21, 239). This involves civil society as both an ‘actor’ in the decision-making process with regard to democratisation, and also a ‘factor’ having an influence on policy outcomes hence the democratisation process. Civil society, by its ‘civic’ functions, would either directly intervene and take part in the policy-making process at the elite (individual, institutional) level as an ‘actor’, or indirectly influence the process at the society level. The processes and mechanisms involved also include ‘external’ actors and factors, coalitions of actors and movements, making the overall picture complex, multilevel and multi-dimensional. Thus, it is also important to understand the importance of ‘coalition-building’ capacity of civil society organisations, the opportunities available and the legal basis for such coalitions, but, most importantly, the prevailing *civil society culture* since the success of democratisation programmes would largely depend on this capacity.

Most of the time, there are attitudinal pressures or interventions from other actors and/or environmental factors stronger than those of the civil society organisations that may lead to a different course of action which may or may not be reflective of ‘democratic’ values. Weingast (2002), in *rational-choice-institutionalist* context, argues that “democratic consolidation is centrally concerned with incentives” in the sense that “all actors have incentives to adhere to the rules” (679). Risse (2002), writing in international relations context, explains three types of rationalities, through which incentives would be formed: the logic of *consequentialism*, *appropriateness* and *arguing* (600). This study does not differentiate between rationalities or the nature of elite incentives, but mainly interested in the effect of civil society, vis-a-vis ‘others’, in creating such incentives conducive to democracy, as reflected by *policy outcomes*.

## 1.2. ‘Civic’ civil society

This study has taken *civic*<sup>1</sup> efforts of four civil society think-tanks—two Turkish, one foreign (Dutch) and one international/transnational (German affiliated)—with declared, explicitly announced *democratisation* programmes, on security sector and the judiciary, as the basis. The Turkish Economic and Social Studies Foundation (TESEV), The Turkish Industry & Business Association (TÜSIAD), Centre for European Security Studies (CESS) and Heinrich Böll Stiftung Turkey, they all have adopted institutional aims related to democratisation in Turkey and taken on voluntary roles to contribute to potential improvements in various domains of democratisation, by *directly* influencing policy outcomes through participation in decision-making and legislative processes, and/or *indirectly* through contributions to the formation of public opinion more conducive to and supportive of these ends.<sup>2</sup> Their ‘democratisation’ programmes largely overlap. They coordinate, at least attempt to coordinate, their work, albeit—as the findings of this research demonstrate—inadequately and insufficiently with each other, and seek and do receive support from the EU—and other sources. Turkey’s EU integration process does help to create a more favourable and more amenable environment for their work.

TESEV<sup>3</sup> describes its ‘mission’ as “to bridge the gap between academic research and policy-making process, with a view to suggest valid policy recommendations for the problematic issues in Turkey”. It regards “widest possible dissemination of viable policy alternatives” as “an integral part of

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<sup>1</sup> Almond and Verba (1963) describe the notion of ‘civicness’ as “a balanced political culture in which political activity, involvement and rationality exist but are balanced by passivity, traditionality and commitments to parochial values” (32). Some of its characteristics are “valuing of active participation in local government activities, parties and in civic associations; self-confidence in one’s competence to participate in politics, civic cooperation and trust; membership in a voluntary association” (364).

<sup>2</sup> Admittedly, TÜSIAD is not a ‘think-tank’ *per se*. But, as far as *democratisation* is concerned, it is a civil society organisation with functions analogous to those of a think-tank.

<sup>3</sup> See; <http://www.tesev.org.tr/en/about-us>. 20 September 2012.

TESEV’s mission”. Programme areas are grouped under three headings: democratisation, foreign policy, good governance. Democratisation programme covers four main areas: *Perceptions and Mentality Structures and Institutions* to include gender regime, religiousness vs. secularism, authoritarianism, nationalism & ethnic identity; *judiciary*; *security sector reform* [to include, particularly, *military bureaucracy*] in collaboration with the Centre for the Democratic Control of Armed Forces (DCAF)<sup>4</sup>; *Kurdish question* to include internal displacement/forced migration, economic and social development, policy proposals for a political solution. In addition to publishing reports, TESEV “organizes conferences, panels, workshops and film screenings to share the findings of its research and to open to discussion, the policy proposals”, that is to say, it seeks a ‘political’ role and influence on policy outcomes.

TÜSIAD<sup>5</sup>, particularly in recent years, has focused its efforts on *election* and *political parties* reforms, and on the formulation of a new *constitution* “favouring individuals” over the state, “securing equality before law”, ensuring “separation of powers” based on “a pluralistic parliamentary system”, that would remedy Turkey’s “democracy deficit”. TÜSIAD communicates its views to “the Turkish Parliament, government, foreign governments, international organisations and the global public with the aim of establishing a unity of ideas and action”, in other words TÜSIAD—like TESEV—also seeks a ‘role’ in the decision-making process and an ‘influence’ on policy outcomes. Besides, as its vision implies, it also quests for formal and informal ‘networking’ and ‘unity of effort’.

CESS<sup>6</sup>, active in Turkey since June 2004, is based in Groningen, the Netherlands. It seeks “to support civil society in young democracies” and is sponsored mostly by the Dutch government agencies. They “advocate democracy and the rule of law”. Its aim is “to promote transparent, accountable and effective governance of the security sector” by working

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<sup>4</sup> See; <http://www.dcaf.ch/>. 20 September 2012.

<sup>5</sup> See; <http://www.tusiad.org/tusiad/tusiads-vision/>. 20 September 2012.

<sup>6</sup> See; <http://www.cess.org/cess-the-centre/mission>. 20 September 2012.

closely with national governments and international governmental organisations, an international *network* of associate experts and instructors. They conduct policy research on issues of governance in the security sector and seek the help of local partners and provide them with support. Similar to the other two, CESS pursues a—rather *indirect*—role and influence, however in a more muted fashion and restricted to the so-called *security sector* reform.

Democracy promotion is “one of the main areas of the international activities of the Heinrich Böll Foundation”.<sup>7</sup> Its work “aims primarily at the legitimacy of policy-making and decision-making processes as well as the application of democratic principles in other areas”. They work in cooperation with “partners from different levels of interest, the civil society and state actors”. Heinrich Böll, in the field of *democracy promotion*, takes “the specific context of each country into account”. Heinrich Böll Stiftung Turkey<sup>8</sup> aims to involve in “the efforts to protect freedoms and cultures in Turkey”. Their primary aim is “to support the notion of participatory democracy and further it”. They cooperate with civil society institutions and academics in Turkey. Heinrich Böll’s work focuses on four main areas: EU process and reforms; religion and democracy; *militarism* and Kurdish question; subjects such as discrimination, nationalism, confronting the past etc. which have been traditionally considered *taboo*. Therefore, this is a *sui generis* organisation, distinct from others, but of fundamental value for the purpose and subject of this research.

This study, while primarily tracing the democracy-enhancing functions of these four civil society think-tanks in the context of *democratisation* in Turkey, will not ignore the others and the overall environment in Turkey in which civil society operates. The main dimensions of this environment are

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<sup>7</sup> Heinrich Böll Stiftung has offices in Brussels, Warsaw, Prague, Tbilisi, Moscow, Kiev, Belgrade, Sarajevo, Zagreb, Washington D.C. as well as Istanbul. See; <http://www.boell.de/worldwide/europenorthamerica/europe-north-america-5795.html>. 20 September 2012.

<sup>8</sup> See; <http://www.tr.boell.org/>. 20 September 2012.

composed of political culture, party system and political leadership—connected with the political decision-making system and leadership styles—legislative process, EU accession process and, quite unusually, perhaps uniquely, parliamentary ‘civil society’, i.e. quite active ‘civil’ associations of the parliamentary staff in the Turkish Grand National Assembly (TGNA)<sup>9</sup>. The results and findings of this study are supposed to help those active in the ‘civil society’ to formulate better strategies for supporting *democratisation* in Turkey.

### 1.3. Approach, design

The main assumption of this study is: civil society democratisation programmes aim, in the short term, to influence the *behaviour* of major actors taking part in the policy-making and legislative processes and in the mid-to-long term, to transform their *attitude* by inducing democratic ‘values’. Two ‘issue-areas’ have been selected for investigation: security sector reform—*improving political oversight of the security sector*, and judicial reform—*strengthening judicial independence*. Four civil society organisations with democratisation programmes have been taken as cases to study.

I aim to uncover the mechanisms—causal processes and intervening/mediating variables, which work between civil society and the political decision-making, in the context of the former’s democracy promoting role. Basically, I will be investigating the relationship between the efforts of civil society (independent variable) to promote democratisation and the policy outcomes (dependent variable), in other words, whether the policy outcomes in areas of *security sector* reform and *judicial* reform are influenced by such programmes. In this respect, I postulate; political culture, political leadership, leadership types and styles and other individual influences, party system, EU accession process and global trends, legislative process and ‘parliamentary’ civil society would *intervene* to mediate between the effect of civil society and the policy outcomes. Some of these *intervening*

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<sup>9</sup> Particularly Yasama Dernegi (YASADER).

*variables*, once put into particular context, may also be *moderating* or *mediating* the effects of these variables.

Indicators and indicator attributes selected for this study—connected to the two areas of ‘reform’ in Turkey—are two-fold: 1. Reorganisation of the National Security Council and the General Secretariat for the National Security Council and integration of the General Staff with the Ministry of National Defence in the form of improved Parliamentary oversight and improved civilian/executive oversight, i.e. more democratic civil-military relations (for improving the political oversight of the security sector), 2. Reorganisation of the Constitutional Court and restructuring and reorganisation of the High Council of Judges and Prosecutors in the form of improved Parliamentary oversight and separation of powers between the executive and the judiciary (for strengthening judicial independence). The study essentially compares the ‘actual’ policy outcomes with the ‘suggested’ outcomes originally recommended or proposed by the civil society.

This is a *cross-sectional, qualitative* research, for each subject area focusing on a particular time frame, based on the data collected from a relatively short period of time—not on data collected over time—concentrating mainly on the behaviour/actions, preferences of a population of actors who are either directly involved in policy-making and legislative processes and/or affected directly or indirectly by the civil society or civic activity and/or exposed to such civic activity in any other way. I am not primarily interested in the *impact of time*. However, this aspect comes out as a side-result of the study, adding a *longitudinal* dimension.

This is an *intensive case study* for which ‘process induction’ approach of ‘Process Tracing’ method is applied. I use process tracing in order to verify causal mechanisms through which causal or intervening variables produce causal effects, linking putative causes to observed effects. I expect the ‘intensive research’ to give better accounts of time-order and causal mechanisms in identifying new variables—which I may have omitted—and maximize validity of the research.

I focus on *inductive observation* of apparent causal mechanisms based on thick descriptions, carefully drawing possible different ‘paths’ through which the factors cause their effects. Yet, this research continues as an ‘iterative’ process, involving process verification by which whether the observed processes among variables match those predicted by the relevant theory is found out. Doing so, as cautioned by Checkel (2005), (1) I am wary of losing sight of the big picture, (2) be aware of the significant data requirements, (3) recognize certain epistemological traps inherent in the application of this method.

*Process tracing* offers particular advantages for studying behaviour by obtaining documents, interviewing subjects, performing content analysis on documents and statements, and for establishing precise sequences of *who does what, when* and based on *which information*. It is suitable for the study of intentional behaviour of individuals because this often involves the use of qualitative variables that are difficult to quantify. Process tracing is particularly useful for addressing the problem of *equifinality* by documenting alternative causal paths to the same outcomes and alternative outcomes for the same causal factor.

I adopt a ‘holistic’ approach—as suggested by Rudestam and Newton (1992) “to understand the phenomena” of political decision-making and legislative processes on subjects directly related to democratisation and ‘civic’ activity of civil society in their entirety in order to “develop a complete understanding” (32) of the outcome of interaction between the government and other actors on the one hand and the civil society on the other, in these processes.

#### **1.4. Order of the dissertation**

The preface can be considered an integral part of this introduction because there one can find the real motive behind this research topic—search for an explanation for why a country, that is Turkey, has been stuck in the twilight of democratisation for such a long (?) time. One reason, I posit, is the lack of ‘civic’ input into the political system. Civil society is not

the only source to provide this input but—bearing in mind the unique socio-economic and political history of Turkey, to include late Ottoman era—it is, potentially, the only one to offer something which is not centrally decided (by the state) in this sense. Because, Turkey never experienced a flourishing *public sphere* and was always ruled by a *strong state*, the political scene was usually dominated by an authoritarian political culture and appeasing mass culture. As the political parties are traditionally just reflections of this overall political reality, civil society organisations and particularly those with ‘civic’ programmes are the only ones that can possibly tip the balance in the direction of ‘forward’ democratisation, i.e. transforming the political behaviour—and attitudes—of major policy-making actors in a way that would be more conducive to democratic consolidation. Turkey’s European Union accession process has a vital role in making civil society in Turkey more effective. Introduction shortly explains this complex web of interactions, attempts to clarify the directions of *causal arrows*, describes, justifies and discusses the design and approach of the study.

Chapter 2, reviews and discusses theoretical perspectives and concepts relevant to this study, particularly concentrating on those related to *democracy* and *democratisation as a process* and *cultural change, actors involved, political decision-making* and *legislation, civil society* and *civic functions*, civil society’s *involvement* in respective processes. Also theoretical perspectives as employed and applied to this research and the conceptual framework are outlined, research design and measurement techniques used are explained and justified.

Chapter 3, describes the political environment in Turkey to include political culture, political parties, legislative process, the Parliament, role and influence of the European Union on ‘reforms’ and how civil society operates in Turkey. Then, the actual ‘civic’ work of four selected civil society think-tanks (TESEV, TÜSIAD, Heinrich Böll Stiftung Turkey and CESS) as their work relates to democratisation, particularly to the *security sector* and *judicial* reforms, is reviewed.

Chapter 4, traces the decision-making and legislative processes—in narrative form—in two reform areas respectively. The focus is on what ‘civil society’ wanted to happen—in terms of laws (policy outcome), how they strove to these ends—the way they sought a *role* at least a *voice* in these processes, and what the actual *policy outcome* was *vis-a-vis* the original aim. The influence and role of the EU has been given a particular weight in this quest.

Chapter 5, ‘Findings and Conclusions’, elaborates the findings and discusses them in some length.

## **Chapter 2**

### **Conceptual Perspectives and Methodology**

*“In fact, most political systems may be somewhere in the twilight area between the rule of the few and the rule of the many.”<sup>10</sup>*

In this chapter, first I review conceptual perspectives that are directly or indirectly relevant to this research; mainly *democracy* and *democratisation as a process* and *cultural change*, *actors* involved, *political decision-making* and *legislation*, *civil society* and *civic functions*, *civil society’s involvement* in respective processes. Then I summarize them as employed and applied to this research and outline the conceptual framework. I also dwell upon limitations—some of which serious—of this research design, major sources and types of *bias*, how they were handled and their effects were minimized, mainly through application of the ‘principles’ of *participatory action research*. Then, the measurement techniques used are explained and justified, followed by a step-by-step walk-through of the research process.

#### **2.1. Democracy and democratisation**

Democratisation, that is, transition from an authoritarian regime and its consolidation is a long way which is walked by various societies at different speeds, styles and paces with extremely varying successes. Furthermore, it is not an uninterrupted, linear, one-way process. History has been witness to several setbacks, reverse moves, collapses and destructions of many democracies all over the world and this is a process still ongoing. Huntington (1991), conveniently describes and explains this phenomenon as “waves of democratisation”; some forward, some reverse and certainly not developing in a parallel fashion and pace in each and every country. In other words, at a certain period of time, while democracy may be developing in one country or region, it may be reversing, i.e., being replaced by

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<sup>10</sup> Vanhanen (1997: 4).

authoritarian regimes in other countries and regions. Also within the same country—as has actually occurred in many countries—there have been many waves of different character and direction.

Turkey, originally a ‘second wave’ country by Huntington’s definition, is a typical case in point; it has experienced four clear transitions, in 1950s, then in 1960s and 1970s, again in 1980s and finally (?) in 2000s. It also, necessarily, suffered at least three reverse waves, all accompanied by periods of political instability at varying degrees. Whether the current wave of democratisation in Turkey will be followed by another fourth wave of *reverse nature* is a valid question for which an attempt will be made to answer in the concluding chapter. But, based on the evidence offered by the modern political history of the country, it seems safe to argue, at this stage, that there is now an *established* pattern in Turkish politics which may be maintained and, all other things equal, a reverse wave may well follow.

Larry Diamond (1999), one of the leading scholars in *democratisation* studies, in the introduction of his insightful book *Developing Democracy: Toward Consolidation*, quotes Robert Dahl—another innovative scholar of *consolidation*, for a description of democracy. It is, Dahl (1971) says:

a system of government that meets three essential conditions: meaningful and extensive competition among individuals and organized groups for all positions of government power at regular intervals and excluding the use of force; a highly inclusive level of political participation in the selection of leaders and policies; a level of civil and political liberties—freedom of expression, freedom of press, freedom to form and join organisations, sufficient to ensure political competition and participation. (qtd. in Diamond *et al* 1999: x)

As comprehensive as this description sounds, it highlights *participation*, *competition* and *pluralism* as key features of democratic institutions and practices. However, democracy may take different shapes and models depending on the ‘style’ these essential principles are operationalized; in forms of *pseudo democracy*, electoral democracy, delegative democracy,

representative democracy, liberal—radical—democracy. This list does not reflect isolated stages in the process of democratisation, but what O’Donnell describes as “the gap between democratic form and substance” (1994: 55-67) as well as the overlap between them. Consequently, civil society’s role in a political system is closely related to this gap.

Electoral democracies<sup>11</sup>, at one end, meet the *form* requirement of democracy but lacks in the *substance* because they fail in guaranteeing at least some of the fundamental freedoms and political rights—for *participation, competition and pluralism*. In contrast, *liberal* democracy, as it is, represents most developed models of democracy: there are no *reserved* domains, there is full accountability of the elected officials toward the electorate—vertical accountability, there is horizontal accountability in the form of *separation of powers*. Liberal democracy represents a ‘consolidated’ democracy. Between the two, are other ‘models’ of democracy offering and/or allowing, with varying degrees, some space for civil society.

*Delegative* democracy is not a model or type by itself, but a democracy that has *failed or failing in consolidation*. It is not the opposite of ‘representative’ democracy, because *representation* is the essence of democratic governance, but it is a politico-psychological environment where *representation* does not exist in substance. The term *delegative democracy* has the ‘trademark’ of Guillermo O’Donnell (1994). Basically there is an absence of horizontal accountability between branches of the government, effectively eliminating the principle of separation of powers. That’s why, “democracies are more likely to function effectively and become consolidated the more they are representative rather than delegative in nature” says Diamond (1999: 36). Since the gap between democratic form

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<sup>11</sup> For examples of electoral democracies based on scoring in two dimensions—civil liberties and political rights, see Freedom House’s *2012 Freedom in the World Report*: total number of *electoral democracies* are 117 out of 195, i.e., 60%, including *liberal democracies*. That means, according to Freedom House methodology, 40% of all countries in the World, in terms of democratisation process, have not even reached the stage of being an *electoral democracy* yet.

and substance is an *institutional* gap, consolidation essentially involves measures to bridge this gap. To the degree this gap is reconciled, civil society finds a more amenable environment for its work.

In terms of political decision-making and the legislative process, ‘delegative’ regimes may look like havens because the whole decision-making power—at least, ultimate *veto* power—is reserved for a single office, in most cases, effectively a single person. Decision-making is easy, takes less time; *decisions*, once made, can be implemented quickly and effectively. However, ‘policy’, as a whole, is likely to be erratic and *mired in* several, repeated and gross mistakes, because the process is closed to *environmental inputs*, shaped in ‘black-boxes’, behind closed doors and there is no felt need to base it on a clear-cut programme. (O’Donnell 1994: 55-67; Diamond 1999: 35-39)

Such political systems, once they set in, it is very difficult to move democracy forward because they create their own ‘institutions’. That’s why many third wave democracies<sup>12</sup> have remained *delegative* in nature for long periods of time and some seem to be doomed to remain so for ever longer periods. Delegative democracies and models resembling them, while giving a false impression of a permissive environment for civil society, actually represent the most challenging political settings.

## **2.2. Democratisation as a process and cultural change**

Political culture in a given country is an integral part of the general—both elite and mass—culture in the society. The dynamics involved in transforming political culture in a way more favourable for democracy are intertwined with the process of democratisation, in a parallel fashion. The two processes interact to create a *common product*—if successful—a

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<sup>12</sup> For a discussion on *delegative* cases of Peru and Brazil, see Diamond (1999): “In Latin America as a whole, [...] fundamental ills—personalism, concentration of power and weak, unresponsive political institutions—have prominently contributed to the turbulence and poor quality of democracy and to the consequent political cynicism and apathy among Latin American publics” (39).

consolidated, liberal democracy in which civil society is accepted as a legitimate *participant* contributing to *competition* and *pluralism*.

Sources and/or facilitating conditions of democratic progress—towards *liberal* democracy—vary widely as do sources of failure and instability. There is neither a clear hierarchy between them, nor they apply equally to all cases, across time and space. But since democratisation eventually involves a change in value systems, reflected on norms, beliefs and behaviour, *political culture* probably ranks first above others. Because, a change in culture eventually feeds back into other—social, institutional, economic, psychological and political—changes.

According to Almond and Verba cultural orientation has three dimensions: *cognitive* that is knowledge of and beliefs about the political system, *affective* that is feelings about the political system, *evaluational* that is commitments to political values and judgements. (1963: 15; 1989: 27-28) Similarly, Pye argues that “the notion of political culture assumes that the attitudes, sentiments and cognitions that inform and govern political behaviour in any society are not just random congeries but represent coherent patterns which fit together and mutually reinforcing” (1965: 7). But, those patterns are not evenly and uniformly spread in society. However, elites<sup>13</sup> “have distinctive values and norms [...] and they often lead the way in large scale value changes” (Diamond 1999: 163-64).

If *democratization* is about making *democracy* “the only game in town” with its rules, principles and institutions, willingly accepted—or, at least, respected—and reflected in practice by the overwhelming majority—elites and the mass alike—and enforced<sup>14</sup> by a system of law, it does involve a *cultural change*. This suggestion is not about explaining the democratic change or its origin, but pointing to its end result, *consequences*. Diamond

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<sup>13</sup> Burton *et al* put the number of elites in large countries like the US to about “upwards of ten thousand people”, in smaller countries like Mexico or Italy, “somewhere between one thousand and five thousand” (1992: 8).

<sup>14</sup> The subject of *enforcement* is a rather problematic aspect of democratisation debate involving the concept of the ‘Paradox of Democracy’, discussed below.

goes one step further and tags this change a key (intervening) variable; “Political culture change would figure to be a key variable in determining how and when a political system moves closer or further away from the perfect ideal of democracy” (1994: 4).

It’s a long, iterative process which, perhaps, will never end. This is why Dahl (1971) introduced “polyarchy” into the democracy jargon: “[...] relatively [but incompletely] democratized regimes, or, to put it another way, polyarchies are regimes that have been substantially popularized and liberalized, that is, highly inclusive and extensively open to public contestation” (8). As long as democracy is viewed from *developmental* perspective, even in consolidated liberal democracies, there is always room—much room—for further improvement, deepening and ‘perfection’. This suggestion which seems extremely simple—and admittedly self-evident—is *the key* to understanding *patalogies* in many third wave electoral democracies, because, as Diamond (1999) explains:

There has never been in the modern world of nation-states a perfect democracy [...]. Important currents in democracy’s third wave are the increased valorisation of such limited political democracy as an end itself and the growing tendency for intellectuals [...] to recognize the need for realism in what can be expected of democracy. (18)

Diamond (1994), describes political culture as “a people’s predominant beliefs, attitudes, values, ideals, sentiments and evaluations about the political system of its country and the role of the self in that system” (7). For Almond and Verba (1963), what they call “civic culture” is the basic and perhaps idealized set of values essential for democratisation; “a third culture, neither traditional nor modern, but partaking of both; a pluralistic culture based on communication and persuasion, a culture of consensus and diversity, a culture that permitted change but moderated it” (7-8). This is more or less in line with Diamond’s list of “distinctive set of political values and orientations: moderation, tolerance, civility, efficacy, knowledge and participation” (1994: 1).

From a different angle, democratic culture is determined by ‘disposition toward authority’, it is the inverse of what Inkeles calls “authoritarian personality syndrome”. Inkeles (1961) describes this syndrome as including “faith in powerful leaders, hatred of outsiders or deviates, a sense of powerlessness and ineffectiveness, extreme cynicism, suspicion and distrust of others, dogmatism”. On the other hand, ‘participant citizen’ would have an active interest in public affairs, keep himself informed and remain engaged in civil society based on a self-confidence that political action can actually produce a change in policy. (195-98) It is like living in parallel universes; mentally, emotionally and behaviourally, let alone attitudinally. The inevitable cultural clash here coming from an irreconcilable incompatibility is obvious. The outcome of such an encounter would decide the basic nature of the operational environment for civil society.

There are significant differences between countries in terms of the degree to which democratic culture—and values associated with it—are inherently included in the *common* set of values, norms, beliefs, attitudes and behaviour—*national culture*. Yet, it is misleading to consider the ‘national’ culture as a *monolithic* set. There are many subcultures within national cultures and while they—in terms of certain values and orientations—may largely overlap, some others may be conflicting. In that sense, one may roughly talk about an *elite* culture and *mass* culture. Even this is less than adequate because there are ‘sets’ of cultural values associated with certain groups of elite or organisations.

The initiation of a democratic transformation process, in most cases, is result of a conscious elite decision. This decision, initially, may be based on instrumental reasons, rather than shifts in values, i.e., cultural change. At some stage, elites come to recognizing the legitimacy of respective political, economic and other interests of each other and decide to tolerate and resolve their differences through bargaining rather than open—often violent—conflict. There is an *instrumental rationality*—as opposed to epistemic rationality—involved here. Behavioural change paves the way toward attitudinal, normative change. Almond and Verba (1963) also point to this

sequential pattern of behavioural and then attitudinal change, shifts in *values*: “[...] the option for a democratic regime” is “a matter of pragmatic, calculated strategy by conservative forces. Even at the elite level, deep normative commitments to democracy appear to have followed [...] rational choices” (39). Therefore ‘elite’ is the key variable in initiating a democratic transition, along with other—political, structural, conjunctural—factors having effects on elite interactions. Diamond (1994), rephrasing the same argument, says that this *behavioural* shift stems from “strategic considerations—altered perceptions of risk”, not from “what values the leaders hold dear in the abstract” (3). In other words, if ‘strategic’ considerations do not favour participation, then political behaviour accommodating civil society, in some form, would not be forthcoming.

Democratic transition is a challenge; but once it has been completed, the challenges awaiting the new regime are even more challenging and “neither breakdown nor consolidation is overdetermined” (Linz & Stepan 1996: 187). For instance ‘trust’, the most fundamental component of social capital, refers to a *confidence* in the democratic system in general—legitimacy, and in the way political institutions perform in particular—efficacy. Satisfaction with the perceived political performance of the regime, i.e., legitimacy, in some societies, could exist along with low levels of political participation and other forms of engagement. In Spain, for example, what Montero *et al* (1997) call “affective estrangement” syndrome—low political interest, engagement, information and efficacy—is “a stable, if not permanent, feature of Spain’s political culture” (22). The roots of this political-sociological phenomenon can be found in modern Spanish political history.<sup>15</sup>

If *trust* does not exist at least in one form, either in the form of trust in the regime itself or in the form of trust in the way it performs, with all likelihood, there is little chance of consolidation and the most likely outcome would be a *reverse movement*, i.e. failed consolidation. What

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<sup>15</sup> For Spanish democratisation, see also: Montero & Torcal (1993), Gunther (1992) and Gunther *et al* (2004).

follows a failed consolidation is important for the purposes of this study. Because, quite different from what happened during the first and second waves of democratisation, nowadays, democratic regimes, if failed, are not replaced by outright military regimes or civil politicians with totalitarian practices, “democracy, instead of expiring altogether, has been hollowed out, leaving a shell of multiparty electoralism [...]” (Diamond 1999: 62-63). Diamond (1999) clearly explains this ominous phenomenon for the future of transitioning democracies: “[...] a third wave of democratic expansion to be followed not by a reverse wave but with a period of stagnation or stability [...] in which gains for democracy are [...] off-set by losses. [...] such a period of *stasis* are seen to have entered” (60-61). In such a *twilight zone*, there is very little, if any room for civil society to operate. When a reverse *socialisation* starts, resulting in some form of *electoralism*, if not outright authoritarianism, democracy is faced with a ‘crisis’.

*Crisis* mainly involves lack of enough improvement in three areas of *deepening, institutionalisation* and *performance*—all related to the perception of *legitimacy* of the democratic regime. Kettl (1998) groups them as “three deficits”; budget deficit, performance deficit and trust deficit. There are inextricable connections between welfare, good governance and participation.<sup>16</sup> Contrasts and disparities are not only of economic or political nature. Ideological and cultural disparities overshadow and accentuate them. This situation results in the inevitable ‘paradox’ of democracy. For instance; civil society has to operate in an environment where its ‘supply’ is not demanded, even rejected.

‘Secularisation’ is another subject that can be considered as part of the ‘paradox of democracy’ debate. The Church, even in consolidated

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<sup>16</sup> For a related debate on ‘Reflexive Democracy’ see Kevin Olson (2006). His basic argument is that the term ‘welfare’ should not be understood any longer as providing citizens with resources they need, i.e., in economic terms, so that they can become politically equal, but providing them with equal opportunities to ‘participate’. “On the one hand, welfare is necessary to ensure equal and sufficient participation in forming the laws. On the other hand, equal and sufficient participation (in deliberation) is necessary to legitimate the system of laws that includes welfare”, he argues (189).

democracies such as the Netherlands, is still relevant.<sup>17</sup> However this does not necessarily mean that this *relevancy* is in conflict with the secularisation of society and the polity. People do have overlapping identities and a religious identity should not be in conflict with civic or democratic identity. Besides, many individuals may simply consider the Church an institution “which should be engaged in the values and morality of society just like for instances, Amnesty International or Greenpeace”, not because of its “religious characteristics” (Hart 2005: 192-93). But, how to accommodate this ‘role’ in a democracy has always been problematic and particularly in developing societies today, this accommodation continues to present serious challenges.

The key question here is about drawing somewhat firm lines for the way religion is engaged in society and the state, particularly in the way political legitimacy is claimed. While in traditional societies religion has customarily decided the legitimacy in every aspect of life the process of modernization has radically changed this and resulted in what Kaufmann (1979) calls “enchurchment” of religion (qtd. in Hart 2005: 194). Therefore, the basis for political legitimacy has shifted from religious—or what Weber calls “traditional” and/or “charismatic”—to legal-rational considerations. The religion as a social force or the Church as an institution did not disappear but was comfortably accommodated in secular democratic political systems.

Why is this important? Although there are important differences between societies, “in the absence of the right to oppose, the right to participate is stripped of a very large part of the significance it has in a country where public contestation exists” (Dahl 1971: 5). Especially the notion of ‘rights’, from the perspective of democracy, is somewhat problematic in Islam as well as in Confucianism.<sup>18</sup> According to Thompson (2010) the main

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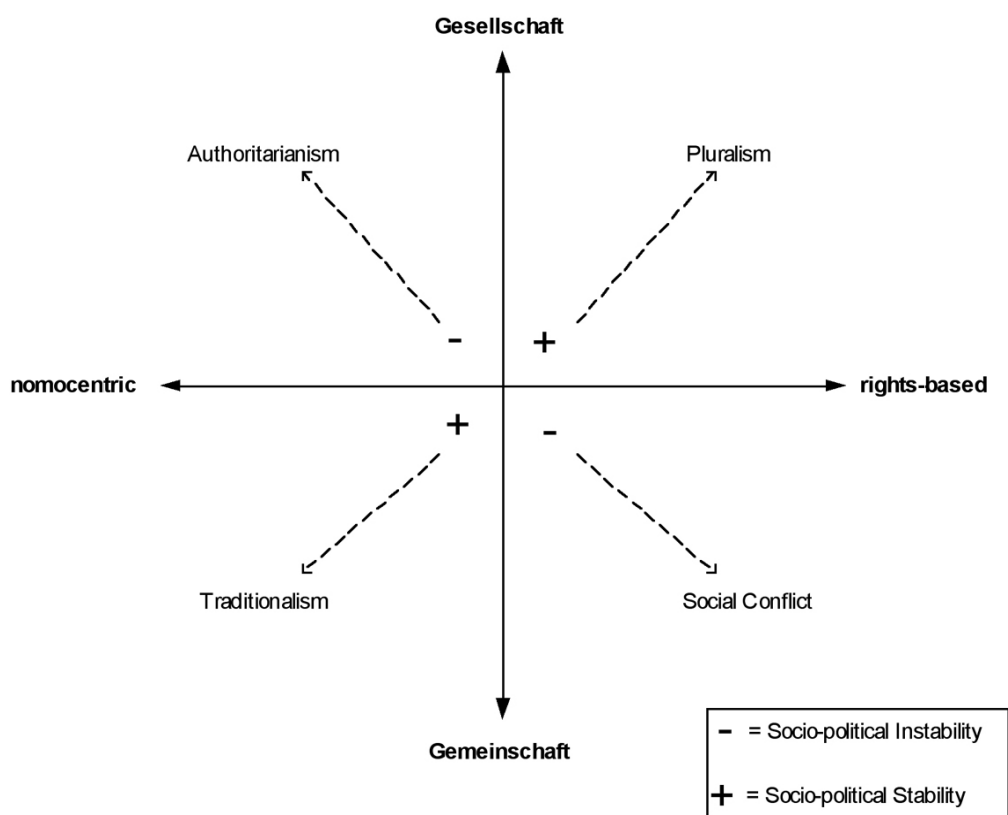
<sup>17</sup> Nearly 50 per cent of Dutch non-church members see the Church as a reliable source of information with regard to social and political affairs—a much higher figure than for the Dutch political parties, for example. (Hart 2005: 192)

<sup>18</sup> Stephen B. Young and Nguyen Ngoc Huy (1990) offer a somewhat different interpretation of human rights and the role of law in the *Confucian* tradition. They argue that there was “a duality of virtue and power in the Confucian tradition”, but they admit

problem lies in a lack of development of the concept of *rights* at the level of ‘ethical life’. He describes this dynamic relation between paradigms of ethical life and forms of social organisation by a four dimensional diagram (Fig. 1) based on what he calls “uneven modernisation”.

Figure 1.

Dynamic relation between paradigms of ethical life and forms of social organisation. (Thompson 2010: 119).



He argues that the outcome is determined by whether *modernisation* is accompanied by adequate forms of *rights-based ethical life*. If small portions of elites begin to move toward modern forms of association (*Gesellschaft*) while broader swaths of the population still maintain traditional, communal forms of social cohesion (*Gemeinschaft*), social

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that “power became increasingly concentrated in modern times” (qtd. in Huntington 1991: 340).

conflict for an extended period of time is inevitable. Social conflict is most probably followed by the emergence of *authoritarianism*—to repress social cleavages. If modernisation is accompanied by a rights-based ethic—shifting away from nomocentric paradigm—political *pluralism* develops. If nomocentric forms of ethical life persist along with the communal forms of social, political life, *traditionalism* settles in. The essence of this debate is not new, nor exclusively related to ‘Islamic’ societies or Islamism<sup>19</sup>. It took place in the West during the eighteenth and nineteenth centuries and continues in the form of *liberals-communitarians* debate today. (Thompson 2010: 100-121) Such values dominating societies may well lead to political regimes essentially *elitist, hierarchical, corporatist* and *authoritarian*, not necessarily democratic. Surely, where the right to *participate* is problematic, civil society is faced with a real challenge and dilemma.

A discussion of the subject of ‘paradox of democracy’ is timely here. Nash argues that *the paradox of democracy* is that “it can only be maintained by repression of the undemocratic”. However, she warns; “repression should clearly be a last resort, when discussion is no longer possible; there should be no *a priori* judgements of traditions as necessarily undemocratic” (2000: 249-50). There is also a *mirror image* of this rather disturbing fact, a parallel *paradox*; just as democracy is a *double-edged sword* which may cut both its friends and foes, the paradox is a *Janus-faced* one. It is possible to destroy democracy—or a democratic polity—by using what it basically and fundamentally offers, *majority rule*. The majority, represented by democratically ‘elected’ political leaders, if they are not *loyal* to the system, “are more likely to choose and condone oblique and partial assaults on democracy such as repressing particularly troublesome opposition and minorities” (Diamond 1999: 63). The risk for civil society is

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<sup>19</sup> The term ‘Islamism’ is much contested and its contentious and controversial interpretations often lead to conceptual imbroglio. Here it is used to describe a political culture recognising a legitimate—often supreme—place for religious rules and ruling by Islamic scholars—*ulama*—in a political system. For two similar discussions of the subject see; Demant (2006: xxii); Cagaptay (2010).

that, in such a cultural climate, it can easily be introduced and portrayed as ‘opposing’ and in ‘minority’.

Of course ‘religion’ is not the only source of ‘culture’ in general, and political culture involves a number of other orientations and the outcome of interaction between the religion—and the values it represents—and other dimensions of local culture is not pre-determined. In Latin America, where Catholicism is the dominant creed, a common culture of *authoritarian*, ‘elitist’ elite norms and values, combined with wide-spread estrangement of the masses from politics, lack of demand for participation, low levels of social capital and deep-seated perceptions of ineffectiveness *vis-a-vis* the state, always became major obstacles to democratic development. Perhaps the power of religion—any religion—comes not from its direct teachings *per se* but from indirect influences in transforming the general culture and the resulting *hybrid culture* becoming either hostile or amenable to democracy.

One other important aspect of ‘cultures’ is the fact that they determine ‘identities’ and express them. At individual level, *identity* is coupled with ‘personality’. Therefore just as there are overlapping cultures, there are overlapping identities one—or more than one—of which may come forward depending on the context, the subject involved and the identities interact. Cultural change also means identity change and is met with reflexive resistance. As indicated by Pye (1985):

Culture is a remarkably durable and persistent factor in human affairs. It is the dynamic vessel that holds and revitalizes the collective memories of a people by giving emotional life to traditions. [...] People cling to their cultural ways not because of some vague feelings for their historical legacy and traditions, but because their culture is part and parcel of their personalities [...]. Cultural change therefore involves true trauma. (20)

Civic culture—a set of democratic values—with its mixed character appears to be the *panacea* for all the evils and illnesses of democratic transformations: crisis of democracy, paradox of democracy, resistance,

accommodating ‘religion’, culturally diverse groups and ‘civil society’ within an overall political framework without imposing *one* solution, and eventually preventing a reverse movement. This outcome which can be called a ‘democratic miracle’ may come about thanks to two features of civic culture:

Social trust and cooperativeness and overarching commitments to the system, the nation and the community, moderate the conflicts and bridge the cleavages of politics. Trust also facilitates the vertical ties between elites and their constituencies that keep politics functioning within the institutional boundaries and constraints of democracy. These beliefs and norms keep political conflict from becoming so polarized and intense that it might destabilize the system. (Almond & Verba 1963: 490)

Civil society does have a crucial role in making democratic transformation possible. *Civic culture* can only be the product of a ‘vigorous’ civil society. Causal arrows running from *social capital* to *commitment* to democratic political system, then to harmonious politics on the one hand; *vertical ties* enabling citizens to actively and effectively *participate* on the other, all start with and also are started by the involvement of civil society. If ‘civicness’ comes gradually with democratic experience, or precedes democracy, or an interaction develops in parallel, is subject to question, but the crucial role of civil society is not.

### **2.3. Actors in policy-making**

Weber calls elites “switchmen of history”. They are also switchmen for a successful democratisation as it concerns consensus at both mass and elite levels. Morlino (1998) rightly points to “a basic distinction between consensus at a mass level and support of political elites” and to two different faces of citizen reactions against political reality; *pragmatic* reactions against the way democratic institutions work or fail to work, and more ideological ones related to *values*. (5-6) Both are functions of elites; making democratic institutions work and leading the value change.

Burton *et al* (1992) explain the role of elites in terms of the stability and long term survival of political regimes: “Democratic stability requires a careful balance between *conflict* and *consensus*. [...] What principally distinguishes unconsolidated from consolidated democracy is, in short, the absence of elite consensual unity” (3). According to them, in unconsolidated democracies while the trappings of procedural democracy and even substantial mass participation may well exist, there is *no real* elite consensus and elites are disunified, they distrust and have little traffic with one another. Similarly, for Higley and Gunther (1992), “a disposition toward compromise, flexibility, tolerance, conciliation, moderation and restraint among elites is *sine quo non* of consolidated democracy” (x).

Elites may be disunified, consensually unified or ideologically unified which are related to the extent of their structural integration and/or value consensus respectively. Consensual unity represents a *relatively inclusive* structural integration and value consensus while in *ideologically unified* elite this value consensus is *monolithic*. But transformations from disunity to unity themselves may take one of the two basic forms: settlement and convergence.<sup>20</sup> *Settlements* may or may not facilitate the eventual emergence of a consolidated democracy, but elite *convergence* would most probably pave the way towards that end. More *gradual* convergences rather than sudden and deliberate settlements would more likely lead to consolidated democracies.<sup>21</sup> *Pacts* represent some form of settlement

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<sup>20</sup> According to Burton *et al*, the Fifth Republic of France—following the dire crisis of 1958—is the paradigmatic case of an elite convergence under General de Gaulle, the key facilitator, which eventually led to ‘cohabitation’. (1992: 25-29)

<sup>21</sup> In Brazil, lack of transformation resulted in an unconsolidated democracy; in Mexico, early settlement in 1920s led to stable but limited democracy, that is inclusionary authoritarian regime; in Spain, later settlement in the 1970s gave the country a consolidated democracy, thanks to lessons learned from earlier failures and the emergence of able leaders, like Adolfo Suarez and King Juan Carlos. (Burton et al 1992: 326) Bruneau (1992), focusing on the personal characteristics of key elites in Brazil, argues that highly fragmented party system and highly unstable and personalistic nature of political parties undercut prospects for an elite settlement. The only consensus and unity that existed among the Brazilian elites was their opposition to the entry of the masses into political arena—an

between certain groups of elites. However, if they deliberately exclude other elites—who are not part of the pact—or important social groups, and discriminate against them, the inevitable result would be ‘pseudo-democracy’ at best.

Bottomore (1970), based on the earlier works of Gaetano Mosca (1939) and Vilfredo Pareto (1977)<sup>22</sup>, widely discusses the subject of elites and their circulation between social ranks. Elite undergoes changes in its membership over a period of time; (1) by the recruitment of new individual members from the lower strata of society, (2) by the incorporation of new social groups, and, occasionally (3) by the complete replacement of the established elite by a “counter-elite”. A *sub-elite*, comprising of middle class civil servants, managers, scientists, engineers, scholars, intellectuals connects the elite with the rest of the society. (11-12)

One other important aspect of elite-mass interaction is the need for a reduced distance between elites and masses so that the elite can possibly be expressive of the aspirations of the people and their interests. In this respect too, there is a difference between earlier democratized countries of the West and today’s newly democratising ones, the latter requiring elites relying upon mass support while this was not necessarily the case for the former.

The bottom line, as argued by Higley and Gunther, among others, is that “in [...] states with very long records of political instability and authoritarian rule, distinctive elite transformations, carried out by the elites themselves, constitute the main and possibly *the only route* to democratic consolidation” (italics added) (1992: xi). Therefore, democratisation requires from elites a conscious, persistent and unflinching effort in terms of achieving *unity* in one form or another—ideally, in the form of convergence.

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antidemocratic consensus. (259-80) Knight (1992) finds the elite settlement in Mexico ‘successful’, but the regime based on this “neither democratic nor fully inclusionary” (142).

<sup>22</sup> Although this work of Pareto was published in 1977, he wrote extensively before, on the role of elites in political and social transformations. See; Pareto (1935a), Pareto (1935b), Pareto (1935c), Pareto (1942), Pareto (1965).

One other closely related subject is the role elites play as ‘individuals’. Content of *beliefs* and *images* held by those individuals taking part in the decision-making process and cognitive approaches adopted and ordinarily practiced by them have an effect on determining the actual contents of the policy outcomes. These involve complex concepts<sup>23</sup> such as operational code, image of the other—mirror images, cognitive mapping, attribution, structure of beliefs, cognitive consistency, schemas, social cognition, use of analogies and metaphors<sup>24</sup>. Cognitive behaviour varies by classes of persons, decision-making institutional setting and from decision to decision. Cognitive syndromes such as grooved, uncommitted or theoretical thinking<sup>25</sup> do not refer to personality types. Importance of the situation—of great complexity and/or uncertainty; content, structure and relative degree of stability of beliefs; complex links between beliefs and behaviour would have an influence on how beliefs, images and cognitive behaviour interact, therefore on how they influence policy outcomes.

Shared images concept (Ferguson & Mansbach 1988) refers to a set of common ideology, values or shared assumptions among decisionmakers “as to the nature of the world and desirability of certain policies”. (167-68) Therefore, how cultural and social differences shape decision-making and how structures and processes of policy-making are affected would differ between cultures/sub-cultures.

The psychology of individuals also affect policy and the dynamics of small groups can help or hinder the decision-making process. Stern and Sundelius (1997) propose classifying group interaction patterns running from conformity (that is, groupthink) to conflict (that is, bureaucratic politics) and the hybrid between these two extremes. (qtd. in Garrison 2005: 179) Under certain conditions the scope of the decision unit widens or narrows. When decisions are made in hierarchical groups, membership in the decision group is very restricted and the nature of interaction is one of

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<sup>23</sup> For a detailed discussion of these concepts see; Rosati (1995: 59-64).

<sup>24</sup> For *analogies* and *methaphors* in decision-making see; Shimko (1995).

<sup>25</sup> For a discussion of ‘cognitive syndroms’ see; Steinbruner (1974: 125-35).

conformity. Then, group-think is not only one of the possible dynamics among members of a group, but the most likely medium of exchange.

Stone (2002), underlining the importance of socialisation and political learning, argues that “the essence of policy-making in political communities (is) the struggle over ideas”. Her model is based on—not rational decision-making—but reasoning by *metaphor* and *analogy*. (2002: 8-12) Feulner (2009) has a similar line of argument: “[...] in the public war of ideas, entrepreneurial prowess is necessary to win, but it is not sufficient, [...] those who attribute our success to skilful and aggressive marketing, and to nothing more, overlook the most critical factor of them all: the power of our ideas” (84).

Elite also includes individual leaders called *political leadership*. The political leadership, i.e. the skills, values and behaviour of political leaders—as reflected on their leadership *styles* and *effectiveness* of their leadership—is vitally important for the success of democratisation.

A leadership style is composed of behavioural patterns and strategies adopted by a leader. Burns (1978) identifies three styles of leadership: *laissez-faire* leadership, *transactional* leadership and *transformational* leadership (qtd. in Heywood 1997: 334). *Laissez-faire* leaders have a ‘hands off’ approach, while *transactional* leaders have a more ‘hands-on’ style. *Transformational* leaders, on the other hand, Heywood explains:

[are] not so much a coordinator or manager as an *inspirer* or *visionary*. Not only are such leaders motivated by strong *ideological convictions*, but they also have the *personal resolution* and *political will* to put them into practice. Instead of seeking compromise and consensus, they attempt to mobilize support from within government, their parties and the general public for the realisation of their personal vision. (italics added) (1997: 335)

If the prevailing conditions in a country allow, perhaps even compel, leaders to fill the ideological and moral vacuum—with accompanying uncertainty and fears—at the mass level, then *transformational* style may

well dominate the leadership practices. These conditions are vastly available in developing societies and it is simply less than a matter of chance for political leaders—with relevant personality traits—come to power in such societies and rule with ‘conviction’ rather than compromise and/or consensus-seeking. Such a trend, once set forward, would have its own dynamics and difficult to control—let alone reverse—and may even end up in a personality cult.<sup>26</sup>

‘Laissez-faire’ style leadership fits well to the leadership as an *organizational necessity*, while the ‘transactional’ leadership does so with the leadership as a *sociological phenomenon*. However ‘transformational’ style requires both ‘personal gift’ and ‘political skills’. These traits are intimately linked with the personality of leaders in office. What combination of style, model and personal character would befall in a particular polity, under certain set of conditions is simply a function of historical probability. But the outcome would be decisive for the direction democratisation can possibly take in this country—and for the accommodation of civil society as a legitimate actor.

As typically happens in ‘delegative’ democracies, where political parties and civil society are weak, voters are mobilized by clientelistic ties, and populist, personalistic appeals. There is very little accountability. In the absence of meaningful political programmes and policy commitments, nor consultation—because there is no felt need as such—there is much space for inevitable and unavoidable policy mistakes, setbacks and an endless process of *course-correcting*. Diamond (1999), brilliantly portrays a *delegative democracy under personalistic rule*—what he calls ‘delegative pathologies’—and its consequences:

Highly personalistic, populist, delegative presidents [...] rather than

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<sup>26</sup> Heywood (1997) describes a ‘cult of personality’ as “a propaganda device through which a political leader is portrayed as heroic or God-like figure. By treating the leader as the source of all political wisdom and an unfailing judge of the national interest, the cult implies that any form of criticism or opposition amounts to treachery or lunacy. The point at which routine propaganda (found in all systems) becomes a fully fledged ‘cult’ may be unclear in practice.” (333)

seeing to strengthen the judiciary, political parties, congress and other representative institutions [...] set out deliberately to weaken, fragment and marginalize them further as a means of further aggrandizing their own personal power. [...] political deinstitutionalisation has been a conscious strategy of personalist leaders, enabling them to establish unmediated relationships with atomized mass followings while overcoming institutional checks [...]. (35)

One and probably the most likely result of concentration of powers in one office, combined with ‘transformational’ style, ‘personal gifts’ and ‘political skills’ would be an ‘executive type’ of policy-making. But this ‘executive’ function would go beyond the traditional roles of policy implementation, and include also the direction and control of the policy formulation process, effectively taking over the functions and responsibilities of the legislative assembly, through the use of various instruments.

Advisors and the ways they take part in or contribute to policy-making is essentially a reflection and extension of a leader’s style. A leader’s style and needs shape the organization of an advisory system and also affect advisory *dynamics*. Garrison (2003) describes types of advisory structures as collegial, competitive and formalistic. (180) Advisory structures may be large, informal and are even formed on an *ad hoc* basis or composed of a small nucleus of close and permanent advisors. What is of utmost importance is whether they can curb the negative effects of small group dynamics, improve the quality of information processing and mitigate some inherently defective advisory processes. Those who gather, analyze, interpret and provide the information, actually shape and narrow policy options available to policy-makers. On the other hand, sometimes it is the other way round. Political leaders may “manipulate advisers to rubber-stamp his own ill-conceived proposals” Janis (1972) argues:

[...] a different source of defective decision-making [...] often involves a much more subtle form of faulty leadership. [...] subtle

constraints, which the leader may reinforce inadvertently, prevent a member from fully exercising his critical powers and from openly expressing doubts when most others in the group appear to have reached a consensus. (3)

However powerful an executive political leadership can be, still there are other actors participating in the decision-making and legislative processes and exercising some influence on the policy outcomes; political parties, bureaucracy, interest groups, and civil society.

Political parties play critical roles in democracies, by organizing electoral challenges to authority, mobilizing participation, articulating demands and aggregating political interests, they serve as key links between political elites and the society. The growing influence and competitiveness of the mass media, the decline of ideologies, the narrowing of policy choices as a result of globalisation have weakened the traditional functions of parties and led to a growing detachment of voters from political parties. This has been partly offset by the growing strength of civil society. But at the same time, peoples have been exposed to manipulation and exploitation of populist political leaders. According to Diamond *et al* (1999) “The greater risk has been that they [parties] would be circumvented by plebiscitarian leaders or abandoned by alienated voters, in either case becoming irrelevant at great cost to democracy” (29). That’s why Morlino (1998) argues that “deinstitutionalisation of political parties is one of the most serious obstacles to democratisation” (348). Effective democratic institutions are essential for sustainable democratic politics.

However, very rigid party structures, excessively centralized and disciplined party organisations and a compliant party culture may become as detrimental as polarisation of the political system. Because what may, at first, appear beneficial for democracy, can over time obstruct or undermine democratic consolidation and governability. “This underscores the wisdom of viewing adaptability as an important dimension of genuine institutional

maturity and strength” argues Huntington (1968: 12-26). This is related to dominant political cultures in political parties—defined in terms of elites.

Here involves a phenomenon what Diamond (1999) describes as “a tension between durability and adaptability”:

[...] political parties and party systems must strike a balance between competing values: [...] stability and rootedness, on the one hand and adaptability on the other. [...] between over- and under-institutionalisation. [...] a weak, fragmented, inchoate, highly volatile party system that barely penetrates the society, commands few stable bases of popular and electoral support [...] is prone to populism and polarisation [...]. (96-97)

Party systems and election systems in any country are interconnected and electoral systems too involve similar ‘tensions’; between efficiency and governability, on the one hand, and representation on the other, between majoritarianism and proportionality, between vertical accountability and horizontal accountability, between representativeness and accountability, between inclusiveness and accessibility, weaker or stronger ties between the voters and representatives. These are all related to electoral systems, i.e. how members of the legislative body are elected. Systems based on proportional representation are highly representative and inclusive of diverse interests, but they may be less than efficient. However, majoritarian or plurality systems such as single-member district electoral systems, while causing distortion between votes and seats, are more efficient in terms of governability. But they are exclusionary systems and concentrate power.<sup>27</sup>

Nevertheless, like in many other cases, the outcome is not overdetermined, depending on the wider political context, both sets of rules may result in what Sartori (1966) calls “polarised pluralism”, infested with political polarisation and fragmentation. Diamond (1999) holds that; “[...] majoritarian systems are ill advised for countries with deep ethnic, regional, religious or other emotional and polarising divisions. Where cleavage

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<sup>27</sup> 10% country-wide electoral threshold in Turkey has the same effect with similar outcomes, e.g. concentration of power in the executive.

groups are sharply defined and group identities deeply felt, the overriding imperative is to avoid broad and indefinite exclusion from power of any significant group” (104).

Finally, political parties and election systems—along with leadership styles and the dominant political culture—are what make up legislatures. And, in legislatures both the weaknesses and strengths of these systems are reflected. As a result, they may or *may not* become meaningful forums where either the political parties as institutions or MPs as individuals mandated by their constituencies—in practice both—can engage, challenge and supervise the executive branch—to include the bureaucracy. An effective parliament, in order to perform these basic functions, would require, as a minimum, advisors to parliamentarians with necessary skills, a system of staffers with diversified expertise, an information service and ‘institutionalised’ committees that can function with, at least some, autonomy from respective political parties. “In [...] unconsolidated democracies, [...] national legislatures lack the organisation, financial resources, equipment, experienced members and staff to serve as a mature and autonomous point of deliberation in the policy process” argues Diamond (1999: 98), then, some parliaments which may look powerful—constitutionally—are doomed to remain weak institutionally, hence practically non-existent.

Policies—and the laws to implement policies—are formulated by politicians, executive and legislative alike; *bureaucrats*—civil servants—offer advice. However, bureaucrats have the expertise, control over the information, and they represent continuity in state apparatus. Politicians come and go, but bureaucracy is there for extended periods. This advantageous position of bureaucracy over elected politicians, creates a critical problem of *accountability*. In principle, politicians, i.e. the executive and the legislature—parliament, are accountable to the public through elections, transparency, parliamentary mechanisms etc, but keeping bureaucracy accountable to elected politicians presents a challenge. Bureaucracy is considered as part of the ‘executive’ and ministers are

responsible for the actions of their subordinate officials. The problem is how to practise the oversight the ministers are supposed to have over the bureaucracy. Because, unless this oversight is secured, the executive would never be confident that the bureaucracy would be acting in accordance with the letter and spirit of the political decisions made by the government.<sup>28</sup>

One way to ascertain political control is to replace not only the minister—and the small cadre around them—in each department, but to go for a larger replacement in the bureaucracy through so-called political appointments. This option would have the obvious risk of politicizing and devaluing the bureaucracy.<sup>29</sup> But even then, the desired outcome is not certain to be achieved. A well-entrenched bureaucracy—regardless of their own motives—would still have some latitude to ‘resist’ politically-motivated choices made by the executive, no matter how legitimate such choices are. Another way to overcome this ‘difficulty’ is to outsource the bureaucracy through employment of advisors or consultants. Despite the risks of *bureaucratic in-fighting*, particularly in presidential systems, this may be an option of *lesser-evil*.

However, as argued by Bottomore (1970), “bureaucracy’s policy-making powers, however much they may have increased, are ultimately subject to the control of a political authority and the conflict between political parties in the democratic countries is one of the means by which this control is made effective”. He also quotes “ethical code of the bureaucracy” and the “doctrine of political neutrality” as principles providing a restraining

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<sup>28</sup> In the United States, for example, with each administration about 500 posts at the head of federal departments, agencies, administrations, commissions etc. are replaced by new appointees subject to approval by the Congress. Bearing in mind the huge mass of 2.7-3 million strong bureaucracy, one can imagine how difficult it can be to assure a firm control.

<sup>29</sup> Heywood (1997) explains that having “both political commitment and meritocracy” is difficult, because appointments made on the basis of “political affiliation and personal loyalty rather than ability and training” would not attract high-calibre staff to work in temporary positions that offer no form of job security”. Also “ideological enthusiasm” could blind civil servants to the “drawbacks and disadvantages” of policy proposals. (353-56)

influence upon any political ambitions of bureaucracy by providing a kind of systemic and cultural check on it. (86-87)

The importance of an efficient bureaucracy, free from politicization, is obvious for the civil society to participate in the legislative process from drafting stage. Also obvious are the impediments posed by a politicized and degraded bureaucracy.

#### **2.4. Political decision-making, policy-making and legislation**

The complexity of decision-making process cannot be overstated. Ferguson and Mansbach (1988) depict a typically complex decision-making environment in which individual, group, institutional actors interact under the influence of factors such as personality, psychology, conflicting goals, hierarchical structures or dominant leaders. Individuals, seeking risk avoidance, may look for simple alternatives that are similar to those they have adopted in the past, under the pressure of time or in the face of perceived emergencies or uncertainties. There may be previous policy commitments or organisational interests. Ultimate decisionmakers may have specific interest, ego and/or charisma to impose his or her personal will. Individual leaders rarely have a complete freedom of action—or ‘decision’ for that matter. It is hard to distinguish idiosyncratic behaviour from that emanating from role or other influences. (153-55)

It is very difficult to precisely establish the relative influence of various actors in the overall policy-making process. “The actual process of choice may not be a clear, clean occurrence, but a gradual, incremental process that transpires over an extended period without anyone being able to say that ‘X’ made the decision” warn Hermann *et al* (1987). Ferguson and Mansbach (1988) describe ‘power to influence’ as an elusive blend of at least three elements: *bargaining advantages*—such things as formal authority and control over information, *skills* and *will* in using bargaining advantages, and true perception of other players’ understanding of the first two. (174-78)

Standard approaches to the study of decision-making—more or less similar to Stone’s models above—are based on three conceptual

frameworks. Classical approach is the *rational actor* model; political actors—humans pursuing carefully calculated self-interest—try to attain fixed ends by means of the policy they have chosen. In *organisational process* model, there are factors that limit rationality in decision-making such as the lack of information or the capacity to process it, and a tendency for satisficing strategies<sup>30</sup>. *Governmental politics* seeks to gradually change the old policy into a new one through small, incremental steps, while keeping every group that are taking part in the decision-making process reasonably ‘satisfied’. Therefore, there is a similarity in terms of the *nature* of policy outcomes between the two. In each process, either individual decisionmakers or large organisational groups—sometimes inter or intra-agency coalitions within the bureaucracy—participate in give-and-take bargaining. A fourth approach focuses on *group dynamics* and uses a different unit of analysis: small group of decisionmakers.

Naturally, models are helpful tools that help us to understand and explain the decision-making processes. Whatever the general character of a system is, there is *a set of authorities* with the ability and power to commit resources with respect to a particular problem—ultimate decision unit. Hermann *et al* (1987) widely discuss the subject of what is “in reality [...] may consist of multiple separate bodies rather than a single entity”. Ultimate decision unit may be a *predominant leader*, a *single group* or *multiple autonomous groups*. Hermann *et al* attempt to predict policy behaviour based on a table depicting the character of ultimate decision unit, control variables (contextual sensitivity, concurrence, relationship among groups) and alternative conditions (sensitive/insensitive, agreement/disagreement, zero-sum/none-zero-sum). (Fig. 2)

When influences of other parts of the political process are muted (a predominant leader who is *insensitive*, a single group that can reach prompt consensus, multiple autonomous groups that have a zero-sum relationship), the linkage between the ultimate decision unit and policy behaviour is more

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<sup>30</sup> Satisficing strategy: strategy aiming to find a course of action that will satisfy the most minimal goals instead of seeking for the action with the best consequences. (Janis 1972: 6)

straightforward. For example, when the ultimate decision unit is an insensitive predominant leader, his or her personality, orientations, view of the world would shape the policy. Similarly, in a single group with consensus, the nature of decision would likely to be based on a shared set of beliefs or on that of a ‘natural’ leader in the group, effectively rendering the group a single ‘predominant leader’. When multiple autonomous groups—with a zero-sum relationship, form the ultimate decision unit; deadlock, continuation of the *status quo*, appeals for more time, broad and vague policy declarations, minimal commitment—with potential reversals—are most likely outcomes. However, in case of a predominant leader—insensitive to the immediate political environment, or a single group whose members disagree, or multiple autonomous groups who have a non-zero-sum relationship, policy commitments on the part of the government are definite and firmer. (Hermann *et al* 1987: 311-33)

Figure 2.

A Typology of Policy-making

(Hermann *et al* 1987: 312)

<b>DECISIONMAKERS</b>	<u>Perfectly rational</u>		<u>Imperfectly rational</u>	
<u>Single decisionmaker</u>	1a.Complete info	1b.Incomplete info	2a.Complete info	2b.Incomplete info
<u>Many decisionmakers, same goals</u>	3a.Complete info	3b.Incomplete info	4a.Complete info	4b.Incomplete info
<u>Many decisionmakers, conflicting goals</u>	5a.Complete info	5b.Incomplete info	6a.Complete info	6b.Incomplete info

Individuals in small policy-making groups, their official status and expertise and responsibilities notwithstanding, may behave more or less like any other citizen and ‘strive’ for *unanimity* rather than for finding the best courses of action. Janis (1972), among others, describes *groupthink* as “deterioration of mental efficiency, reality testing and moral judgement that results from in-group pressures” (9) and argues that “the more insulated a cohesive group of executives becomes, the greater are the chances that its policy decisions will be products of groupthink” (15). Perhaps the most

important aspect here is the ‘moral’ one. Because it involves a moral dilemma—a conflict between humanitarian values and the utilitarian demands of politics—and refers to circumstances when “the most advantageous course of action requires the policymakers to violate their own standards of humanitarian behaviour”, Janis (1972: 206) explains.<sup>31</sup>

For the purposes of this research, the role of what Paul Sabatier (1988) calls “policy subsystems”—that is collections of people who in some way contribute to influencing policy in a particular area—is also important. Sabatier argues that, within such subsystems, “advocacy coalitions” emerge that comprise collections of individuals—researchers, academics, journalists—concerned with particular area of policy, sharing broadly similar beliefs and values, the ‘glue’ of politics. He proposes that policy change can largely be understood in terms of the shifting balance of forces within a policy subsystem, in particular through the dominance of one advocacy coalition over others. (qtd. in Heywood 1997: 385-86)

Problems of ‘public’ nature are solved by a state apparatus through established ways and mechanisms—policy-making and legislative processes. Decision-making, as a constant and iterative process involving cognitive, psychological, emotional, social and political interactions at each and every stage of both processes, should be considered as a separate phenomenon in the form of a series of occasions for decision-making, repeatedly taking place and supplementing the both. Therefore there are actually three processes taking place in a complementary, concurrent and sometimes sequential fashion.

Policy-making process, generally, takes place in stages: initiation, formulation, implementation, evaluation. Hogwood and Gunn (1984) offer a

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<sup>31</sup> In terms of ‘informatics’ of the decision-making environment, Bendor and Hammond depict a typology of models of policymaking similar to that of Janis (1972) based on four basic assumptions: the number of actors (single decisionmaker or many decisionmakers), whether the multiple actors have the same or conflicting goals, the degree of rationality attributed to decisionmakers (perfectly rational or imperfectly rational) and the amount of information attributed to decisionmaker (complete information or incomplete information). (1992: 302-03)

more sophisticated model of policy process, each step having a key importance for the outcome: deciding to decide; deciding how to decide; issue definition; forecasting; setting objectives and priorities; options analysis; policy implementation, monitoring and control; evaluation and review; policy maintenance, succession or termination. (qtd. in Tansey 2000: 226-27)

Policy initiation either from ‘above’ or ‘below’ sets the political agenda. Actually the cases of initiation by one ‘source’ are rare. Most of the time what is initiated is the outcome of interaction by several actors—political leaders, government agencies, public opinion, mass media, interest groups and civil society. What makes a political system more democratic is the degree of success in initiation by actors from below. Heywood (1997) argues that “democracy could be understood in this sense to imply that the political agenda is shaped from below rather than from above” (386). The law-making—legislative—process involves bargaining, competition, persuasion and compromise. But this interaction occurs after the agenda for policy-making has been established and the major directions of policy or policy *changes* have already been determined. The ‘decisions’—or contributions to decision-making—of those other than the major policymakers are not unimportant, but they are necessarily about the *means* rather than the *ends* of the ‘policy’. In this respect, for all practical purposes, it is sensible to see the functions performed and the authority used by (1) main policy-making actors, (2) those who contribute to it in an advisory capacity, such as bureaucracy, (3) other political actors, such as opposition parties and the parliament, and (4) all ‘others’, respectively, interconnected but still separate from each other. Civil society can become part of any one but the first group.

*Policy formulation* translates broad proposals into specific and detailed objectives, priorities and courses of actions and takes place in steps. What is essential here is to detect the *authoritative decision unit* which makes the final, decisive choice. In this sense, Heywood (1997) explains, ‘policy’ is better understood as the linkage between intentions, actions and results. At

the level of *intentions*, policy is reflected in the stance of government (what government says it will do). At the level of *actions*, policy is reflected in the behaviour of government (what government actually does). At the level of *results*, policy is reflected in the consequences of government action (the impact of government on the larger society). (382)

Policy formulation represents a process in which, traditionally, outside actors are involved or allowed to involve the least. Ironically this is the stage, objectively, involvement of others is most needed—but least desired by ‘insiders’, politicians, advisors, ‘key’ bureaucrats. *Implementation* is the crucial step to see if the policy serves its original aims. *Evaluation and review* of policy is an equally important step in the overall cycle because it may lead to changes to make the policies more effective or to decisions to terminate to avoid unwanted or unintended consequences of the policy. So in a sense, evaluation feeds back into *initiation*.

‘Ignorance’ of the environment by groups or individual decision/policy-makers represents a major flaw in any policy-making process. Kegley and Wittkopf (1996) portray the policymaking process as “what converts inputs into outputs, [...] conceptually [...] the intervening variable that links policy inputs to outputs”. They argue that it is complex because there are many participants, procedures involved and independent sources that shape [or supposed to shape] actors’ responses to situations demanding action. In addition to personal/idiosyncratic<sup>32</sup> factors, they describe a series of ‘circles’ made up of roles defined by actors’ positions within institutions involved in policymaking, then more encompassing societal setting, and finally an even larger international environment within which individual decisionmakers operate, i.e. perform their policymaking roles. (16-30) In other words, there are *individual, role, governmental, societal, external* and *systemic*<sup>33</sup> sources.

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<sup>32</sup> In fact, in this context, personal/idiosyncratic features of an individual, taking part in any process, at any stage and in any capacity, is ‘external’ to him or her.

<sup>33</sup> Kegley and Wittkopf distinguish between ‘systemic’ (general attributes of international environment) and ‘external’ (relationships between particular countries) sources of policy-making. (1996: 30)

*Governmental* sources are what Rosenau (1980) describes as “those aspects of a government’s structure that limit or enhance the foreign policy choices made by decisionmakers” (qtd. in Kegley & Wittkopf 1996: 22). *Societal* sources are nongovernmental aspects of a political system.

Putnam’s (1988) “two-level game” concept is related to external and—partly—systemic factors. Leaders can strategically use developments at one level—either national/domestic or international—to affect policy choices made at the other. (433-34)

## **2.5. Civil society and ‘civic’ functions**

“For democratic consolidation, it is important to stress not only the distinctiveness of civil society and political society, but also their complementarity” say Linz and Stepan (1996). The discourses and practices of the two should not be inimical to the development of each other, either implicitly or explicitly. In a sense, there is a practical, albeit tacit, division of ‘democratic’ labour between them. Civil society, provided that it has the capacity, generates political alternatives, monitors the government and the state, helps push democratic transition and consolidation. Political parties, on their part, aggregate and represent differences within the society. A “working consensus” between the two is a prerequisite for democratic development and it is the basis of concerted effort and mutually respected legitimacy. (6-15)

Therefore, there is a kind of umbilical cord connection, attaching two societies to each other, without which neither can really survive. Political society, by establishing and enforcing the rights of civil society renders *legitimacy* to it, and in return itself gains legitimacy.

Civil society can take many forms ranging from organised NGOs for public good and associations for member benefits, to faith-based organisations, pressure groups, charities, social movements, even individuals active in the so-called social media. Civil society empowers citizens to play a role in political decision-making and thus on the decisions that affect them. Walker and Thompson (2008) describe civil society as “a

veritable marketplace, but not of goods and services, [but] a marketplace of interests, ideas, and ideologies. Customers don't trade with cash and shares, but with their support and their time [...] and media coverage [...]" (32).

Post and Rosenblum (2002) specify the three basic functions performed by the independent groups and associations of civil society as "to serve as a centre of collective political resistance against capricious and oppressive governments", "to organize people for democratic participation" and "socialisation into the political values necessary for self-government" (17-18). Therefore there is an inherent tension between the 'government' and civil society as they are conceptually exclusive, they explain. Likewise, Fukuyama (1996) refers to the same phenomenon: "civil society is the realm of spontaneously created social structure separate from the state that underlies democratic political institutions. These structures take shape even more slowly than political institutions. They are less manipulable by public policy and indeed often bear an inverse relationship to state power, growing stronger as the state recedes and vice versa" (321). Therefore the doubt voiced by Schneider (2004) has a sound basis and it is self explanatory: "It is not clear why state actors would want to create associations that can, in turn, constrain them, so government officials are probably poor candidates for crafting a dense civil society as counterweight to state power" (261).

This brings us to one of the main problems of developing democracies, as far as civil society and its role in the political system is concerned, that is the duality of civil and political societies and the inevitable tension which is further exacerbated by the (im)balance of political power between them:

[State] is the continuous administrative, legal, bureaucratic and coercive system that attempts not only to manage the state apparatus, but to structure relations *between* civil society and public power and to structure many crucial relationships *within* civil and political society. (Italics added) (Stepan 2001: 101)

Shortening the *gulf between citizens and the decisionmakers* means citizen ownership of politics and this is related to the debate on

‘participatory’ democracy and ‘representative’ democracy. Citizen-centred politics, addressing the problem of what Boyte (2004) calls “a tinned version of citizenship” (13) allows participation—beyond representation and periodic elections—and practically and actually connects people’s daily lives to arenas of policy. It is not *owned* by professional politicians only. This is probably the closest concept to the meaning of civil society as understood in this paper: citizen-politics, in any form of participation, both creating free spaces<sup>34</sup> and being conducted in these spaces, *everyday*.

The concept of ‘free spaces’ has common origins with Habermas’ *public sphere*. It is part of what Habermas (1989; 1996) designates as ‘the life world’, that is *the public sphere* of civil society—outside the state and economy—and the private *domestic sphere*. Actors in these arenas, orient themselves in terms of *communicative action*, toward understanding each other rather than toward bringing about objective, impersonal results (instrumental action) or influencing other actors (strategic action)<sup>35</sup>. Habermas argues that the growth of societies and clubs in the Eighteenth Century provided spaces for the radical criticism of state practices by informed outsiders. But the complexity of contemporary societies has limited potential for democracy because the public sphere has degenerated due to overexpansion, blurring of the distinction between public and private and the growth of mass communication.

Civil society debate is closely related to a ‘culture’ debate which is largely dominated by the notion of ‘civic culture’ which has been introduced by Almond and Verba (1963; 1989) and contributed by Diamond (1999)

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<sup>34</sup> For a discussion on ‘free spaces’ see; Evans and Boyte (1992: 182-203). “In the course of democratic movements, as a people move into action, they change. They discover in themselves and in their ways of life new democratic potentials. They find out new political facts about the world. They build networks and seek contacts with other groups of the powerless to forge a broader group identity. In turn, for such processes to occur, requires more than local, communal roots. Such spaces must also be relatively autonomous, free from elite control” (188).

<sup>35</sup> For a discussion on ‘rational action’ and Habermas see; Johnson (1991) and Honneth and Joas (1991).

among others “[...] participant role is fused with and balanced by the political subject role [...] and the parochial role” (171). Therefore, democratic civic culture is “neither blindly trusting nor hostilely rejecting but inquisitive and sceptical” argues Diamond (1999: 206). However, trust is an important aspect of civic culture because it is a fundamental basis for cooperation. It transpires in two dimensions: interpersonal trust and political trust—trust in democratic institutions—which are interconnected. If elites and the mass do not trust one another, hence defect from compliance with the rules of the *democratic game*, politics will never be stabilized, institutionalisation will never take place and democracy will not be consolidated.<sup>36</sup>

The role of civil society in this respect is mainly related to the creation of social capital. However, Omar Encarnacion (2003), among others, challenges this view of civil society as “an infallible democratic miracle worker” and calls this view a “myth”. He further argues that “quite the contrary, a flourishing civil society can actually be a hindrance to democratisation, particularly if surrounded by weak and inefficient political institutions”. Poorly developed institutions<sup>37</sup> would lead to the emergence of ‘negative’ forms of social capital—e.g. mistrust and cynicism. (4-9) Cochrane (2005) also argues that “community cohesion, civic activism and

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<sup>36</sup> Diamond (1999), emphasizing “strong linkage between culture and the institutional hollowness of democracy” describes this as “a central problem in Latin America today, where laws are hollow, courts are feeble, and delegative presidents run roughshod over the constitution. [...] most people do not consider their fellow nationals to be honest, and huge majorities [more than 80% in Brazil] believe their fellow nationals obey the law little or not at all” (208).

<sup>37</sup> For a discussion on Spain and Brazil as evidence of *political institutions* rather than *civil society organisations*, being the main source of social capital, see Encarnacion (2003). In Spain, “it was democratic commitment and competence displayed by public officials, the social and economic transformations engineered by state agencies, during the decades preceding the democratic transition that lifted [...] a previously radical political culture [...]”. In Brazil, “unrestrained state control and violence, weak support for democracy from the masses, corruption and clientelism, a poor conception of citizenship and widespread social and economic inequities” prevented the consolidation of democracy. (10-13)

the desire for associational life that are the building blocks of civil society, can lead to uncivil as well as civil outcomes. We need to understand civil society for what it is, namely, a subjective reflection of communities' values and not an intrinsic force for good" (61).

However, there is a social dilemma—connected to pre-existing democratic culture—involved here. In developed countries of the West, where democratic values and habits already internalized, both at the mass and elite level, 'civicness', where it is—in context—least needed, delivers the best results. It is in societies where antidemocratic culture predominates, civic culture is most—and urgently—needed, but does not exist.

However, in practice, the role and actual functions of civil society in general and civil society organisations in particular are conditioned upon their recognition—at least acknowledgement—as a legitimate 'partner' in the political game. This recognition is based on an assumed popular *mandate* which may take various forms: access to the media, access to those in positions of political power, an active support base etc. In what is generally referred to as 'representative democracy', giving the citizens the opportunity to vote every few years and delegate to 'parliamentarians' the absolute right to make political decisions binding for all across a spectrum of matters, until next elections is a concept of the time long past. It is the 'participatory' concept of democracy that has given legitimacy to civil society and—through it—enabled citizens to participate also 'between' elections. The right—and assumed popular mandate—to participate, in turn, carries with it the responsibility to *represent* and *be accountable*. Of course, representativity is not simply—and only—a matter of having a 'constituency' to talk on behalf of, but a matter of expertise. The issue of accountability is rather problematic, however also the most critical. In terms of the messages delivered by civil society organisations and by individuals active in civil society, they are expected to be honest, accurate, realistic, really serving the goals they claim. They have to get as close to the citizens as possible and open to public scrutiny through full transparency.

The question of ‘legitimacy’ for civil society—based on representativity and accountability—is also linked with some other debates of democracy such as ‘radical’ democracy, ‘deliberative’ democracy and the ‘right to participate’—in a wider sense. *Radical democracy*<sup>38</sup> is based on the concept that, in a democracy, there are no fixed certainties to depend, nor a final authority to settle contentious issues at hand. This ‘agonism’ or *agnostic pluralism* comes from multiple interpretations of the same ‘facts’ as they are perceived and it does not reject any possibility for reconciliation or compromise in advance. Rationalists, such as Benhabib (1996), argue that “without a final adjudication of the outcome of political struggle, it is impossible to be sure that it is good and just, rather than unjust, racist, fickle and capricious” (8). However, its proponents, Laclau and Mouffe (1985) among others, see the basic trust of radical democracy as avoiding the totalitarianism associated with claims to *absolute truth* and *value*. They see “the only way of safeguarding pluralism against totalitarianism” and also “the possibility of constructing a mere egalitarian and inclusive political community” in the radicalization of liberal democracy (186-88).

*Deliberative* democracy or *discursive* democracy is based on the principles of both consensus decision-making and majority rule as the primary sources of *legitimacy*. It requires citizen participation beyond mere elections. This participation may take the forms of face-to-face meetings, town hall meetings<sup>39</sup>, the use of social media and participation through *civil society*. There are also international efforts and networks, such as the Open Government Partnership<sup>40</sup>, to encourage governments’ openness to and

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<sup>38</sup> For a discussion on ‘radical democracy’ see; Little and Lloyd (2008).

<sup>39</sup> One pioneering example of ‘town hall meetings’ is *America Speaks*. It aims to engage citizens and to bring them together to deliberate about decisions so that public officials make informed, lasting decisions. Town Hall Meetings enable facilitated discussion for 500 to 5,000 participants each time. The conclusions from these meetings are then brought to the attention of decisionmakers. 19 April 2012. <http://americaspeaks.org/>.

<sup>40</sup> The *Open Government Partnership* (OGP) is one of such global efforts to make governments more responsive to *citizen engagement* through collaboration between governments and civil society. It is overseen by a steering committee of governments and

support for ‘citizen participation’. There are others, International Association for Public Participation (IAP2)<sup>41</sup>, for example, with more ambitious aims and a greater inventory of participation modes.

As for the *right to participate*; Bignami (2003) uses ‘procedural rights’, ‘participatory rights’, ‘process rights’ interchangeably and divides the process such rights came into existence, in the European Union, into three stages: 1. The *right to fair hearing* emerging in the 1970s—mainly driven by English and German conception of the value of a fair hearing. 2. The rise of *transparency* in the 1990s—led by countries with longstanding traditions of open government—the Netherlands, Denmark, Sweden. 3. In the late 1990s, the *right to participation* debate—whether and under what conditions, individuals, firms and their associations, i.e. *civil society*, should take part in legislative and administrative policymaking. “Yet, there is no consensus in Europe, where republican, corporatist and liberal traditions continue to flourish, on the legitimacy of representation outside of political parties and the electoral process” (3). She plausibly argues that *transparency*, while allowing for scrutiny of public decision-making, leaves influence to existing political and legal mechanisms. On the other hand, *consultation* involves a formal and routine sequence of *objections* from interested parties and *reasons* and *justifications* from decisionmakers.<sup>42</sup>

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civil society organisations. The OGP was launched in 2011 by eight founding states: Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, United States. Since then, 47 additional governments have joined the Partnership, making the total 55. Civil society organisations and governments work together to lead, manage, and guide the ongoing development and direction of OGP. 19 April 2012.

<http://www.opengovpartnership.org>. Turkey is a member of OGP Initiative since 20 September 2011. For Turkey’s OGP Action Plan visit;

<http://www.opengovpartnership.org/countries/turkey>.

<sup>41</sup> International Association for Public Participation (IAP2) Spectrum for Public Participation include goals; to inform, consult, involve, collaborate, empower, through a variety of techniques ranging from fact sheets—to *inform*, to citizen juries—to *empower*. See; IAP2 web-site. 04 November 2012. <http://www.iap2.org/>.

<sup>42</sup> Bignami (2003) quotes the United Kingdom as the EU member state with the broadest consultation rights. As a general rule, government departments must allow ‘twelve weeks’

Therefore only *representation* withstands scrutiny from the perspective of civil society participation. (Bignami 2003: 19-20)<sup>43</sup>

The potential ‘civic’ role of civil society is not independent of the political context which defines the ‘nature’ of civil society. Rossteutscher (2005) defines a ‘civic’ community by “the *number* of voluntary associations plus the *overlap* between them, especially the overlap that is created by the network of interlocking directorates among them” (234). Civic communities are products of trust ‘between’ organisations. However, in societies which recently suffered what can be called *cultural traumas*<sup>44</sup>, this is very difficult if not impossible to achieve since in such fragmented societies, social trust will be higher within groups rather than between groups. Therefore, from the perspective of democratisation, the overall and essential nature of civil society in a given country may present a challenge. This is related to ‘individualist, voluntarist’ or so-called ‘communitarian’

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to comment, synthesize and summarize those comments for public consumption, and then to explain the policy choices ultimately made. However, these are just Cabinet Office guidelines, “they don’t create binding legal duties and they vest a significant amount of discretion concerning when and how consult administrators” (30). See; HM Government Code of Practice on Consultation. 04 November 2012.

<http://www.bis.gov.uk/files/file47158.pdf>.

<sup>43</sup> In the draft constitution of the European Union, elections and parliaments are believed to guarantee the ‘principle of representative democracy’, whereas civil society politics are thought to guarantee the ‘principle of participatory democracy’. According to Bignami (2003) “this formulation associates elections and legislative bodies with passive citizenship and routinization of politics, and identifies interest group consultation with active citizen engagement and direct democracy” (31-32). See; the EU Constitution. 25 April 2005. Title VI: The Democratic Life of the Union. Art. I-46: ‘The principle of representative democracy’. Art. I-47: ‘The principle of participatory democracy’. 04 November 2012. [http://en.euabc.com/upload/rfConstitution\\_en.pdf](http://en.euabc.com/upload/rfConstitution_en.pdf). Treaty of Lisbon, dated 13 December 2007, which replaced the unratified draft treaty, contains similar provisions. See Title II, Art. 8, 8A, 8B. 05 November 2012.

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0010:0041:EN:PDF>

<sup>44</sup> Sztompka (2000) describes the sources of cultural traumas as ‘changes’; (a) sudden and rapid, (b) radical, comprehensive and deep, (c) perceived as imposed, exogenous, (d) unexpected, unpredicted, shocking and repulsive. (452)

accounts of civil society which in turn ultimately related to the concept of *personal autonomy*. Post and Rosenblum (2002) describe this phenomenon as “the openness of groups and shifting involvements among them” versus “the capacity of groups to endow persons with stable and enduring identities” (5). In divided societies, group membership based on mutually exclusive identities and relationships of power and authority of tradition can be hostile to the idea of plural identities and multiple, overlapping memberships in civil society. Then, some social forces can be performing functions counter-productive for the development of a really ‘civil’ society. This is correlated with the dominant general culture and the political culture in any given country and involves moral and political questions. The fact that an organisation is neither of private nor ‘economic’ nature does not necessarily make it ‘civil’, it is what Korkut (2005) describes—in the context of newly flourishing Eastern European democracies—as ‘internal democracy’ that would enable civil society to act as a real force for democracy:

As long as civil society organisations are not internally democratic, they cannot serve as schools of democracy for their members. Only non-hierarchical, participatory, internally democratic civil groups can instil virtues of democracy in their members. On the other hand elitist behaviour and vertical bonds [...] are prone to hamper [...] potentials as schools of democracy. In itself, a vertically organised civil society can be an obstacle to democracy. (113-14)

In this context, ever since the Huntington’s *The Clash of Civilizations* article appeared in 1993, whether liberal democracy is compatible with Islam as a religion, and particularly civil society’s role in ‘Islamic’ societies has been hotly debated. Although there are some contradicting views on that, the general tendency is the one finding Islam inhospitable to ‘civil’ society in the modern—i.e. Western—sense.

According to Kelsay (2002), “civil society organisations represent a stage in the development of people who can deal with those who are

different from themselves” (284). He argues that mediating institutions are important in preserving a “balance of power between those holding the reins of government and ordinary citizens”. However, while there are some common characteristics of the ‘civil’ discourse in Islamic and non-Islamic—particularly Western—societies, “the emphasis of Muslims seems to be on the creation of a sphere of citizen liberty. By comparison, Europeans and North Americans seem focused on citizen participation in specific organisations” (Kelsay 2002: 285-86). This major difference between the two ‘civilisations’ can be traced back to the founding years of the Islamic society.

Islam introduced ‘Muslim as ‘the’ common identity above all other identities and loyalties. With this identity came an unchallengeable system of belief, government and socio-economic organisation based on Quran and *hadith*—reports of the example of the Prophet. A *combined* ‘prophetic’ authority—and the legitimacy it provides—that can only be exercised by a prophet, if applied to a contemporary political system, from a democratic perspective, does present some challenges.<sup>45</sup> A president can be elected by popular vote—as in the Islamic Republic of Iran—run day-to-day affairs of the state, but he would always be under the supervision of *ulama*. There is room for *discussion, consultation* and *participation*, but it must have a ‘moral’ component and, at the end of the day, those making policy decisions should consult sources of Islamic authority, i.e. *ulama*.<sup>46</sup>

Kazemi (2002), likewise, argues that since much of the philosophy of Islam have premodern roots and basically underwent very little change, civil society—an essentially modern phenomenon—is difficult to accommodate. According to him, problematic aspects are mainly about how to ascertain the extent of civil society’s presence—a space separating the individual from the state—and its level of autonomy from the state—existence of

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<sup>45</sup> For a discussion of government in Islam see; Ali abd al-Raziq’s book on Islam and Basis of Government; published in Cairo in 1925, excerpted in Kurzman (1998: 29-36).

<sup>46</sup> For a discussion of the political system in the Islamic Republic of Iran see; Kelsay (2002: 286-310).

autonomous institutions. The general preoccupation with order in Islam and overwhelming fear of chaos (*fitna*) makes such an unconditional acceptance difficult. (321)

Sunar (1997) talks about two models of ‘relations’ traditionally followed within the Islamic world: the ‘caliphal’ model where the circle between faith, power and society is kept intact, and the ‘imperial’ model where the link between faith and society only—not power—is kept. He gives Turkey as a modern case rejecting both models and “breaking the circle between faith, power and society” (15) but, by implication, he follows the same line of argument with Kelsay and Kazemi.

Thompson (2010), as already pointed out, discusses the same subject from the perspective of ‘rights discourse’. “Civil society cannot be seen inherently to be a mechanism for democratic change since other forms of social transformation could result, especially in the Islamic context. These could be more communitarian, more theocratic and less ‘modern’ forms of social and political life” (101) he argues.<sup>47</sup>

Then, ‘religion’ would continue to act as a barrier to developing ethical autonomy as well as civil society.

Here, one aspect of the cultural debate which is of vital importance for an effective civil society is the culture of *charity* versus the culture of *philanthropy*. Philanthropy has a participatory and organisational dimension: it seeks to include those to be ‘served’ and makes them an integral part of the effort. The term charity is commonly used to refer to programmes that are designed to address immediate crises. It has a *short-term* focus and, in principle, one-time. Philanthropy is more than just ‘giving’ and in this sense makes a huge difference for civil society and for civic activity in general. McGann and Johnson (2005) argue that, especially in predominantly Muslim countries, despite significant income from energy resources “the traditional religious obligations require donations to the poor

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<sup>47</sup> In this context, Islamic society does not necessarily mean an Islamic state—a political entity based on Sharia, rule by the Book-*Koran*—but a social phenomenon dominant in the society.

and needy, rather than institutions such as think tanks” (257). This situation suggests an incongruity between Islam as a *cultural framework* and philanthropic culture, however, this does not necessarily mean that such an incompatibility exists in Islamic societies only.<sup>48</sup>

Think-tanks are part of the civil society and serve as an important catalyst for producing ideas and mobilising actions. McGann and Johnson (2005) describe the role of think-tanks as essentially seeking to “bridge the gap between knowledge and power”, linking the “two roles, that of policymakers and academic, by conducting in-depth analysis” (11-13). They identify, articulate and evaluate “current or emerging issues, problems or proposals, transforming ideas and problems into policy issues, serving as an informed and independent voice in policy debates, providing a constructive forum for the exchange of ideas and information between key stakeholders in the policy formulation process” ((McGann & Weaver 2009: 2-3). Think-tanks target three groups, to engage and influence: policymakers, the press and the public. However, the key to their ‘success’ is their ability to overcome the resistance exercised by centralised decision-making systems, and to have points of access.

For McGann and Johnson (2005), “the viability of think-tanks is a critical indicator of the health of the civil society in a country. If the space for think-tanks to operate in a country does not exist or if it is severely constrained then this suggests that all non-governmental organisations are threatened”. They are critical because if the ‘state’ remains the sole provider of information and analysis, regarding the problems faced by policymakers and the public, the society as a whole is deprived of open, dynamic and

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<sup>48</sup> Johnson (2009) maintains that “Arab states seem to place a stronger emphasis on charity than philanthropy. In one sense, this is a cultural and religious issue. [...] there appears to be limited financial support for civil society organisations that are not directed to the interests of either Islam or charity” (348-52). Kimball (2009) argues in similar lines for the former communist societies of Eastern Europe: “Since a ‘culture of giving’ has not developed in the region, the general population cannot be relied upon for support. [...] a tradition of corporate philanthropy has not been established. [...] Almost all of the funding for these organisations originates in Western Europe or the US” (268-70).

democratic means of addressing such problems which can only be provided by think-tanks, they argue. However, in order to be able to do this, i.e. becoming both credible and effective, think-tanks would need to “have the freedom to voice policy opinions that may be in conflict with those of the ruling power. This is the challenge and paradox for all think-tanks” they stress, because think-tanks “must operate within the very environment they seek to change”. (256) Therefore, think-tank activity is the litmus test for determining the basic nature of a political environment in a country and its both openness and permissiveness to civil society input, in other words, if the political freedom to criticise and express dissent does exist.<sup>49</sup>

After all, think-tanks disseminate the results of their analysis in order to ‘educate’ the public and inform policy debate, in other words they make their views available for use and to benefit from. But unless there is a real and strong demand for their services, only supplying these services does not result in much change. If the well-known economic laws of supply and demand are applied, when demand remains unchanged and supply increases, this situation leads to a lower price, i.e. lower value.

Freres *et al* (2009) offer a comprehensive discussion of the ‘think-tank’ environment in *Spain* and *Portugal* which is salient for this research. Their primary activity—rather than engaging in providing policy advice, evaluating government programmes or interpreting policies—is doing ‘basic research’. They do publicise their work and make an effort to achieve certain goals, but not in an aggressive manner based on comprehensive,

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<sup>49</sup> The Think Tanks, Politics and Public Policy Project, launched by Jim McGann in 2001, was designed to provide factual and objective information about the state of *independent policy advice* in individual countries while establishing a framework for cross-national comparison. Twenty countries (Turkey was not included) were analysed using 13 indicators: political freedom, political system, number of years as a democracy, number and strength of political parties, freedom of the press, economic freedom, gross domestic product per capita, population, number and independence of public and private universities, philanthropic culture, public sector demand for independent policy analysis, level of global integration and nature of civil society. Study found ‘foreign donor assistance’ having a decisive impact on think-tanks. (McGann & Johnson 2005: 1-3)

multifaceted strategies. Their rather elite and bureaucracy-centred policy-making processes offer very little—if any—space for think-tanks.

Parliaments are places where the parties can only ‘discuss’ government proposals, with limited control functions, hence they hardly offer a channel through which think-tanks could exert an influence. (200-201)<sup>50</sup> They link this overall situation to the dominant political culture:

[...] limited role think-tanks seem to have played in the policy process in both Iberian countries. [...] civil societies are relatively underdeveloped in comparison with other parts of Western Europe. This was mostly due to the lack of a democratic space during the long dictatorships, but, to a certain extent, it predates these regimes, and forms part of their broader political cultures which are termed, by Montero and Torcal (1993), as ‘political passivity’. (190)

Collapse of the Berlin Wall was important for several reasons. Although the collapse occurred suddenly and unexpectedly, it was the result—rather than cause—of a series of events and developments long unfolding but went largely unnoticed. It not only reflected changes in politics, economy, international relations and social reality but also signalled more and fundamental changes to follow. One of them was *citizen-centred politics* which was emerging around the world. Emergence of a global civil society was accompanied by various social, political, intellectual and sometimes ideological developments, movements—and ideas—in and across societies and polities, such as everyday politics, cosmopolitan democracy etc.

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<sup>50</sup> For a similar discussion on Central and Eastern European countries see; Kimball (2009). “[...] few talented policy analysts with a firm understanding of the needs of a democratic, capitalist system were waiting to direct the countries down the proper road of reforms [...] at the exact moment when policy input was most needed, policymakers were least skilled. In order to fill this void, Western experts were brought in, to provide advice or how best to reform the economies and design the necessary pillars of a democratic system?” (251-52).

David Held's theory of cosmopolitan democracy<sup>51</sup> attempts to develop a sociological understanding of the potential for democratisation of political institutions beyond the nation-state. In this model, nation-state is not ignored or by-passed, it is simply considered one political player among others, sharing sovereignty even within its own borders. According to Walker and Thompson (2008) there were "increasingly evident flaws in the traditional institutions of democracy". They argue that "paradoxically, just as formal democracy has spread into new areas of the globe for the first time, substantive democracy—the ability to participate in decisions affecting everyday life—has been eroded by this loss of autonomy of nation-states".<sup>52</sup> They offer 'global civil society' as the answer to address the flaws of globalisation, "if it can be properly used as a tool [...] [to] encourage, if not impose, democratisation from outside". Why such "shifting informal and opportunistic alliances of governments and non-state actors around specific policy issues"—what they call "civilizing global governance"—should not work for democratisation, they question. (32) Actually, although some governments clearly resist the idea, this was what also the 'Cardoso' Panel concluded. It states that constructive and strategic engagement with civil society is a vital defence against the challenges the UN itself faces today.<sup>53</sup>

This brings us to what Risse-Kappen (1994) addresses in his *Ideas do not Float Freely* article, that is how to overcome the domestic cultural, mental and political resistance—to change:

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<sup>51</sup> See; Archibugi and Held (1995), *Cosmopolitan Democracy: An Agenda for a New World Order*.

<sup>52</sup> Walker and Thompson (2008) describe the 'five democratic deficits' about which global civil society can help to expose and potentially to remedy as: the ideological deficit, the deficit of integrity, the deficit of representation, the deficiency of reach and the deficiency of sovereignty (32). The last two are particularly relevant for the subject of this study.

<sup>53</sup> Final Report of the Panel of Eminent Persons on UN–Civil Society Relations, 07 June 2004. The Panel was chaired by Fernando Henrique Cardoso—former President of Brazil—and included representatives from Iran, Spain, Sweden, the United States of America, Hungary, Colombia, India, South Africa, Philippines, Mozambique and Mali.

The transnational promoters of [...] policy change must align with domestic coalitions [...] to make an impact. [...] access to the political system as well as the ability to build winning coalitions are determined by the *domestic structure* of the target state, that is, the nature of its political institutions, state-society relations and the values and norms embedded in its political culture” ( Italics added). (187)

However, “ideas do not float freely”. The strategic prescriptions offered by *transnational* actors need to be compatible with the worldviews embedded in the political culture, and the approaches adopted should integrate domestic politics, transnational relations<sup>54</sup> and the role of ideas<sup>55</sup>. State-controlled domestic structures, as in Turkey, encompass highly centralized political institutions with strong executive governments and a rather weak level of societal organisation. Then, civil society is too weak to balance the power of the state and access is most difficult. But, once accessed, policy impact might be profound.

## 2.6. Exerting influence

A broad range of tactics, political strategies and very diverse methods are employed by the civil society to influence decisionmakers, government, parliament, either directly or indirectly. Heywood (1997) explains that the methods available and the political strategy to be applied, vary according to a number of factors: “the issue with which the group is concerned”, “how policy in that area is shaped”, “nature of the group”, “resources at its disposal” (262-63). The channels of access through which influence will be

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<sup>54</sup> Transnational relations are regular interactions across national boundaries when at least one actor is a non-state agent or does not operate on behalf of a national government or an intergovernmental organisation. (Risse-Kappen 1995: 3).

<sup>55</sup> Appadurai proposes a theory of ‘scapes’ based on five dimensions of global cultural flow; *ethnoscapes*, *technoscapes*, *finanscapes*, *mediascapes*, *ideoscapes*. He describes ‘scapes’, extending Benedict Anderson (1983)’s ‘Imagined worlds’, as “the landscape of persons who constitute the shifting worlds in which we live” (1990: 296-7). *Mediascape* and *ideoscape* are built on the former three.

exerted also play a role in choosing the best method. Indirect methods target mass media, public opinion, political parties, and may take the form of ‘campaigns’—petitions, protests, demonstrations<sup>56</sup>.

It is common knowledge that there are major differences between a troubled democracy and a consolidated one. One critical indication of a consolidated, well-functioning democracy is an autonomous, pluralistic mass media, really independent in its editorial orientation. Media makes a major difference both by selecting and prioritizing the information available to the public, by interpreting it, by setting the political agenda. Informed public, hence *informed debate*—for all practical purposes—is the product of an independent and effective mass media. It plays a vital role in election campaigns and in political mobilisation by civil society.

For think-tanks, media appearances by their ‘experts’ discussing issues on televisions or in print offer the best way to influence the mass public. This can only be done by relying on contacts within media outlets. However, Kimball (2009) warns that “there is [...] a large difference between making media appearances and making ‘meaningful’ media appearances. Many organisations take any opportunity to appear in the media, often discussing issues in which they lack solid expertise, providing general rather than concrete analysis” (268) which can become extremely counter-productive and discrediting for the organisations.

One another important asset, perhaps more important than the media exposure, is the ability to influence ‘policymakers’ privately—and directly, bypassing some ‘niceties’ of democracy. Political ‘decisionmakers’ include bureaucracy, government and the parliament—not necessarily in that order. The key institution—ultimate decision unit—in the process of policy formulation and legislation varies not only from country to country but also from subject to subject and the main effort of the civil society should centre on this key ‘institution’.

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<sup>56</sup> According to Heywood (1997), demonstrations may take the forms of civil disobedience and “even the tactical use of violence”. (262-64)

Direct methods may take various forms. In countries such as the United States, where think-tanks traditionally occupy a privileged place in politics, individual scholars or policy experts regularly circulate between the government/executive posts, Congress and think-tanks, providing a constant and intimate, hence effective link. This link, with connections to the media, takes the form of a powerful network. Networking in these countries is an accepted and routinized fact of ‘political’ life.<sup>57</sup> The ‘consultative’ process is informal, away from public scrutiny, rarely—if ever—publicised, yet it is institutionalised. But, most political ‘systems’, particularly those in developing countries, consider civil society’s claim to a role in policy formulation as a ‘threat’, an attempt for sharing political power. In such countries, like Turkey, the environment may not be too favourable for the civil society as a whole and participation in policy-making and legislation in general is a major challenge. Some modest access to individual policymakers and some discernible influence on the public opinion is an uphill battle for think-tanks with scarce resources. There is a compelling need for innovative, original means and methods.<sup>58</sup>

In political systems where civil society has real political power, exerting influence through the parliament is called *lobbying*. The independence of the ‘legislature’, in turn, depends on the role it plays within the overall political system, its power in influencing policy and the party system itself. For example, unlike the Turkish Parliament, the US Congress’ constitutional independence, unique party system and powerful parliamentary committees allow much space for lobbying.

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<sup>57</sup> Policy networks are communities of policy actors that criss-cross the public and private sectors. It is a “systematic set of relationships between political actors who share a common interest or general orientation in a particular area”. A policy network may embrace government officials, key legislators, lobbyists, academics, journalists and others. (Heywood 1997: 385-86)

<sup>58</sup> Johnson (2009) suggests that “one of the most powerful and successful tools some think-tanks in the Middle East and North Africa have used to raise awareness and build consensus around policy issues is the opinion poll” (357).

Similarly, global civil society and transnational actors are also faced with particular challenges in getting access to decision-making structures. Risse-Kappen (1994) explains that in order to influence policies, transnational actors first need channels into the political system and then, domestic partners. Otherwise ideas promoted by transnational alliances or epistemic communities would not really matter. The differences in domestic structures<sup>59</sup> account for, to a large extent, the variation in policy impact. For instance, in state-controlled structures—as in the former Soviet Union—transnational actors needed to gain access to the very top of the decisionmaking hierarchy to have an impact. It is more or less the same today for semi-democratic, i.e. less than consolidated, political systems. Access to society-dominated structures—as in the United States—is comparatively easy. On the other hand, building winning coalitions for gaining influence in domestic politics demands considerable effort, skill and perseverance. As to the German system, what Risse-Kappen calls “democratic corporatist” structure, “access to political institutions is more difficult than in the US case, but strong policy networks, such as the party system, ensure profound influence once access is achieved” (187). Of course, having access does not necessarily mean having an influence all the time, on each and every subject.

International institutions are then expected to facilitate access to national policy-making processes for of transnational actors. But this ‘facilitator’ role is a function of cooperative and institutionalised interstate relationships, such as the EU accession process of Turkey and associated *acquis communautaire* of the EU, for instance. According to Risse-Kappen (1995), “international institutions [are] [...] intervening variables between transnational activities and state policies in an analogous way as domestic structures” (30). They legitimize not only transnational activities but also

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<sup>59</sup> “Domestic structures encompass the organisational apparatus of political and societal institutions, their routines, the decision-making rules and procedures as incorporated in laws and customs, as well as the values and norms prescribing appropriate behavior embedded in the political culture” (Risse-Kappen 1994: 208-09).

the demands of civil society ‘coalitions’. Also, institutionalised inter-state relations help ‘foreign’ members of coalitions seen less as foreigners.

As already discussed, dominant political culture in a given country is inherited from the past and represents the outcome of a struggle between the old cultural norms and habits and the newly introduced ones. Each cluster of values are associated with various groups of people and they define, even determine, their identities in a complex way. To make the ‘phenomenon’ much more complicated, these ‘identities’, in other words ‘attitudes’, largely decide the behaviour of the individuals and they overlap to varying degrees. These ‘individuals’ are those who serve in the bureaucracy, political parties, governments, parliaments and civil society organisations. Basically, the outcome of the complex and complicated interaction between these agents and actors decides the mental, intellectual and cultural parameters of civil society’s intervention in policy-making and legislative processes, constraining the possibilities for ‘participation’ and effective ‘pluralism’.

Cultural transformation is never absolute and rapid. It is uneven, takes place at different levels and layers, at different paces, and it is nonlinear in nature. Some cultural elements are favourable for democratic development, some are not. Some undemocratic elements may suppress those of favourable nature. The key is whether cultural features such as moderation, tolerance, accommodation, cooperation, bargaining, pragmatism, proceduralism, social trust are gaining ground or are still resisted by the majority. Yet, cultures are dynamic and the dominant beliefs and attitudes in a society do change.

As Almond (1990) posits; “[...] causality works both ways, that attitudes influence structure and behaviour and that structure and performance in turn influence attitudes. [...] Deeper value and normative commitments [...] change only in response to profound historical experiences and institutional changes” (144-47). However, without conscious change, periodic reform and renewal, political systems may become corrupt and unresponsive to the needs and demands of the people. Then, Diamond (1999) argues:

Democracy not only may lose its quality, it may even effectively

disappear, not merely through the breakdown of formal institutions but also through the more insidious processes of decay. This insidious decay [the progressive hollowing out of electoral democracy] is one of several striking features of the latter period of the third wave that have been inadequately appreciated. [...] In much of the post-communist and developing worlds, democracy appears stuck in a twilight zone of tentative commitment, illiberal practices and shallow institutionalisation. (19-20).

The causal connection between ‘civic’ work of voluntary associations and democratic governance is not as simple as it first appears. “The democratic process is by no means blocked if a substantial number of people do not share democratic values, as long as they do not refuse to live according to its procedures” (Rossteutscher 2005: 224). But, what if, they—particularly those in the decision-making positions—are not prepared to accept and live according to these procedures and the ‘insidious decay’ settles in? Because of the complex *conditionality* involved in this correlation, the causal direction of an imagined path from *civil society* to a *healthy democracy* does not look certain.

## **2.7. Summary of theoretical perspectives**

The political decision-making model adopted in this work has been *partly* inspired by the *input-output analysis* concept, suggested earlier by Frankel (1959) and Rosenau (1969) and, further developed by Brecher *et al* (1969). It is composed of: 1. an *environment* or setting, 2. a group of *actors*, 3. *structures* through which they initiate decisions and respond to challenges, 4. *processes* which sustain or alter the flow of demands and products of the system as a whole.

M. G. Hermann (2001) reformulates a similar approach—decision units approach—composed of *inputs*, decision unit *dynamics*, and *outputs*. In this, decision-making involves responding to a policy *problem* and *occasion* for decision, focuses on decision *units* and key factors that set into motion alternative decision *processes*, leading to particular policy *outcomes*.

Decision unit responds to *stimuli* from the domestic or international environment, or both at the same time. Policymakers have *goals* and *objectives*, hence *agendas* and *plans*. A *problem*, for the policymaker, is “a perceived discrepancy between present conditions and what is desired. Problems represent either a difficulty or potential opportunity. Occasions are decision points when there is a felt need by those involved to make a decision to cope with the problem” (66-75).

This research adopts this approach—as adjusted to the requirements and dynamics of domestic politics, combined with processes of law-drafting and legislation, with a view to see the role and influence of civil society participation in respective mechanisms. It is based on a political decision-making framework of *demands* on policy—or *inputs*, and *products* of policy—or *outputs*. It particularly utilizes Rosenau’s five-group factors having an influence on policy decision-making: *idiosyncratic, role, governmental, systemic, societal*, in other words, ‘operational’ and ‘psychological’ environments, as termed by Frankel (1959). There is a multitude of complex, multidimensional, multidirectional interactions between them all. Civil society—and inputs from it—is just one and it is highly difficult to isolate any single one of them and study as such.

Decisions—policy outputs—also feed back into the system as inputs, therefore it is a circular, somewhat cyclical and continual process. Decisionmakers—and their advisors—receive information from elites and interest groups with competing—or corresponding—views/aims, in the external (i.e. global, international, bilateral) and domestic *operational* environment, process this information in their *psychological* environment<sup>60</sup>. One critical attribute of policy *behaviour* is the degree to which the decision involves an *initiative* or a *reaction* to something in the domestic or international arena.

I pursue “multicausal explanations spanning multiple levels of analysis, [...] viewing the process of [...] decision-making as a subject of equal

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<sup>60</sup> Psychological environment: attitudinal prism, psychological dispositions based in societal and personality factors; elite images, perception of reality by individual elites.

importance to the output”, as suggested by Hudson and Vore (1995: 222). Different individual influences interact within and across levels of analysis—international, domestic, organisational and *individual* levels—across a range of interaction patterns running from conformity to conflict. It distinguishes between ‘systemic’ (general attributes of the policy-making environment) and ‘external’ sources of policy decisions. The political decision-making process—and the two other connected processes which run simultaneously—are taken as complex and as constrained by many *actors* and the *environment*:

[...] *individual* decisionmakers are constrained by their policymaking *roles*, roles defined by their positions within [...] policymaking institutions. Those governmental variables are cast within its more encompassing *societal* setting, which in turn operates within an even larger *international* environment, comprising other nations, non-state actors and global trends and issues [...]” (italics added). (Kegley & Wittkopf 1996: 16)

*Civil society organisations*, as actors—along with *political parties*, *interest groups* and *external actors*—would communicate information about the environment to decision-making elite and advocate, i.e. articulate and aggregate, policies to those who wield authority in the political decision-making system. As indicated earlier, this thesis takes into account mainly—but not exclusively—civil society organisations with clearly delineated democratisation programmes and/or projects, which either participate and/or involve in political decision-making and legislative processes, in issue-areas directly related to democratisation in Turkey. Such organisations, while explicitly promoting democracy, they also promote the role of civil society at the same time. Their influence would depend on their relative strength (real, potential or perceived) and the dispositions of elites (psychological environment) taking part in decision-making and legislative processes, as well as other factors. Here comes into equation the EU process and the *zeitgeist*—the spirit of the time, against the background of historic

developments taking place in Central and Eastern Europe, in Asia—with diverging successes, and recently in the Middle East and North Africa, which, altogether, can perhaps rightly be called the *fourth wave* of democratisation. The distinction between the ‘internal’ and ‘external’ factors is certainly rather blurred.

Of course not all actors, interactions and factors are equally important for all types of decisions responding demands, for all decisions, addressing to all requirements, in all issue-areas and under all circumstances. I aim to find out the relative importance—in other words, the *power*—of ‘civil society’ as an actor, or the relative importance of its inputs, or as a factor, vis-a-vis other actors/factors in decisions directly or indirectly related to ‘democratisation’ in Turkey.

It is difficult to determine the nature of the *authoritative decision unit* for ‘each’ occasion for a decision—even more so, if and when it is not a final decision—in the chain of successive and partially parallel-running steps through the processes of decision-making and law-making—legislation. A decision unit may be ‘open’ or ‘closed’ to the pressures of its environment with respect to the *nature* of an issue-area. Each set of conditions—parameters and constants—would result in a particular type of *process outcome* (certain ‘positions’ that have counted in the ‘final’ decision at each stage) and *substantive outcome* (actual policy ‘actions’ taken). Decision units with principled (contextually less sensitive) predominant leaders, single groups with strong internal loyalties and coalitions with poorly established decision rules would have internal dynamics that override external pressures. At the final stage, in case of laws, passed by the Parliament, the *process outcome* would be determined by the relative power of the governing party, i.e. the Government *vis-a-vis* others—including civil society, and the *substantive outcome*, would be reflected on the actual policy actions taken by the government. Although I will primarily be focusing on the *process outcome*, in a particular context, *substantive outcome* would also be of concern for the purposes of the research.

## 2.8. Measuring influence and the research process

Several individuals and organisations participate in policy-making and legislative processes, at different stages, leading to policy outcomes. They exert influence through various channels, directly or indirectly. The policy ‘matter’, first articulated by any one ‘player’ or proposed by any one civil society organisation, may take a completely different shape along the long and most of the time an arduous process and the outcome may not even look like what was originally intended. It may also take some time even before an ‘idea’ makes a political agenda item.

It should not be assumed that the most visible civil society organisations are the most influential ones in the political decision-making and legislative processes. Their relevance varies at different stages of the policy cycle: some are more active and effective in shaping the initial agenda, some others in contributing to policy development at later stages. This is largely determined by their financial resources, the number and quality of their staff, their connections to policymakers—advisors and key bureaucrats as well as politicians—their access to media, hence their ability to reach multiple audiences.

The major premise of this research related to measurement is that; none of the indicators can provide definitive data on the amount of exposure civil society generates and how much influence they actually have in shaping public opinion—*indirect* influence on policy process—and the preferences and choices of policymakers—*direct* influence—and eventually on the policy outcomes. In this respect, it benefits from Abelson (2009), Abelson and Lindquist (2009), and McGann and Weaver (2009).

Unless policymakers themselves express that their decisions were based on recommendations from particular organisations, it is difficult to determine the degree of such an influence, even if it does exist. On the other hand, since completely isolating the views of certain civil society organisations from many other individuals and organisations that actively seek a role and an influence on public policy is very difficult, it is virtually impossible to assign a numerical value to the amount of influence they

wield. Examining the organisations that focus on particular policy issues—security sector and judicial reforms, selected for this research—is a useful point of departure for studying the interaction. For assessing their effectiveness, this focus would include their strategic goals, areas of expertise, audiences they target and the time frame in which they hope to achieve a policy influence. Since the political system constrains or facilitates access to policymakers and relevant processes, the nature and dynamics of it are also of utmost importance.

It may also be more appropriate to discuss the “relevance of think-tanks in the policy-making process than to speculate about how much policy influence they wield. In other words, [...] if, when, and under what conditions they [could] have contributed to specific public policy discussions and to the broader policy-making environment”. (Abelson 2009: 170-71) Abelson (2009) also suggests that; “scholars should also pay more attention to what policymakers think about contributions think-tanks have made at different stages of the policy making process. [...] either through interviews with or through surveys distributed to policymakers throughout government” (179). This research does the former with satisfactory results. The latter—as it has turned out—if attempted, would have been faced with and crippled by significant practical obstacles.

My unit of analysis<sup>61</sup> is ‘participation of the civil society in the policy-making process’, a *social artefact*, with a view to, first *describing* and then *explaining* its influence on the policy outcomes. I examined the political decision-making, policy formulation, law-drafting, law-making/legislative processes and the participation of civil society at each step of these intermingled series of interactions of policy-making actors. At each step, the research necessarily attempted to focus on the composition and actions of

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<sup>61</sup> The unit of analysis is clearest in the case of nomothetic, quantitative studies, but not so in qualitative research. It can be a group, a formal organization or a *social artifact*. Social artifacts are the products of social beings or their behavior. Social interactions form a class of social artifacts. Each social artifact implies a population of all such ‘objects’—in the case of social interactions, a cluster of them. (Babbie 2009: 101-09)

the group, the dynamics involved and the role and influence of ‘civil society’ in relation to the *ultimate decision unit* in that specific context.

The data required for *process tracing* is necessarily and overwhelmingly qualitative in nature. The main method for data collection used to answer research questions and operationalise variables was ‘intensive interview’. The data was mainly collected from the individuals involved in the processes under investigation, in various capacities, at each level, and then was aggregated to explain, generalise and characterise. For selecting interviewees, a combination of various approaches to sampling proved to be the optimal method. Therefore *non-probability sampling* methods—actually a combination of *purposive sampling* and *chain-referral* or *snowball sampling*—were utilized, based, secondarily, on ‘reputational’, ‘expertise’ and ‘availability’ criteria, focusing on individuals who were active and willing to talk and reflect. Also they were to be representative of a range of points of view—political, intellectual, institutional, cultural—in terms of their professional qualifications, experience, political and organisational affiliation and seniority.

Data collection spread over a period from September 2011 to December 2012 and developed in stages. The first stage covered primarily the four originally selected civil society organisations; TESEV, TÜSIAD, Heinrich Böll Stiftung-Turkey and CESS, i.e. their senior staff. Then, as a probe, a mixed group of individuals, who were thought to be fairly representative of the decision-making and legislative spectra as well as the *judiciary*, were interviewed. These included former MPs, former judges (some of whom served at the Supreme Court), selected advisors to MPs, senior staff who served in Prime Minister’s Office in the past, senior staff from central organisations of political parties—with primary responsibility for civil society, National Security Council staff and senior Parliamentary staff. This list, based on the interview results *snowballed* and also some other individuals were *cherry-picked* as necessary, gradually expanding the emerging mental picture of the research domain, facilitating a properly focused research.

These initial stages were followed by a series of steps *tracing* the processes of political decision-making and legislation: relevant ministries, prime minister's office/cabinet, political parties—party headquarters, parliamentary/committee staffers and advisors to MPs, individual MPs/members of the Parliamentary committees, leadership cadre of the political parties. Those who were from the ministries included civil-military bureaucracy—active and retired, particularly from the Ministry of Justice and the Ministry of National Defence, the General Secretariat for the National Security Council, as well as the Turkish Armed Forces. The process at the Prime Minister's Office/Cabinet level was traced through mainly retired senior bureaucrats and former ministers. Staffers and MPs who participated in this research were mainly—but not exclusively—from the Committee on the Constitution, Justice Committee, National Defence Committee, EU Harmonization Committee and Foreign Affairs Committee as well as senior posts in the General Secretariat of the Turkish Grand National Assembly. Other individuals involved in other parliamentary committees were also consulted for getting a better grasp of the context.

In addition to the above listed range of primary group of interviewees, others from various civil society organisations (not necessarily explicitly working in the area of democratisation), foreign/transnational civil society organisations that are active in supporting civil society in Turkey, offices of international organisations and resident foreign embassies/consulates (providing financial, technical and/or political support to civil society in Turkey) were consulted.

The selection and pursuit of interviewees, at each stratum, continued until the *saturation point*, in other words, until I started receiving the same or very similar inputs. An approximate total of some seventy individuals were interviewed in this research. These include eight senior staff in civil society organisations, twelve senior bureaucrats (judges, military, TGNA), twelve advisors to MPs and experts at Parliamentary Committees, four senior staff in political parties, twelve MPs, five senior staff at Prime Minister's Office and five senior staff in foreign entities that are resident in

Turkey. Some of them were revisited either for purposes of clarification and confirmation or for cross-checking some interim or provisional results.

Also some *focus group* discussions—involving a range of individuals from staffers to MPs—were organised to discuss some certain issues or particular aspects of the research subject which were common to more than one interviewee. These were mainly eight; four with small groups of staffers currently working in the TGNA, two with former MPs, one with former Supreme Court judges and one with the military serving in NSC Staff.<sup>62</sup> Such group discussions proved extremely useful because they gave the participants the opportunity to put their own views and perceptions to test, complement other's views, and eventually corroborate. However, while focus groups generally created a sense of confidence and encouraged free expression of facts and views thereby substantially improving both the reliability and validity of the research, they also suffered from an inherent risk—mental and/or psychological *withdrawal*, some participants ceasing cooperation or applying self-censorship (as one can guess, particularly in discussions with TGNA staff). Perhaps, given the current state of extreme political polarisation in all walks of life in Turkey, this was an inevitable trap due to exposure to others. Fortunately, the effect of this situation on the openness and honesty of the participants was negligible, thanks to 'participatory' approach, explained below at the end of this section.

Intensive interviews were based on *semi-structured* and/or *open-ended* questions<sup>63</sup>, and “active interpretation” (Rudestam & Newton 1992: 34) fusing the perspective of the phenomena and that of the interpreter. I aspired to hear what interviewees “[had] to say in their own words” and see the phenomenon “as they [saw] it” (Chambliss & Schutt 2003: 30). Applying the 'rolling interview' technique, I relied on questions, follow-up probes and *active listening*, each subject leading to the next subject, to develop an

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<sup>62</sup> In the course of research in the TGNA, some unintended, spontaneous 'group discussions' also occurred which were extremely useful to 'observe' and to take note.

<sup>63</sup> Appendix A: Questionnaire for Directors of Democratisation Programmes, Appendix B: Questionnaire for Those Who are active in the Policy-making and/or Legislative Processes.

understanding of the interviewee's background, attitudes and actions—and reactions to—developments and others' attitudes and actions. In such *in-depth interviews*, specific content and order of questions would naturally vary from one interviewee to another. I also asked *counterfactual* questions to compare if the outcome would be the same, absent intervention by the civil society.

I then compared *words* with *deeds*, corroborating the earlier findings obtained from other sources/interviews, examining if, how and to what extent 'democratic' messages of the civil society has been received, adopted and transformed into behavioural change, and if this change in behaviour was reflective of a change in attitudes (i.e. if 'democratic' values were internalized) or it was the result of other factors.

In order to strengthen measurement validity and for improving reliability, i.e. for getting consistent results, I used *methodological triangulation*—a logical combination of interviews, observations and review of relevant documentation.

Observations included participation in parliamentary committee meetings; observation of interactions between the committee Chairs, member MPs and staffers during and, perhaps more importantly, also out of meeting times; working habits during off-duty hours; institutional culture; participation of civil society organisations in parliamentary committee meetings; relations between media, civil society and member MPs in committees; meetings involving legislative staffers, parliamentary advisors, bureaucrats and civil society; civil society conferences and meetings directly or indirectly related to democratisation. The observation scheme also benefitted from a coincidental working trip—not an inherent part of this research—to the Netherlands to visit both chambers of the Dutch Parliament and Ministry of Defence. This gave the opportunity to observe parliamentary debate and to attend one specially organised parliamentary committee session and to discuss 'participation' of the civil society in legislative process in this country. This visit also included meetings and discussions with a select group of civil society organisations (think-tanks)

which were actively participating in political decision-making and legislative processes in the Netherlands and with a specific interest in Turkish civil society and democratisation in Turkey in general.<sup>64</sup>

The most salient documents used for triangulation included texts of *draft bills* and *proposals of law, reports* of parliamentary committees and sub-committees on draft texts forwarded to the Office of the Speaker of the Parliament and of course their final versions—laws—passed by the Plenary.

I used an electronic tape recorder and notes—as ‘memory joggers’—and also maintained a daily log/summary of oral interviews. Then based on the notes taken and the views heard, I developed comprehensive notes which established the basis for the ‘findings’ of this dissertation. Sources of information, views and documents provided directly for this research will be withheld.

## **2.9. Controlling limitations: Participatory Action Research**

Although utmost attention has been paid to avoiding threats of *history, maturation, testing* and *contamination* to internal validity of the study, some certain and serious limitations did exist. They mainly came from the rather sensitive nature of the research subject and the two *cases* selected which have been dominating the current political debate—actually the political *conflict*—in Turkey: ‘democratic’ reforms in the security sector and the judiciary. Besides, the fact that they will continue to eclipse other issues in the political scene for the foreseeable future, constituted a challenge for ensuring the validity—and to a certain extent the generalizability—of the results reached.

Slightly at odds with the commonly understood meaning of ‘history’ as a threat to internal validity, in this research process, the subject’s ongoing relevance, widely-publicised political debate over it, ever-increasing political sensitivity—which kept building throughout the research phase and

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<sup>64</sup> These are the Netherlands Institute of International Relations Clingendael, the Hague Center for Strategic Studies and the Turkey Institute. 28 December 2012. <http://www.cess.org/activities/view/?id=120>.

hung in the air all the time—caused a psychological pressure on individuals, as evidenced by the outright rejection of interviews by some groups and institutions with certain political affiliations. This was apparent particularly during revisits, necessarily after a certain time-lapse.

Again, the potential threat of ‘maturation’—in the form of *intellectual* and *emotional* change—was experienced in a rather different nature. As the ‘participant observation’ and interviews progressed and the ‘population’ became familiar with the identity of the researcher and his ‘subject’, and were ‘educated’, both the interest in the research subject and the *perception* of questions changed, resulting in either increased eagerness or, to the contrary, reluctance to cooperate. Sometimes, particularly during longer interviews, this kind of maturation occurred in a matter of hours, between the beginning and the end of the interview. But, it has to be stressed that maturation worked in ‘both’ directions and the importance of this cannot be overstated.

‘Testing’ also proved to be a real threat as individuals were exposed to certain probes during rolling interviews and responding open-ended questions.

*Social/intellectual-desirability*, interacting with the factors causing ‘maturation’, resulted in a type of ‘contamination’ as the individuals, exposed to the basic research question—role of civil society—tended to give responses favouring such a role or assuming the existence or desirability of such a role.

These ‘traps’ and threats of bias having a direct influence on this research, in a wider perspective, were coupled with some potent *ecological* limitations of longitudinal nature. Some individuals had involved in interviews of similar nature in the past, and were either *well* prepared or *resistant* to some questions; experience in time, hindsight, and potential publicity of their responses created a kind of self-imposed censorship, selective responses or complete avoidance. Because of the prevalent nature of the subject and since they knew that their responses would have been

compared with others' and put into context, some chose to respond otherwise than they would normally do under different circumstances.<sup>65</sup>

The phenomenon studied here also involves a natural *socialisation* process on the part of each *actor*, individually, as a group or as part of an organisation. However the focus of this research has been on *objective* functions as reflected by behaviour, largely disregarding *subjective* functions, in terms of socio-psychological development of the individual, which involve various subprocesses as explained by DiRenzo (1991). Since this is linked to the production—and satisfaction—of basic human needs, it is important for correct reading of the responses because “inadequate gratification in unauthentic and/or unresponsive societies” may result in *negative motivation* (275). This is believed to be of particular significance, particularly under the prevailing conditions of Turkish politics. However, because this was essentially an area of political psychology, requiring a stand-alone and thorough treatment, it was essentially left out of the scope of this study. Nevertheless, some significant findings connected to this occurrence have been noted in various parts of this thesis. The phenomenon of *negative motivation* in certain bureaucratic and legislative circles, to a certain extent, helped this research.

‘Participatory’ approach is based on the assumption suggested by Knight *et al* (2002) that “states and markets are insufficient on their own to develop societies successfully”. A “third force or sector, called civil society, is also needed”. *Participatory research*, both as a method and an approach, involves the “most crucial element of civil society—citizens” (31-32). It is mostly used by researchers working on developing and/or transitional societies for better planning and directing ‘aid’ efforts more effectively and more efficiently. In this research, inspired by the ‘revolutionary’ way it approaches to the researcher-subject relationship, its ‘principles’ have been used in a way to improve the *reliability* and *internal validity* of the research and to avoid some well-known research traps, as detailed above.

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<sup>65</sup> This may sound too pretentious. Examples of such instances are given throughout the text, mainly in relevant footnotes.

Knight et al (2002) explain that, in order to explore the “consciousness of other people”, the researcher needs an exploratory frame of reference and to ‘identify’ with the people in the study. Raising consciousness would enable the people to begin thinking about how to close the gap between their current and desired realities. Many of the benefits quoted by Knight *et al* overlap with both the ‘civic’ functions of civil society and the quest to answer the main question of this research. Perhaps the most relevant aspect of the process of *participatory research* was the fact that, on the part of the participants, it induced active involvement. For the purposes of this research, active involvement—becoming *instrumental*—has taken the form of identification with the ‘objective’ researcher and adopting both an insider and an outsider view at the same time, thereby becoming both the subject and the object of the study, eliminating most of the research bias, hence maximizing the value of interviews. (2002: 33-36)

Some of the essential characteristics of *participatory research* were particularly salient. Knight *et al* describes the main logic of it as *cross-cultural*; using methods of synthesis, building up pictures of society, based, first, on the views of people who are normally *invisible* to researchers, debating the concerns they raise with a range of different people in society—in our case, the diverse sample from the population of those involved in decision-making and legislative processes—and finishing with those who have most influence. This is exactly what has been done in this research with, humbly, successful results as reflected by the large scale cooperation and willingness of most of the interviewees, save for a certain monolithic political group.<sup>66</sup>

This research attempted to combine the ‘process tracing’ method with the ‘participatory approach’, in order to find out whether ‘civil society’, in performing its ‘civic’ role, had an influence on the policy outcomes related to democratisation. The claim that the ‘researcher’ acted as a ‘change agent’ would be an exaggeration and certainly too ambitious for the scope of such

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<sup>66</sup> As explained elsewhere, this group is associated with the governing AKP. However, their ‘withdrawal’ or ‘avoidance’ is also considered a ‘response’ for research purposes.

a limited study; but for practical purposes, he adopted a ‘civic’ role and acted, throughout the research process, as if he was a representative of a civil society institution with *democracy-promoting* functions, rather than a neutral, value-free researcher. This was done following a cyclical procedure; involving the initial collection of data followed by a period of analysis and reflection on that data and then continue the collection of data this time for either corroboration and/or *filling in the blanks*.

The nature and the depth of ‘participation’ by the researcher developed along the research process. The first interviews with people who were normally ‘invisible’—staffers, junior bureaucrats/advisors—were followed by senior level civil servants and finally those who are assumed to have the largest influence—MPs, senior politicians, former ministers—debating the concerns raised by the previous—lower—layer of *sample*, gradually building up ‘real’ pictures of ‘society’. These were complemented by interactions and communication in Parliamentary Committee meeting rooms, in offices or in the cafeteria sipping a glass of tea or coffee, during friendly chats in restaurants, at various times of the day, sometimes after close of business in party buildings, Parliament or elsewhere. This approach created trust and while giving the researcher the chance of being a member of the *sample* ‘society’, it made an open, honest and ‘informed’ discussion—albeit somewhat controlled—debate possible. It also gave the ‘population’ the impetus to look for the changes that ‘ought to take place’. This process turned the *population* into an integral part of the ‘research team’, ensured utmost cooperation and the most relevant contribution, secured assistance and *educated* them as well as the researcher himself. This was different from the role of the ‘observer’ or even the role of ‘participant observer’. It consciously raised ‘consciousness’ about the gap between current realities and desired end-states and instigated initiative taking. This situation made the researcher and the population ‘one’ in searching for the courses of action that would fit best to the purpose of enhancing and promoting democratisation.

In terms of representativeness of the 'sample'; personal/psychological characteristics of the individuals in the sample, ecological features of the research, external validity of the results are believed to hold.

### Chapter 3

## 'Turkey', Civil Society and Democratic Reform Process

*"A democracy can be distinguished, if its citizens are distinguishable; if each has an area of choice in which he really chooses"<sup>67</sup>.*

Turkey is one of the major third-wave<sup>68</sup> *electoral* regimes displaying most (if not all) of their typical characteristics: an unconsolidated democracy frequently interrupted by military interventions, with strong personalistic rule and weak constraints on the executive authority, very much reminiscent of Latin American political regimes. This has always led to continued tension, volatility in politics and resulted in a highly disintegrated, *torn* society created by authoritarian, selective modernisation; not an ideal environment for civil society to operate.

In this chapter, first I describe the political environment in Turkey to include political culture, political parties, legislative process, Parliament, role and influence of the European Union on 'reforms' and how civil society operates in Turkey. I spare particular attention to the subject of Rules of Procedure for the Turkish Grand national Assembly, and—connected to the former—to what I call 'parliamentary' civil society, that is associations of parliamentary staff which have been unusually active in reforming the legislative system to allow, above all, more effective participation by the

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<sup>67</sup> G. K. Chesterton, *All is Grist*.

<sup>68</sup> Huntington (1991) describes waves of democratisation as groups of "transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period of time" (15-26). He defines the first, long wave of democratisation, 1828-1926; first reverse wave, 1922-1942; second short wave of democratisation, 1943-62; second reverse wave, 1958-75; third wave of democratisation starting in 1974—still ongoing. The historic changes which took place in the early 1990s in Central and Eastern Europe can, perhaps, be considered a fourth wave. If the recent social and political upheavals in North Africa and the Middle East can be considered a 'democratic' wave is yet to be seen.

civil society. Then, after summarising the reform process in 2000s, I review the ‘civic’ work of four selected civil society think-tanks in detail; particularly their democratisation programmes, works, publications, networking, relations with the media and what they put forth—in terms of policies related to democratisation—to policymakers in respective ‘reform’ areas. This chapter also dwells upon the conflictual relations, *uphill battle*, between civil society and the executive, namely the government and, until after 2007, the military. I end with a compilation of civil society’s common demands and proposals in reform areas.

### **3.1. ‘Learning’ democracy and democratic culture**

The basic notion of democracy presupposes a pluralistic society. Diamond, Linz and Lipset (1990) define democracy as a system of government that meets “three essential conditions: competition, political participation and respect for civil and political liberties” (6-7). One may also add, as a complementing or facilitating condition ‘inclusiveness’ to these three areas because it is the cement that holds them together and give real meaning to them. According to Diamond (1999) democracy—in other words, the meaning of essential conditions for democracy—is something to be learned:

[...] political experience with democracy and alternative regimes, and how well a formally democratic regime functions to deliver the political goods of democracy, have sizable independent effects on political attitudes and values, often overpowering those of the country’s socioeconomic status and the regime’s economic performance. [...] There is no better way of developing the values, skills and commitments of democratic citizenship than through direct experience with democracy, no matter how imperfect it may be. (162)

However, there is a challenge of conditionality involved here; in Eckstein’s words “early learning conditions later learning” (1988: 782). In terms of developing a democratic political culture, the lack of “experience

with democracy, no matter how imperfect it may be”, due to frequent *interruptions*, represents the major challenge both the individual and the Turkish society, as a whole, are confronted with. This has resulted in the persistence of certain cultural orientations which are not too favourable for democratisation of the political culture. Because “[...] the learning of political values and beliefs is cumulative over a life time. [...] Early learning limits greatly the extent and ease of later learning” (Eckstein 1988, qtd. in Diamond 1999: 165).

Since the political system has been frequently disrupted by army interventions, either directly or indirectly, taking various forms ranging from upright takeover to subtle guardianship, the executive authority has not always been of ‘civilian’ origin. Even between interventions, army’s ‘long shadow’ has overcast the political stage, most of the time, in a threatening manner. Although each time the rules of the political game have been radically altered<sup>69</sup>, this change has not generally represented a progress towards ‘democracy’ and certainly not an evolving democratic culture. To the contrary, as discussed below, there are some clear signs that the political culture in Turkey, at both mass and elite levels, is transforming in a way not too amenable to a change towards democratic consolidation, nor the Turkish society is too willing for such an outcome. In other words, in economist jargon, there is very little ‘demand’ for democracy, hence its ‘supply’ is very constrained.

The political culture is not monolithic and contains features of both traditional and modern, combining elements from both. But, again, by the same token, according to Gresham’s Law on money, ‘bad’ traits of political

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<sup>69</sup> Turkey has had three ‘new’ Constitutions between 1960 and 2010. First was introduced in 1961, following the 1960 military coup, and the second one in 1982, again after the 1980 takeover. Between 1983—when a civilian government took over from the military, and 2010—when a comprehensive constitutional amendment package was passed by a referendum, 16 amendments had already changed 85 articles and the opening statement—either completely or partly—of the 1982 Constitution, making it almost a new one. The process of drafting a new constitution in the Parliament was still ongoing when this paper was finalised mid -2013.

culture—traditional attributes, drive out ‘good’ traits—modern attributes (although everything ‘old’ is not necessarily bad just because they are old, neither does ‘new’ always refer to ‘good’).<sup>70</sup> Therefore the dominant culture is unstable, conflicting and majoritarian. It is closed to communication and persuasion, compromise, hardly permitting orderly political change based on cross-party consensus. Civil society is but one source—and tool—in inducing ‘democratic’ change, and its effectiveness mainly depends on other sources’ effectiveness and, more importantly, and other actors’ willingness to work together toward similar—at least reconcilable—ends. Considering what Vanhanen (1997) calls ‘evolutionary or Darwinian theory of democratisation’ that is “democracy is expected to take place under conditions in which power resources have become so widely distributed that no group is any longer able to suppress its competitors or to maintain its hegemony” (5), there is a strong cultural resistance to such a distribution in Turkey. The general tendency is in the direction of *concentration*, rather than distribution of political power and resources of power.

Among the social groups that compete for the concentration of power in Turkey, military officers are—or, have been, until recently—more influential than other groups such as political elite and intellectuals. Bottomore (1970) explains this phenomenon in some developing or newly independent countries by referring to weak political institutions, yet to be developed: “where political institutions are still in the making and political authority is still [...] unsettled and insecure, those who control the ultimate power of direct physical coercion have the opportunity to play an important part in deciding the future of the nation” (105). As discussed below, although major changes have taken place in this respect, since early 2000s in Turkey, the influence—if not the role—of ‘military officers’ is still far from being absent. This must not be surprising, because, like any other social phenomenon, this change is also to take a long time to become really

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<sup>70</sup> Developed in XVIth Century by Thomas Gresham, an English financier and merchant: basically argues that “bad money drives out good money” from circulation—also discussed earlier by Copernicus, Oresme, Al Maqrizi and even Aristophanes of ancient Greece.

rooted. This general perception was confirmed by the very recent report of the Parliamentary Committee<sup>71</sup> established for investigating the root causes and consequences of military interventions in Turkey.

The development process of Turkish political culture during the ninety years of modern Turkish Republic has been basically conflictual, incoherent, inconsistent and is crippled with a lack of democratic ‘vision’ on the part of the political elite—which also includes the uniformed military, i.e. *top brass*. Because the emergence of political cultural orientations more akin to those of a democratic culture and a cultural transformation of such character has been considered a threat, traditionally, a strictly *zero-sum* approach has been adopted by almost all major political actors. The outcome of this powerful orientation can clearly be seen in consistent results of various surveys within the last 30 or so years—a deeply divided society.

The division is multifaceted. A division between seculars and the religious, as the main axis of confrontation, has always existed and revealed itself in various forms in politics and in society as a whole, intensifying after 1960s. A parallel axis is based on a Turkish-Kurdish division. Yet another axis of major importance has been that of between the followers of Sunni Islam and Alevi Islam. The fact that each ‘orientation’ represented not an exclusive identity but an amalgamation of many interlocking—sometimes contradicting—identities, with a certain degree of overlap, made the reading of Turkish society extremely difficult. When the fall of the Berlin Wall

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<sup>71</sup> The Committee for Investigating Coups and Ultimatums was established in April 2012 and presented its final report to the Speaker of the Parliament in November 2012. The report concluded that “since TAF gave cadets an ideological—not technical, training and education, [a typical] Turkish officer considered himself as the guardian of the [democratic ?] regime, rather than a civil servant like an engineer or police officer simply providing public service, hence [mis]conceived himself as privileged”. The report also suggested “elimination of military officers serving within MİT” and “establishment of a civilian intelligence service for monitoring anti-democratic movements within the army”. It argued that “the model of General Staff positioned above the ministries, as designed by 1961 and 1982 Constitutions, was well-suited for the Turkish political elite with underdeveloped political culture”. 24 November 2012, *Hurriyet*. 29 November 2012. <http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=22001170>.

ended the global-scale ideological division of East versus West or ‘free world’ versus ‘communist world’ as perceived—or suggested, hitherto suppressed identities, hence conflicts based on them, gradually came to the forefront, making the cultural dimension of the political environment in Turkey more complex than ever.

Accordingly, Turkish Values Survey—which was part of the World Values Survey of 1990, conducted by Esmer—found that “with the RP’s successful showing in the elections of 1994, the problem of secularism vs. Islamic fundamentalism has started to receive more attention than ever. Many (*sic*) worried that this deep and widespread dissention carries the seeds of a dangerous schism in Turkish society” (Esmer 1995: 86). Toprak (1995), on the other hand, pointed to Islamic theology that “consider[ed] it a heresy to separate religious and political affairs” and that for the common people “Islam [was] a religion that demand[ed] certain duties from the believers such as daily prayers and periodic fasting” in order to gain “the blessing of God”. Nevertheless, she argued that;

the majority of Turks [did] not equate religion with any political project [...] the values held by the majority of Turks d[id] not set them apart from liberal and progressive causes simply because they happen[ed] to be believers in Islam. They also show[ed] that values which one might associate with urban educated elites [we]re commonly shared by much wider strata in Turkish society. (92-94)

However, this situation was rapidly changing. What was overlooked—and led to a critical misperception—by many scholars, perhaps was the preferred method of change by the Turkish society and the role individual Turk perceived for himself or herself in such a change. Again, in early 1990s, when RP won almost 20 percent (19.14%)<sup>72</sup> of the national votes in 1994 local and municipal elections and captured the city-halls of a number of large cities, including Istanbul and Ankara, Toprak (1995) argued that “an overwhelming majority of Turks [shied] away from radical forms of

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<sup>72</sup> This was followed by 21.38% in general elections in 1995.

political protest, perhaps as a reaction to the violent 1970s decade which culminated in a military coup” (92). Also the findings of a TÜSIAD Survey in 1991, found that “those who support revolutionary change [was] only 13.7 percent”, with the majority preferring change through gradual reform—60.7 percent—while 25.6 percent “in favour of preserving the status quo” (Ergüder *et al* 1991). But clearly the ‘majority’ opted for a change, albeit for different reasons.

Ten years later, TESEV survey in 2002<sup>73</sup> showed widespread demand for political, i.e. democratic, reforms. Ninety percent of respondents were unhappy about the workings of Turkish democracy. The poll showed that 60 percent of those questioned were "not at all happy" with the functioning of Turkey's democracy, while 30 percent said they were "not happy." Only 9 percent said they were “satisfied” and only 1 percent said they were "very happy." World Values Survey (2001)<sup>74</sup> gave similar results; only 3.1% was very satisfied while 76.3% was not satisfied—50.6%, not at all. However, when it came to 2007, WVS indicated that only 37.7% (scales from 1 to 5-inclusive) was unhappy<sup>75</sup> with the way political system worked in Turkey. The majority, 62.3% (scales from 6 to 10) felt that Turkey was ‘democratic’. Esmer, this time in 2011, discovered that the so-called ‘democracy deficit’ was further reduced<sup>76</sup>. But he argues that, intriguingly this was due to a decrease in ‘demand’ rather than an increase in ‘supply’ (of democracy), although there was a slight increase in the perceived supply.

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<sup>73</sup> TESEV/Boğaziçi University Survey on “Turkish Public Opinion Regarding the EU”, January 2002. Conducted by Ali Carkoglu, Refik Erzan, Kemal Kirisci and Hakan Yilmaz. 11 December 2012. <http://www.radikal.com.tr/haber.php?haberno=41809>

<sup>74</sup> WVS 2001 Turkey. ‘Satisfaction with the way democracy works’. 22 December 2012. <http://www.wvsevsdb.com/wvs/WVSanalyzeQuestion.jsp>.

<sup>75</sup> WVS 2007 Turkey. The question slightly changed: ‘How democratically is this country governed today, using a scale from 1 to 10?’. 22 December 2012. <http://www.wvsevsdb.com/wvs/WVSanalyzeQuestion.jsp>.

<sup>76</sup> 2011 Turkey Values Survey. Summary of findings, 21 July 2011. Yilmaz Esmer. Bahcesehir University. 28 December 2012. [egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc](http://egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc).

Pew results, in 2012, largely confirm these findings and put them in a ‘regional’ context. According to Pew, large majorities in ‘Muslim’ countries prefer democracy; in Lebanon 84%, Turkey 71%, Egypt 67%, Tunisia 63% and Jordan 61%. Majorities also believe they should rely on a democratic form of government to solve their country’s problems, rather than relying on a leader with a strong hand; in Turkey, 68% to 26%, in Egypt, 61% to 33%. When respondents are asked to choose which is more important, a *good democracy* or a *strong economy*, more than half in Turkey (58% over 37%) choose a good democracy, up (+10 points) from 2011. Egypt was equally divided: 48% (democracy) and 49% (economy). Political stability in a ‘democracy’ is also considered ‘very important’ by 61% in Turkey.<sup>77</sup> Increased demand for a good democracy is a promising and positive sign for democratic consolidation, however, political stability being considered ‘very important’ by the majority is contradictory. These results refer to what Huntington calls a “mixed political culture”, neither democratic nor completely authoritarian, a mix of sub-cultures.

Huntington (1991) argues that it was “elected leaders themselves” who were “responsible for ending democracy [...] in Turkey [...]” because “they had little commitment to democratic values or practices. Even when leaders did abide by the rules of democracy—somewhat—they often seemed to do so grudgingly” (297). But why? According to Diamond (1994) this again is due to a mix of political subcultures:

[...] the long-standing legacy of the Ottoman Empire [...] a centralized, despotic, paternalistic state [...] remains visible in the political values of many Turkish elites, particularly, the military and bureaucracy. But new geological strata of cultural influence have been deposited from later historical periods [...] the egalitarian, populist, unifying currents of Kemalist ideology [...] as well as a strong consensus on consolidating and preserving democracy. In each new historical

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<sup>77</sup> Pew Research Center. 10 July 2012. “Most Muslims want democracy, personal freedoms, and Islam in political life”. 30 December 2012.  
<http://www.pewglobal.org/2012/07/10/chapter-2-views-of-democracy/>.

period, new value orientations have partially displaced but not completely erased pre-existing ones. The result is a mixed political culture, or more properly, a mix of political subcultures with different combinations of emphases from different periods. (230)

Frey (1975), in the early 1970s, argued that it was “still possible to analyse much of the thrust of Turkish politics by focusing on the political elite”. Although he anticipated this perspective becoming “increasingly inadequate in the future” (42) this has not happened yet. Therefore it is still pertinent and suitable to examine ‘elite’ behaviour—and its cultural roots—in order to study Turkish politics. On that point, Özbudun (1994) observes that most of the studies on the Turkish elite “have concentrated on the social background characteristics of particular elite groups, not, as a rule, on their attitudes and values” (189) which is astonishing. Because, as explicated above, it is extremely difficult, even impossible, to separate social background from attitude—and behaviour.

Özbudun (1994) explains the lack of “the concept of power-sharing”, in the Turkish political culture, with “no feudalism comparable to that of Western Europe, no hereditary aristocracy, no autonomous church organisation, no strong merchant class or artisan guilds, no self-governing cities and with a ruling class staffed with slaves”. He points that “not only the ruling class but also the subject classes seemed to share this belief in the paternalistic nature of the state, as evidenced by the popular expression of father-state”.

Particularly after the experiment of multiparty democracy, during the 1950-60 period, which miserably failed and ended up in the 1960 military coup, the 1961 Constitution attempted to create an effective system of ‘checks and balances’ as a counter balance to ‘parochial’ motivation of the political elite. However, neither the dominant *paternalistic* political culture has allowed the development of an effective political system nor the gradual development of a genuinely pluralistic and democratic society has really been aimed by the elite in general. The disappearance of unity between the

state elite—civil/military bureaucrats and the judiciary being prominent—and intellectuals was coupled with the ideologically motivated purges in the wake of military interventions in the 1970s and 1980s. This further complicated Turkish politics and led to an all-out ‘cultural’ war, not only over the identity of the Turkish state but also over the identity of the Turkish people. This war is still being waged in the form of successive and endless pitched ‘battles’ for which no end is in sight. This already complicated and troubled state of affairs in Turkish politics, starting in the early 1980s, has been further mired by two long-dormant social-ideological forces with deep cultural roots. These cultural forces, religion and ethnicity—with connected identities and sub-identities—revealed themselves in the form of religiosity and ethnic Kurdish ‘group’ demands and fast became strong political currents dominating the Turkish political scene. This development resulted in what Özbudun (1994) describes as the further weakening and fragmentation of “the unity of outlook within the bureaucratic elite: the reformist, secularist and tutelary *weltanschauung* of the old bureaucratic centre” (206). But also there emerged powerful demands for local autonomy and even independence for the Kurds of Turkey. These powerful trends, which started about forty years ago, substantially affected the course of democratisation and determined the difficulties, hurdles and dilemmas the Turkish political system is faced—and troubled—with today.

Substantiating this proposition, Kiris (2010) argues that in 1995 and 2002 elections, the secular-religious axis was preeminent. But in 1999, nationalism took the upper hand, to be replaced, in 2002 by the secular-religious axis again. In 2007 elections, secular-religious divide became more prominent while nationalism still maintained some relevance. Polarisation along secular-religious axis overshadowed polarisation over nationalist axis. Left-right axis on the other hand was of even lesser importance. Polarisation as a whole steadily increased at each election period. “Polarisation, in Turkey, was mainly due to ideological factors rather than economic ones and the income disparity had very limited effect on this increase” he concludes. (240-43)

The legacy of ANAP ‘rule’ in 1983-1993 under Özal<sup>78</sup> is mixed, but its influence on the Turkish political system as a whole has been profound. Özal’s *personalistic* style, as Özbudun moderately describes, was accompanied by an ever-increasing struggle for more and more political, ideological and economic power and influence through staffing the posts in various state institutions with persons whom they trusted. This trust did not emanate from the merits of such selections based on talent, competence or proper expertise in the area, but because of primordial linkages—family ties, tribal affiliation, being fellow townsmen etc. Belonging to the same religious sect almost always played the role of mortar keeping groups of sub-identities together and sectarian links increasingly gained primary—though not exclusive—importance.

Today, in mid-2010s, the major political problems faced by Turkey and the parameters within which they can possibly be tackled with and the cultural, ideological and ideational division within the Turkish elite can well be traced back to Özal era. The eternal cultural conflict between the secular and the religious—centred around the role and place of religion in politics and in society as a whole—has been unambiguously tipped under his leadership and under the *military’s watch*, favouring the latter, and has determined the basic course of Turkish politics. The so-called ‘Islamist’ Welfare Party (RP) which came to dominate the Turkish political scene from 1994 on—only one year after Özal’s death—and its offshoot, the Justice and Development Party (AKP), which has further predominated—and today—outbalanced any other political party or political movement, both represent the same line of politics as Özal’s ANAP.<sup>79</sup>

Elite political culture, today, constituting the major challenge blocking the way towards some form of normalisation in Turkish politics, let alone

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<sup>78</sup> ANAP was not in government from 1991 on. But Ozal as President of the Republic maintained a powerful influence until his death in April 1993.

<sup>79</sup> Turgut Özal, RP leader Necmettin Erbakan and AKP leader Erdogan are all members of the Iskenderpasa *cemaati*—formed around the mosque with the same name in Istanbul—which is a branch of the politically powerful Nakshibendi sect.

democratisation or acceptance of civil society as a legitimate partner—beyond some controlled and limited presence—is probably not an overstatement.

At the mass level the situation is no different. Starting in the 1950s, Turkey has witnessed and suffered from increasingly high rates of geographical, hence very painful social mobility as a result of internal migration from rural to urban areas. Since the 1960s, there has also been an external migration of labour to European countries. Besides, in the course of the 1970s and 1980s, a group of political dissidents joined *gastarbiters*. This was followed by internal displacement of groups—mostly of Kurdish ethnic origin—due to increased violence particularly in Eastern and Southeastern Turkey.<sup>80</sup> This mobility had economic and political, but also cultural aspects and its results could not be controlled, managed, nor contained. The resulting political culture is paradoxical, contradictory, puzzling and enigmatic. These basic characteristics of the Turkish political culture can best be seen in the findings of the World Values Survey.

For every one Turk in three, 37.3%, ‘politics’ is ‘very/rather’ important, but only a small fraction of them, 2.3%, is an active member of a political party organisation. Only 11.9% has ever signed a petition; 52.7% would never do this. Only 5.9% has ever attended a lawful/peaceful demonstration; 63.1% would never do this.<sup>81</sup>

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<sup>80</sup> Many among the latter immigrated to Europe as ‘economically’ motivated political asylum seekers. This latest trend has been given a boost recently as the recent developments in the Middle East and North Africa gave many Turkish-speaking ‘Arabs’ or ‘Kurds’ the opportunity to seek refugee status.

<sup>81</sup> WVS Egypt (2008), Great Britain (2006), Poland (2005), Spain (2007), Turkey (2007). Question is “[...] indicate how important it is in your life. Would you say it is: **Politics**”. ‘Very/rather important’: United Kingdom, 40.3%; Spain, 29.1%; Poland, 29.2%; Egypt, 37.3%; Turkey, 37.3%.

‘Not very/not at all important’: UK, 59.6%; Spain, 71.0%; Poland, 70.9%; Egypt, 62.6%; Turkey, 62.7%.

Q. “[...]whether you are a member, an active member or not a member of [...]? **Political party**”. Active membership: UK, 3.3%; Poland, 1.1%; Egypt, 2.0%; Turkey, 2.3%.

For an overwhelming majority of Turks, 93.1%, having a democratic political system is very important and it is a ‘very good/fairly good’ thing. However, still a majority, 58.9%, believes that ‘having a strong leader’ is a ‘very/fairly good’ thing.<sup>82</sup> Furthermore, half of them, 50.1%, believes that ‘the army taking over when government is incompetent’ is an essential characteristic of democracy. An even larger majority believes that ‘the government’—rather than the people—should take more responsibility to ensure that everyone is provided for—60.1%.<sup>83</sup> The role of ‘Islam’ further complicated this picture.

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Q. “[...] some different forms of political action that people can take [...] whether you have actually done any of these things, whether you might do it or would never, under any circumstances, do it. **Signing a petition**”.

“Have done”: UK, 68.2%; Poland, 23.5%; Egypt, 6.9%; Turkey, 11.9%.

In 2011, this came down to 10%.

“Would never do”: UK, 8.5%; Poland, 46.7%; Egypt, 78.5%; Turkey, 52.7%.

In 2011, this became 61%.

Q. “[...] forms of political action that people can take [...]. **Attending lawful/peaceful demonstrations**”.

“Have done”: UK, 16.6%; Poland, 10.2%; Egypt, 1.5%; Turkey, 5.9%.

“Would never do”: UK, 38.6%; Poland, 59.4%; Egypt, 91.3%; Turkey, 63.1%.

In 2011, this became 66%. WVS, Turkey 2007. 31 December 2012.

<http://www.wvsevsdb.com/wvs/WVSanalyzeIndex.jsp>.

For 2011 findings see; 2011 Turkey Values Survey. Summary of findings, 21 July 2011.

Yilmaz Esmer. Bahcesehir University. 28 December 2012.

[egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc](http://egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc).

<sup>82</sup> This question is slightly rephrased than the Pew question on p. 88.

<sup>83</sup> WVS Egypt (2008), Great Britain (2006), Poland (2005), Spain (2007), Turkey (2007).

Q. “[...] political systems [...] as a way of governing this country. [...]? Having a **democratic system**”.

“Very/fairly good”: UK, 90.6%; Poland, 84.2%; Egypt, 98.3%;

Turkey, 93.1%. “Fairly/very bad”: UK, 9.4%; Poland, 15.7%; Egypt, 1.7%; Turkey, 6.9%.

Q. “[...] political systems [...] as a way of governing this country. [...]? Having a **strong leader** who does not have to bother with parliament and elections”.

“Very/fairly good”: UK, 28.2%; Poland, 30.5%; Egypt, 16.0%; Turkey, 58.9%.

In 2011 this became 63%.

“Fairly/very bad”: UK, 71.8%; Poland, 69.5%; Egypt, 84.0%; Turkey, 41.2%.

In 2000 this was 73%.

The overwhelming majority of the Turkish people is followers of Islam and Islam as a religion—as a social phenomenon—is part of the ‘Turkish’ identity, in general. This is probably true for any other society and religion as well. But, how strong this dimension of identity compared with other—and overlapping identities—and its political relevance are crucial questions. On this, scholars are divided. Toprak (1995), for example, differentiated between ‘militant’ Islam and Islamic movement in general and, in mid-1990s, did not consider that militant Islam, “a fringe movement within the larger context of a plethora of Islamic groups and organisations”, had any prospect to become a political power. Because “the strength of the opposition to it, even without counting the military among the forces committed to defending secularism“ (93) would not allow this happen.

However, later developments, as examined elsewhere in this paper, led to different outcomes. This was mainly derived from the central place occupied by the religion of Islam in Turkish society as a whole and the acknowledged and recognised role for religion in politics. Despite the country’s strictly secular past and its—less than perfect—democratic

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Q. “[...] essential characteristics of democracy. [...] how essential you think it is as a characteristic of democracy. [...]The **army takes over** when government is incompetent”. “Not an essential characteristic of democracy-scales from 1 to 5-inclusive”: UK, 67.2%; Poland, 80.1%; Egypt, 30.8%; Turkey, 49.8%.

“An essential characteristic of democracy-scales from 6 to 10”: UK, 32.9%; Poland, 19.8 %; Egypt, 59.3 %; Turkey, 50.1%.

Q.; “How would you place your views on this scale? [...] People should take more responsibility to provide for themselves vs the government should take more responsibility to ensure that everyone is provided for”.

“The government should take more responsibility-scales from 1 to 5-inclusive”: UK, 42.1%; Poland, 60.6%; Egypt, 85.4%; Turkey, 60.1%.

“People should take more responsibility-scales from 6 to 10”: UK, 57.9%; Poland, 39.5%; Egypt, 14.6%; Turkey, 39.9%.

WVS, Turkey 2007. 31 December 2012.

<http://www.wvsevsdb.com/wvs/WVSAanalyzeIndex.jsp>.

For 2011 findings see: 2011 Turkey Values Survey. Summary of findings, 21 July 2011.

Yilmaz Esmer. Bahcesehir University. 28 December 2012.

[egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc](http://egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc).

Constitution, for the overwhelming majority of Turks, 91.3%, ‘religion’ is very important.<sup>84</sup> This is not as absolute as the case in Egypt which is 99.6%, nevertheless less than even Poland—one of the most strictly Catholic nations, 86.8%. However, while they have great confidence in

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<sup>84</sup> World Values Survey. Egypt (2008), United Kingdom (2006), Poland (2005), Spain (2007), Turkey (2007).

Q. “[...] indicate how important it is in your life. Would you say it is: **Religion**”.

‘Very/rather important’: UK, 40.7%; Poland, 86.8%; Egypt, 99.6%; Turkey, 91.3%.

‘Not very/at all important’: UK, 59.3%; Poland, 13.2%; Egypt, 0.4%; Turkey, 8.7%.

Q. “Independently of whether you go to church or not, would you say you are? [A religious person, not a religious person, a convinced atheist]”.

“Religious”: UK, 48.7%; Spain, 45.6%; Poland, 94.6%; Egypt, 92.5%; Turkey, 82.6%.

“Not religious”: UK, 40.9%; Spain, 47.0%; Poland, 4.0 %; Egypt, 7.5%; Turkey, 16.9%.

(‘A convinced atheist’ answers not included).

Q. “[...] organisations. [...] could you tell me how much confidence you have in them: is it a great deal of confidence, quite a lot of confidence, not very much confidence or none at all? **The churches**”.

“A great deal, quite a lot”: UK, 45.7%; Poland, 72.7%; Turkey, 71.7%.

“Not very much plus none at all”: UK, 54.2%; Poland, 27.3%; Turkey, 28.3%.

Q. “[...] could you tell me whether you are a member, an active member or not a member of that type of organization? **Church or religious organization**”.

Active membership: UK, 19.2%; Poland, 12.9%; Egypt, 0.9%; Turkey, 1.3%.

Q. “How much do you agree or disagree [...]: Politicians who do not **believe in God** are unfit for public office”.

“Agree strongly, agree”: Spain, 11.3%; Poland, 17.8%; Turkey, 54.8%.

“Disagree, strongly disagree”: Spain, 74.4%; Poland, 63.2%; Turkey, 24.9%.

(‘Neither agree or disagree’ answers not included).

Q. “How much do you agree or disagree [...]: It would be better for [this country] if more **people with strong religious beliefs** held public office”.

“Agree strongly, agree”: Spain, 12.8%; Poland, 29.8%; Turkey, 47.8%.

“Disagree, strongly disagree”: Spain, 67.2%; Poland, 41.4 %; Turkey, 18.7%.

(‘Neither agree or disagree’ answers not included).

WVS, Turkey 2007. 31 December 2012.

<http://www.wvsevsdb.com/wvs/WVSanalyzeIndex.jsp>.

For 2011 findings see: 2011 Turkey Values Survey. Summary of findings, 21 July 2011.

Yilmaz Esmer. Bahcesehir University. 28 December 2012.

[egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc](http://egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc).

‘mosque’, 71.7%—as much as Poland, 72.7%—only 1.3% is member of a religious organisation. Yet, half of them—54.8%—believe that ‘politicians who do not believe in God are unfit for public office’, and it is better if more ‘people with strong religious beliefs’ hold public office.

As for the role that civil society is allowed to play in an ‘Islamic’ society such as the Turkish society, the difficulty lies—primarily—with the question of which groups can be considered as part of the civil society. Turkish ‘town’ is very much like what Ayubi (1999) describes as “an *urb*, that is a physical agglomeration rather than a *civitas*, a space for collective debate and action” (398). Most of the groups claiming the status of ‘civil society’ have traditionally been ‘primordial’ in nature. Among them, religion-based associations, sects, mosque-affiliated communities<sup>85</sup> (*cemaat*), and charity institutions are prominent. A ‘civil’ society based on what is basically a *primordial culture*, which in essence refuses the existence of *individual* independent from the society is hardly a *civil society*.

A Lebanese lawyer and historian, Youssef Mouawad (2003) gives the example in a novel by Fouad Laroui (1999), story of a Moroccan engineer who returns home after years in Europe and finds himself invaded by family and neighbours, nowhere to ‘escape’ for privacy as an *individual*. “How could the concept of individualism emerge when God and family are omnipresent?” he posits. (116-18) This debate is related to what Maffesoli (1988) calls *secondary culture* “to which individuals would aggregate by voluntary choice and usually after repudiating their primordial culture” (243). Mouawad (2003) offers a striking analogy:

One could say that the oriental mansion has a ceiling that is *religion* and lateral walls that are *cousins*. This mansion may be considered either like a house of splendour, a refuge, a haven, or on the contrary, as a prison that prevents the individual from moving away and assuming his total freedom. [...] some people have chosen to remain in the old house and to root themselves there. Others have decided to flee. However most

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<sup>85</sup> The term ‘*cemaat*’ of a mosque is similar to the parish of a Christian church, but represents a deeper and more-encompassing connection.

people hesitate; do not take a decision and try to reconcile freedom with their ancestral chains (*Italics added*). (120)

Turkish society has changed, probably beyond any other Islamic society, but the majority has repudiated neither God nor *cousins*, they hesitate. This is where the major social dilemma lies in Turkey.

When people are asked how proud they are being a Turk, 96.4% respond that they are ‘very/quite proud’, and 93.6% see themselves as ‘citizen’ of the Turkish nation. However, 93.7% also see themselves as member of their local community.<sup>86</sup> It looks as if the majority of individuals in Turkey have multiple and largely overlapping—not necessarily conflicting or irreconcilable—identities. However, if these results are analysed against the background of religiosity and primary identities, the conclusions can become quite different. Those who define themselves as ‘religious’ are 85%, up (+10 points) from 1990s.<sup>87</sup> Those who are proud of being a ‘Turk’ make up 75%, but when they are further asked about priority of identities, two-thirds give priority to their Muslim identity.

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<sup>86</sup> World Values Survey. Egypt (2008), United Kingdom (2006), Poland (2005), Spain (2007), Turkey (2007).

Q. “How proud are you to be [Nationality]?”

“Very proud, quite proud”: UK, 91.7%; Poland, 96.0%; Egypt, 98.4%; Turkey, 96.4%.

“Not very proud, not at all proud”: UK, 8.3%; Poland, 4.1%; Egypt, 1.6 %; Turkey, 3.5%.

Q. “People have different views about themselves and how they relate to the world. [...] : I see myself as citizen of the [country] nation”.

“Strongly agree, agree”: Spain, 96.2%; Poland, 98.4%; Egypt, 97.9%; Turkey, 93.6%.

“Disagree, strongly disagree”: Spain, 3.9%; Poland, 1.6%; Egypt, 2.1 %; Turkey, 6.4%.

Q. “People have different views about themselves and how they relate to the world. [...] : I see myself as member of my local community”.

“Strongly agree, agree”: Spain, 95.9%; Poland, 92.8%; Egypt, 93.2%; Turkey, 93.7%.

“Disagree, strongly disagree”: Spain, 4.0%; Poland, 7.3%; Egypt, 6.8 %; Turkey, 6.3%.

WVS, Turkey 2007. 31 December 2012.

<http://www.wvsevsdb.com/wvs/WVSAanalyzeIndex.jsp>.

<sup>87</sup> 28 December 2012. <http://smgconnected.com/2011-turkiye-degerler-arastirmasi>.

In 2003<sup>88</sup>, 40% and 41% felt themselves belonging to ‘East’ and ‘West’ respectively—almost equally; 36.0% believed EU was founded on Christian values and in a ‘Christian Club’ there was no place for Turkey—39.8%—and EU treated Turkey with double standards—61.8%. Furthermore, 54-55.0% believed that closer relations with EU would bring corruption of moral and religious values (raised to 65% in 2012) and that they would be disturbed if the EU anthem was played beside the Turkish national anthem—66.2%. Yet, 75% was prepared to vote ‘for’ Turkey’s membership in the EU. When it came to 2012, in terms of the “three most important values, personally”, *religion* (6% EU to 25% TU), *personal fulfilment* (10% EU to 1% TU) and *respect for other cultures* (8% EU to 2 % TU) stand out

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<sup>88</sup> Euroscepticism in Turkey.

Q. “Vote for the EU?” I would vote AGAINST Turkey’s membership in the EU: 17%. I would vote FOR Turkey’s membership in the EU: 75%.

Q. Which of the [...] regions of the world do you feel you most belong to? EAST (Asia, Middle East), 40%; WEST (Europe, Mediterranean, Balkans), 41%.

Q. [...] EU has been founded on Christian values. Do you agree with this view? YES, I agree, 36.0%; NO, I disagree, 26.7%.

Q. [...] EU is a “Christian Club” with no place for a Muslim country like Turkey. Do you agree with this view? YES, I agree, 39.8%; NO, I disagree, 45.3%.

Q. [...] EU has treated Turkey with double standards [...] . Do you agree with this view? YES, I agree, 61.8%; NO I disagree, 19.9%.

Q. [...] closer relations with Europe will bring along a corruption of values [...]. Do you agree with this view?

Corruption of the moral values of the young people: NO, I disagree, 41.0%. YES, I agree, 55.0%; raised to 64.8% in 2012. Corruption of religious values: NO, I disagree, 42.0%. YES, I agree, 54.0%; raised to % 64.5 in 2012.

Q. Will you be disturbed if you hear EU anthem being played beside the Turkish national anthem [...] ? YES, I will be disturbed, 66.2%; NO, I will not be disturbed, 30.4%.

Euroscepticism in Turkey. Doubts, anxieties and fears of the Turkish Public concerning Europe and the European Union. Open Society Institute and Bogazici University. July 2003-July 2004. 30 December 2012.

[http://hakanyilmaz.info/yahoo\\_site\\_admin/assets/docs/HakanYilmaz-2003December-EuroskepticismInTurkey-Presentation-English.28464900.pdf](http://hakanyilmaz.info/yahoo_site_admin/assets/docs/HakanYilmaz-2003December-EuroskepticismInTurkey-Presentation-English.28464900.pdf).

as major value differences, while generally there is an overlap in other values.<sup>89</sup>

Recent Pew findings<sup>90</sup> confirm this sharp diversion of set of values, perceptions, expectations and identities in predominantly Muslim countries. Majorities in such countries want Islam to have a major influence in politics, they believe Islam currently—already—plays a large role in their nation’s political life and they mostly view this in a positive light. The similarities—in terms of the place and role of religion in politics—between Turkey and Egypt are telling. In Turkey 64% believes that Islam plays a ‘large’ role in politics and of these, 57% believe this is a ‘good thing’. In Egypt these are 66% and 61% respectively. A plurality in Turkey, 44%, say the law should follow the values and principles of Islam but not strictly follow the teachings of the Quran—17% prefer strict observance, which altogether makes up 63%. A broad majority in Egypt, 60%, believe their nation’s laws should strictly follow the teachings of the Quran. Those who prefer ‘milder’ influence of Islam, 32%, included, it adds up to 92%. The sentiment that religion is influential in politics has increased substantially in Egypt over the past year—2011 to 2012. The percentage saying Islam is influential in Egyptian political life jumped from 47% in 2011 to 66% today.

These findings not only pertain to how fast perceptions of reality can change—if they are in conformity with the basic, inherent, indigenous value systems of societies—and embraced, but also some fundamental dilemmas faced by Muslim-majority countries: accommodating religion in politics—particularly in ‘democratic’ politics, reconciling deep divisions among cultural sub-groups about the—central—role and place of Islam in societies in general. In Turkey’s case, there is a third quandary involved: becoming part of a ‘Western’ polity representing, as perceived by majorities, a

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<sup>89</sup> Eurobarometre 74, Public Opinion in the EU. Fall 2010. National Report, Turkey. 29 December 2012. [http://ec.europa.eu/public\\_opinion/archives/eb/eb74/eb74\\_tr\\_tr\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_tr_tr_nat.pdf).

<sup>90</sup> Pew Research Center. 10 July 2012. “Most Muslims want democracy, personal freedoms, and Islam in political life”. 30 December 2012. <http://www.pewglobal.org/2012/07/10/chapter-2-views-of-democracy/>.

completely different—and even conflicting—set of values, some of which are even anathema to ‘Islam’, and national, moral and religious identities linked to or associated with these values.

This brings us to the question of ‘sum-effect’ of Turkey’s EU accession process on democratisation.

Canefe and Bora (2003) argue that “the sceptical and resistant attitude toward anything that is Western and European has deep roots in the Turkish intellectual tradition” (127-48). This ‘disposition’, as evidenced by the results of successive polls, is actually not restricted to the elite, but widespread throughout the society, albeit for different—and partly overlapping—reasons.

A review of Eurobarometer<sup>91</sup> results from 2004 on, supports this argument. Support for the EU membership has declined from 72% in 2004 to 42% in 2010. Within only six months in 2010, it dropped 5 points. Increase in the negative perception was even more pronounced, 9 points. These sharp changes themselves were reflective of an unusually artificial situation in EU-Turkey relations. This can also be seen in the expectations and perceptions related to the EU membership which also widely vary and diverge from those of the EU norms and averages. Outstanding expectations of the Turkish people are reflected by their perception of the EU<sup>92</sup>: economic prosperity, national prestige—in the form of greater say in the world, democracy, free movement in the EU and social protection. While

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<sup>91</sup> Eurobarometer, Question: “Generally speaking, do you think that (OUR COUNTRY)’s membership of the EU would be [...]?” “A good thing”: 42%, ‘-5’ from Spring 2010. “A bad thing”: 32%, ‘plus 9’ from Spring 2010.

Standard EB 74. Autumn 2010. 29 December 2012.

[http://ec.europa.eu/public\\_opinion/archives/eb/eb74/eb74\\_tr\\_tr\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_tr_tr_nat.pdf).

<sup>92</sup> Eurobarometer, Question: “What does EU mean to you personally?”.

Economic prosperity: 35% (TU), 13% (EU), Stronger say in the world: 26% (TU), 23% (EU), Democracy: 21% (TU), 23% (EU), Freedom to travel, work, study in the EU: 19% (TU), 45% (EU), Social protection: 17% (TU), 10% (EU). Standard EB 74. Autumn 2010.

EU, Turkey. 31 December 2012.

[http://ec.europa.eu/public\\_opinion/archives/eb/eb74/eb74\\_fact\\_tr\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_fact_tr_en.pdf).

‘democracy’ and ‘greater say’ overlap with those of the EU, ‘freedom of movement’—rather than *economic prosperity*—scales much higher for the ‘Europeans’.<sup>93</sup>

This state of relations and perceptions is not restricted to EU-Turkey relations only, but extends to ‘Western institutions’—particularly to NATO—and other Western polities—particularly the US and the UN—among others, as well. It is true that there is a widespread loss of confidence in international organisations in general and in the EU in particular in many countries—including the individual EU members. But, for the purposes of this thesis, it is important to understand the real nature, extent and consistency of these anti-Western feelings in Turkey. According to WVS, in Turkey in 2001<sup>94</sup>, “confidence in the EU” was ‘a great deal’ or ‘quite a lot’ for the 40.2%, in NATO for 38.7%, in the UN for 46.3%. In 2007<sup>95</sup>, confidence dropped to 31.0% for the EU and 31.3% for the UN. (No WVS results are available for NATO in 2007). More recent Transatlantic Trends<sup>96</sup> findings manifest similar results and confirm the general trend in opinions.

Comparable to the favourable cases of Romania and France or the unfavourable case of Poland, the ‘Turkish’ attitude vis-a-vis the West, in the short term, is determined by the current events and common interests as

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<sup>93</sup> Findings of another survey in 2003 indicate that economic benefits has maintained its importance (39%). *Freedom of movement* within the EU (13%), Turkey’s *prestige in the world* (12%) and particularly *strengthening democracy* (12%) have gained increased importance in seven-year time.

Euro-scepticism in Turkey. Comparative Findings. 2003-2012. Open Society Institute and Bogazici University. March-April 2012. 30 December 2012.

[http://hakanyilmaz.info/yahoo\\_site\\_admin/assets/docs/OSI-2012-Euroskep-2003-2012-Karsilastirmalar-Sunus-v04.344184250.pdf](http://hakanyilmaz.info/yahoo_site_admin/assets/docs/OSI-2012-Euroskep-2003-2012-Karsilastirmalar-Sunus-v04.344184250.pdf).

<sup>94</sup> WVS, Turkey 2001. 31 December 2012.

<http://www.wvsevsdb.com/wvs/WVSanalyzeIndex.jsp>.

<sup>95</sup> WVS, Turkey 2007. 31 December 2012.

<http://www.wvsevsdb.com/wvs/WVSanalyzeIndex.jsp>.

<sup>96</sup> Transatlantic Trends, Key Findings 2012. 30 December 2012.

<http://trends.gmfus.org/files/2012/09/TT-2012-Key-Findings-Report.pdf>.

perceived. However, the general—in other words dominant—nature of the Turkish political attitude is one of distrust and lack of confidence.

This attitude—and its reflection on behaviour—is also clearly visible in social relations. Turks are one of the most suspicious peoples of the world trusting ‘others’ the least.<sup>97</sup> Therefore this attitude suffers from short term fluctuations, it is unstable and open to manipulation by various actors, domestic and foreign alike, sometimes by short-term coalitions of the both. Naturally, this situation also allows Turkish governments greater flexibility in terms of selecting certain courses of political action and policy options regarding foreign policy, and its use as a leverage for domestic politics and *vice versa*.

As pointed out before, Canefe and Bora argues that the West “is regularly cited as the site where evil comes from and around which Turks should always have wits about them [*sic*]” (2003: 143). Since ‘democracy’—and democratic values—also come from *the West*, they are first met with an inevitable—perhaps also indispensable—psychological resistance. The ‘hidden agenda’ of the Europeans or the ‘West’ in general is an image that haunts the Turkish mass and have a direct and indirect bearing upon the political elite’s approach to and perceptions of ‘democracy’ as exercised in the West. It is a common phenomenon of Turkish politics that this rather obsessive preoccupation with the ‘hidden agenda’ is more or less shared by all shades of the political-ideological spectrum. Avci (2003), for example, argues that “Euro-scepticism or in the Turkish case, ‘nationalism

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<sup>97</sup> World Values Survey. Egypt (2008), Great Britain (2006), Poland (2005), Spain (2007), Turkey (2007).

Question is “Generally speaking, would you say that **most people can be trusted** or that you need to be very careful in dealing with people?”.

“Can’t be too careful”: UK, 69.5%; Poland, 81.0%; Egypt, 81.5%; Turkey, 95.1%. 27

December 2012. <http://www.wvsevsdb.com/wvs/WVSanalyzeSample.jsp>.

From early 1990s on, trust level remained stable between 8%-10%. In 2011, there was a slight increase in trust—15%. 2011 Turkey Values Survey. Summary of findings, 21 July 2011. Yilmaz Esmer. Bahcesehir University. 28 December 2012.

[egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc](http://egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc).

in disguise' has become a powerful tool for Turkish parties in their quest for votes and has reshaped aspects of party competition" (164). This 'hidden agenda' as a common phenomenon of Turkish political rhetoric and a propaganda theme—for good or bad—is evident in successive survey results.<sup>98</sup> In 2003, plurality of Turks (40.9%) believed that what the EU imposed on Turkey was no different than the "capitulations of the Ottoman era". This rose to 58.9% in 2012. Similarly, those who believed that the conditions imposed by the EU on Turkey were no different from the terms of the "Sevres Treaty of the Ottoman era" rose from 36.0% in 2003 to 56.3% in 2012.

The European Parliament's critical resolution on the Commission's 2004 Regular Report on Turkey<sup>99</sup> was particularly important—as it was perceived—in confirming the widely-shared perception of the West as maintaining historical aims of 'dismembering' Turkey and supporting 'minorities' to this end. While taking note of the specific conditions included in the Commission Report, the EP recorded a long list of expectations and issues.<sup>100</sup>

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<sup>98</sup> "[...] EU has imposed on Turkey [...] CAPITULATIONS OF THE OTTOMAN ERA. Do you agree with this view?. NO I disagree, 27%. YES, I agree, 40.9%".

"[...] the conditions that the EU has imposed on Turkey are no different from the terms of the SEVRES TREATY of the Ottoman era. Do you agree with this view? NO, I disagree, 26.7%. YES, I agree, 36.0%".

Euroscepticism in Turkey. Doubts, anxieties and fears of the Turkish Public concerning Europe and the European Union. Open Society Institute and Bogazici University. July 2003-July 2004. 30 December 2012.

[http://hakanyilmaz.info/yahoo\\_site\\_admin/assets/docs/HakanYilmaz-2003December-EuroscepticismInTurkey-Presentation-English.28464900.pdf](http://hakanyilmaz.info/yahoo_site_admin/assets/docs/HakanYilmaz-2003December-EuroscepticismInTurkey-Presentation-English.28464900.pdf).

<sup>99</sup> European Parliament Resolution on the 2004 Regular Report and on the recommendation of the European Commission on Turkey's progress towards accession. 15 December 2004.

<sup>100</sup> Kurdish political parties representing the 'Kurdish' people, Greek Orthodox Halki seminary, the non-recognition of the Republic of Cyprus, minority languages, opening of the border between Turkey and Armenia, compliance with the Parliament's 1987 resolution<sup>100</sup>, "remarkable work carried out" by a Turkish historian (spelling out his name) on the Armenian genocide allegations, call on Turkey to acknowledge the genocide, call on the Commission and the Council to demand "the Turkish authorities to acknowledge the

Civil society, a Western ‘institution’—as largely perceived in non-Western societies—takes its fair share from this negative connotation and the negative attitude and behaviour associated with it. However, in recent years, the rhetoric that there are foreign secret “scenario writers” for damaging Turkey and Turkish interests and such plans are “carried out by native agents of the West” is gaining more weight and being further expanded to reflect a presumption of *clash of civilisations*.<sup>101</sup> It is noteworthy that this rhetoric defines ‘West’ with respect to Islamic world, hence takes ‘Muslim’ as the common and dominant identity over national identities.

Therefore, it is puzzling why and how the Turkish governments, especially those under AKP leadership, gave such a priority and vigorous support to advancing the process of EU accession. That’s why Carkoglu (2003) finds the real basis of ‘support’ behind earlier legislative moves—related to the EU accession process—that took place in the early 2000s

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historic reality of the genocide perpetrated”, particular places as suitable for registration in the World Heritage List of UNESCO, disarming the village guards and disband them, reconciliation with ‘Kurdish’ forces (i.e. PKK), water requirements of the lower Mesopotamian marshes in Iraq and Iran, among others.

<sup>101</sup> Turkish Prime Minister Erdogan, during a visit to Pakistan—and later to Iran—in 2010, in a spontaneous, impromptu speech, reflected this deeply rooted ‘cultural’ perception in addressing the ‘flood victims’; “Pakistan getting weaker would make somebody, out of Pakistan, happy. I guess you understand who these ‘somebody’ are. They are the same both for us and you. That’s why we have to get stronger. We have to accumulate power. We’ll support each other shoulder to shoulder, hand in hand. We’ll build a stronger Pakistan. The same is also valid for the world of Islam. You are aware of those forces that aim to divide and destroy the Islamic world”. 13 October 2010. Haberturk daily. 8 November 2010. <http://www.haberturk.com/dunya/haber/560831-erdogan-israil-yalniz-kalmaya-mahkum>. “Pakistan, Afghanistan, Iran, Turkey; why is this belt experiencing such a terror process, continually? Of course there are foreign secret scenario writers and regretfully they select their native agents from within nations”. 14 October 2010. Hurriyet daily. 8 November 2010. <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=16037113&tarih=2010-10-14>. Later, to Tehran Times, he said: “If you will not understand the evil designs of your enemies, then what will be the future of 20 million flood victims of Pakistan?” 16 October 2010. 8 November 2010. [http://www.tehrantimes.com/index\\_View.asp?code=228611](http://www.tehrantimes.com/index_View.asp?code=228611).

questionable. “The obsessive focus on the formalities of the Copenhagen criteria seem to have pushed the lower level of negotiations at the domestic players’ level behind” (252). That is, they were simply intended for the sole purpose of adopting the EU *acquis*, but were not really embraced, let alone internalised and reflected on their actual implementation. There is—on the part of the Turkish government—an instrumental rationality in operation here which makes Putnam’s ‘two-level game’ debate closely relevant.

In the relations with the West in general and Turkey’s EU accession process in particular, this interaction in the form of *two-level game* has played a decisive role in the political decision-making, notably in decisions related to the democratic reform process studied in this paper. This role has mainly been overcoming the resistance to change—for the purposes of maintaining autonomy, identity or way of life—on the part of both the elites and—at least partly—the mass. Not only national elites are “unwilling to relinquish their sovereignty over key areas of policy that would directly undermine their privileged positions or interests” (Onis 2003: 11), but also groups who feel their primary identities—sometimes beyond, and apart from national identity—are threatened, come together with the former. Such ‘groups’, for varying reasons, take EU’s insistence on certain aspects of the accession process simply as a sinister threat to their very identity, in other words, their value system. As a result there is a tendency, in the general public, towards *selective democratisation*. In this context, civil society, especially civic groups/entities, have been principle actors as facilitators, and democracy-promoters—a formidable challenge against overwhelming odds.

Challenge comes from the fact that ‘selective’ democratisation, in principle, is readily adopted by the political elite, as a whole, as well. Making extensive use of the two-level game, in Turkey-EU relations, for promoting long-term domestic goals with a short term perspective towards EU, hence based on selective and instrumental application and adoption of the *acquis*, makes things extremely complicated. This is certainly not the most favourable environment for civil society’s participation in the political

decision-making process as far as—and particularly—the democratisation process and related reforms are concerned.

One subtle but crucial component of this complex picture is the nature of public opinion and the way it is manipulated as part of the two-level game. The domestic politico-psychological background to this game is intelligibly explained by Avci (2003):

The parties close to the centre [...] have exhibited features of soft Euro-scepticism, when convenient. The pro-Islamist parties have very rationally supported the EU whenever it supported their cause but opposed it when it came to crucial matters. Overall, during the period since the Helsinki summit, the Turkish party elites have been inconsistent in exhibiting their unambiguous commitment to EU reform. Neither the left nor the right [nor the Islamists for that matter] are true believers in the EU. (164)

It is timely and worthwhile to focus on the Turkish general public's 'attitude' *vis a vis* Europe and the EU accession process, here. In 2012<sup>102</sup>, roughly half of the population, 48.6%, had a positive view of 'Europeans'—

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<sup>102</sup> Q. Do you have positive or negative views of Europeans? Positive: 64.5% (2003), 48.6% (2012). Negative: 26.5% (2003), 42.5% (2012). No idea: 9%, in both (2003) and (2012).

Q. Have you ever visited a EU country? YES: 11.2% (2003), 11.0% (2012). NO: 88.3% (2003), 87.8% (2012).

Q. Have you ever established friendship with Europeans? YES: 31.0% (2003), 27.0% (2012). NO: 68.7% (2003), 71.6% (2012).

Q. Turkey is a part of Europe. Geographically: 70% (2003), 46% (2012); historically 61% (2003), 33% (2012); economically 28% (2003), 37% (2012); culturally: 28% (2003), 21% (2012); religiously 7% (2003), 10% (2012).

Q. Would being a EU member benefit Turkey or not? NO, it wouldn't: 13.3% (2003), 36.4% (2012). YES, it would: 78.8% (2003), 53.7% (2012).

Euroscepticism in Turkey. Prof. Hakan Yilmaz. Comparative Findings. 2003-2012. Open Society Institute and Bogazici University. March-April 2012. 30 December 2012.

[http://hakanyilmaz.info/yahoo\\_site\\_admin/assets/docs/OSI-2012-Euroskep-2003-2012-Karsilastirmalar-Sunus-v04.344184250.pdf](http://hakanyilmaz.info/yahoo_site_admin/assets/docs/OSI-2012-Euroskep-2003-2012-Karsilastirmalar-Sunus-v04.344184250.pdf).

down from 64.5% in 2003. Only 11.0%—same as 2003, 11.2%—ever visited a EU country, but 27.0% established friendship with Europeans — down from 31.0% in 2003, yet they were opinionated enough to conclude that ‘being a EU member would benefit Turkey’, 53.7%—down from 78.8% in 2003. However, they were confused even as to the borders and history of respective entities. In 2003, 70% believed that, geographically, Turkey was part of Europe. In 2012 this declined to 46%. Historically, in 2003 a clear majority, 61%, believed that Turkey was part of Europe, but almost half had changed their minds by 2012 when only 33% held the same view.

It can safely be argued that, two-level game involving the EU process was played by the Turkish political elite for purely instrumental purposes and for domestic political gains not for the intrinsic democratic benefits expected from Turkey’s EU membership or progress towards this end. Against the background of such an attitude, civil society has very little if any place extended to it or a role ‘granted’—as a legitimate participant, let alone partner—by the main actors who are dominating the political decision-making process. The participation in drafting of the legislation in ministries or the contribution to debates in Parliamentary commissions by civil society—and academia—are both considered a nuisance, even a major source of controversy and dispute, interfering in *otherwise smooth* (!) inter-party relations and ‘harmonious’ exchange of views between MPs<sup>103</sup>. This distorted perception of civil society may even result in refusing the delivery of civil society publications in the Parliament, even though they are clearly addressed to the MPs by name.<sup>104</sup> The fact that even the minds of the

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<sup>103</sup> This unusual complaint was voiced by Bekir Bozdag, MP and Vice-Chair for AKP Parliamentary Caucus. He even criticised the bureaucracy as having *more influence than the Parliament* and Parliamentary commissions in legislative process: “[...] [their involvement] causes controversy between the political parties. It is the dispute between academics, rather than between us [political parties] which is observed in the Parliament from time to time. This may have a psychological effect on the public opinion, but its reflections on the Parliament is negative” (Neziroglu & Bakirci 2011: 198-99).

<sup>104</sup> This complaint was consistently raised during interviews. One civil society representative, Günal Kursun, voiced the rejection of civil society publications by the

opposition MPs are ‘confused’ with regard to the role of civil society—and bureaucracy—in legislative and political decision-making processes is a testimony to the common nature of this critical aspect of the Turkish political elite culture.<sup>105</sup> There is a fundamental resistance to the idea of participation in any form or from any circle. It is considered unfair and even illegitimate “sharing of the political authority” which is traditionally perceived ‘absolute’, not restrained or limited—in practice unaccountable beyond regular elections.<sup>106</sup>

### **3.2. Political parties and political leadership**

Huntington (1991) adopting a deterministic approach, argues that “Political leaders cannot, through will and skill, create democracy where preconditions are absent”. Similarly, on the role of socio-political structure over socio-economic variables for democratisation, Roniger and Günes-Ayata (1994), indicate that, especially in societies laden with social

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Parliament, as a major obstacle to participation: “How can the civil society which is even unable to deliver its publicatons to 550 MPs, allegedly based on security concerns, possibly participate in the legislative process effectively?” (Neziroglu & Bakirci 2011: 189).

<sup>105</sup> M. Akif Hamzaçebi, MP and Vice-Chair for opposition CHP Parliamentary Caucus, expressed the other extreme, ruling out cooperation between bureaucracy, legislative and civil society altogether: “[...] in developed democracies [...] once an agreement is reached within the civil society [...] bills are passed by the Parliament without serious debate. [...] Laws may look like the achievements of the ruling party, but they ought to be achievements of the civil society” (Neziroglu & Bakirci 2011: 204).

Another MP, Emin Haluk Ayhan of opposition MHP, gives another example: “(In the sub-commission) Sometimes there are cases which are open to more than one interpretation. Bureaucrats feel obliged, if reluctantly, to ask questions to the minister concerned [...] some may stick to their arguments and the views of the institution they represent. [...] then some ministers may ask other ministers to never again assign those bureaucrats to commission sessions” (Neziroglu & Bakirci 2011: 210).

<sup>106</sup> During a joint study involving bureaucracy, civil society and parliamentary staffers, attended by the author as a participant observer, an example was provided by one senior bureaucrat. In response to a suggestion by the civil society to improve participation in the legislative process from the drafting stage, she said that “this would tantamount to sharing the political prerogative [of the government] and required advance political decision”.

inequalities, public policies—whether distributive, regulative or extractive—are “potentially discretionary and thus open to clientelistic use and abuse” and they are in conflict with the requirements of democratic consolidation: “access to power, participation, responsiveness by political elites to social demands” (qtd. in Turan 1997: 297). Turan, on the other hand, maintains that, since in Turkey, “the society became the object of state intervention and centrally run policies of development and transformation [...] the relations between the state elites and society were almost in the nature of a command structure” (1997: 297). The virtual absence of the political elite—in the modern sense—in the Ottoman Empire and the merger and even fusion of political elite with state elite, both literally and functionally, in the Turkish Republic resulted in the evolution of a unique common political culture.

The top-down Turkish modernisation by the central Ottoman administration throughout the XIXth century and later during the first half of the XXth century by the Republic of Turkey through a single(state)-party created its own political culture and this culture was inherited—and willingly endorsed—by other parties of the multi-party era. The preference for a single-party system at the beginning of the modern Turkish Republic was, perhaps, out of necessity rather than a choice. This is probably why Duverger (1959) argues that “the Turkish single-party system was never based upon the doctrine of a single-party. It gave no official recognition to the monopoly, made no attempts to justify it by the existence of a classless society or the desire to do away with parliamentary strife and liberal democracy” (277). But, nevertheless it resulted in a political culture which was resistant to democratisation. Even after the transition to a multi-party political system<sup>107</sup> in 1945, the 1924 Constitution of the single-party era was

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<sup>107</sup> There were two short-lived trials of multi-party politics, in 1924 and 1930; both proved unsuccessful and unsustainable. First was the Progressive Republican Party (*Terakkiperver Cumhuriyet Firkasi*). Following a religiously-motivated Sheikh Sait Rebellion in Southeastern Turkey, in 1925, was banned and dissolved in less than a year. Second, in 1930 was the Free (Liberal) Republican Party (*Serbest Cumhuriyet Firkasi*) which was able to survive only three months. Its founder, realizing that the party was perceived by some

maintained until 1961 and if it were not for the 1960 military take over there was no real ‘search’ for a new—and more democratic—constitution on the part of the political elite. Once firmly rooted, ‘single-party’ mentality, with all its features, has dominated all political parties, their leadership, intra-party relations, the Parliament, parliamentary committees, the legal framework—to include the Constitution of the Republic, and the Turkish political system a whole.

As exemplified, elaborated and evidenced in various sections, the dominant political culture in the Turkish party system suffers from strong authoritative tendencies and in this respect there is very little, if any, difference between the parties. This is not surprising because not only the Turkish formal education system neglects, even ignores the vital importance of a comprehensive and coherent learning process for infusion of democratic values, but also the ‘leaders’ lead by example in ways that are anything but encouraging and facilitating ‘liberal revolution’. Besides, the legal framework—the Constitution and particularly the Law on Political Parties<sup>108</sup> and the Law on Parliamentary Elections<sup>109</sup>—is far from providing for the institutions that would secure the freedoms essential for democratic practice. The consequences of this less than favourable framework are best seen in *authoritarian leadership styles* in political parties.

Legally, an MP does not represent the electoral district from where he/she is elected or his/her constituency solely, but the whole ‘nation’.<sup>110</sup> However, the reality is more complicated and sophisticated than that. In

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conservative elements as a political tool against early reforms, particularly secularism, dissolved the party.

<sup>108</sup> Law No. 2820, Law on Political Parties, adopted on 22 April 1983. Official Gazette, 24 April 1983, No. 18027. 02 January 2013.

<http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2820.pdf>.

<sup>109</sup> Law No. 2839, Law on Parliamentary Elections, adopted on 10 June 1983. Official Gazette, 13 June 1983, No. 18076. 02 January 2013.

<http://www.mevzuat.adalet.gov.tr/html/618.html>.

<sup>110</sup> The Constitution of the Republic of Turkey (as amended as of 7 May 2010), Art. 80.

large urban constituencies<sup>111</sup>, the link between a deputy and his/her constituencies is very vague to say the least. Hardly an MP would have direct contact and exchange of views—or demands, deliveries, favours—with the constituency. For one, in most cases it is the party leadership who ultimately decides on the ranking of the candidate on a given ticket, not the constituency involved. Even if she/he ever really intends and actually attempts to reach out to the people he/she is representing, it is practically difficult if not impossible to do so. On the other hand, in most rural—smaller—districts the ties between the constituents and their representatives can be quite personal. Then, for an MP, either promoting or protecting the interests of her/his constituents and/or representing the electoral district he/she was elected from can become the major task. According to Kalaycioglu (1995) “it is amazing to note that more than half of the deputies who were surveyed in 1984 and 1988 reported that they spent the majority of their time as deputies on case work—finding jobs, providing other services or benefits for constituents” (49). Kalaycioglu (1995) also asserts that “clientelistic linkages between the represented and the representatives emerge as the most important cord connecting the two in Turkey” (46).

But, in time, a differentiation in powers—hence functions—and a kind of *division of labour* gradually occurred between the individual MPs themselves and the Party, particularly the party leadership. As the executive came to controlling huge political and economic powers in the form of state enterprises, state banks, foreign currency, export and import quotas, tariffs, subsidies, investment in certain economic sectors etc, governing party or coalition of parties became real patrons and individual MPs were sidelined.

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<sup>111</sup> In 2011, Istanbul had three electoral districts for 85 MPs, while Ankara and Izmir had two electoral districts for 31 and 26 MPs respectively. Each candidate had to secure the support of a constituency of approximately 150.000 strong to be elected in competition with a plurality of other candidates. However Bartın, Ardahan, Iğdir, Yalova, Karabük, Kilis had single districts each for two MPs for much less votes required to be elected—e.g. Bartın 93.000, Kilis 61.000. High Council for Elections decision, No. 119, dated 26 February 2011, No. 3 January 2013. <http://www.ysk.gov.tr/ysk/docs/Kararlar/2011Pdf/2011-119.pdf>.

Selected and authorised ‘agents’ of patrons in central administrations of political parties became instrumental in distributing or allocating rents or other benefits. MPs became impotent, helpless figures who, absent substantial support from the party leadership, can only offer a lunch to visiting constituents, make telephone calls to hospital managers for those who are, almost always, in need of help in payments, or writing short notes to under-secretaries for job applications.<sup>112</sup> This situation, by turning most of the MPs into dependent images without real political functions, and the Turkish political system into a struggle for either coming to power or staying in power after the next election, has paralysed the whole political decision-making and legislative systems. These processes as a whole are mostly closed to participation by ‘outsiders’—particularly the civil society.

In early 2000s, immediately after the financial crisis and the stock market crash in 2001, Carkoglu (2003) was quite optimistic and, in cynical terms, predicted some accountability in the Turkish political party system, now, he argued, free from *patronage politics*: “In contrast to being in ‘power without responsibility’ for decades of patronage-based policy-making, for the first time in multi-party politics in Turkey the present political parties seem unable to escape from ‘responsibility without power’” (246). The new economic policy initiative, imposed by the World Bank, in the wake of the collapse of the Turkish banking system, and the IMF’s involvement in the form of large loans controlled by stand-by agreements, must have led Carkoglu to such an ‘optimism’. But Turkish politics has increasingly proven resourceful enough to invent new—and more effective—forms of patronage. A new clientelism, in the form of organised commercial and financial interests, has also been added to the picture.

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<sup>112</sup> SIGMA 2010 Report quotes about a million visitors per year to TGNA and most of them come to talk to their representative MPs to voice ‘individual’ requests. “Responding to requests, often communicated directly to Deputies during meetings at their offices in Ankara, takes up a large part of Deputies’ time, to the detriment of other parliamentary activities. It also takes up much of the time of their immediate support staff—i.e. the advisor and secretary that every Deputy has at his or her disposal” (SIGMA 2010: 22).

It must be noted that since 2002 Turkey has been governed by one-party majority governments from the same party, and the governing party—AKP—has multiplied its electoral support. Today it enjoys an electoral support unprecedented in Turkish political history. However, this expansion of the political support base has been accompanied by an increased authoritarian style in government and less attention to the principles of good governance. As a result, not only the Turkish economy has been as fragile as it was in early 2000s, but also its dependence on foreign investment has increased and it suffers from a huge balance of payments deficit. This makes the political system increasingly exclusionary and marginalizes the MPs—of all parties—and more importantly, the Parliament as a whole. This outcome is a function of political leadership.

Leadership in general and political leadership specifically, is a vast subject of study. For the purposes of this thesis, this section has been restricted to the general features of the leadership in Turkish political parties as they relate to participation and inclusiveness in the political decision-making and legislative processes.

The key to understanding the role and functions of a typical Turkish political party leader is its absolute authority. This authority can only be compared with that of a *sultan*. He—very occasionally, she—is typically assisted by three to five deputy chairs. The party leadership, as mentioned above, strictly controls nomination and renomination of candidates in Parliamentary elections. This gives party leaders a strong leverage over the MPs and—thank to some critical features of the Law on Political Parties—also a major advantage over potential challengers of the leadership position. That's why Turkish party chairmen are elected 'for life'. Almost all party chairmen have left politics under extraordinary circumstances such as a military coup, death, a scandal (rarely), 'upward' mobility to Presidential office or sickness, not as a conscious personal choice of retirement—or political, electoral failure. They jealously defend their 'castles' and ruthlessly suppress any opposition—or any move they deem 'opposition'. This attitude has had significant consequences.

First of all, turnover rates of MPs in parties—and in the Parliament—are very high. Since the 1950s, they have been consistently above 50 percent, and in the 2002 and 2007 elections, they reached 89.1% and 59.3% percent respectively (SIGMA 2010: 22)<sup>113</sup>.

Since the great majority of MPs face considerable uncertainty over their re-election and their only chance for renomination—and re-election—is to flatter the chairman or at least avoid his fury and displeasure, they turn extremely ‘docile’.

Once they are in the Parliament, even if they are prepared to stand up to the ‘challenges’ posed by the party culture and take on a principled behaviour, their freedom of action is still restricted by party bylaws and the Rules of Procedure of the Parliament. Their nomination to Parliamentary commissions is done by the party leadership and even the legislative proposals they draft are subject to control—and *red tape*—by the Parliamentary Party Group in advance of their submission to the Office of the Speaker. Although there seems to be some degree of internal consultation within the parties, it is extremely limited and geared more towards decision-taking rather than policy-making, because policy ‘decisions’ are made by the party leadership exclusively.

Turkish political parties are dominated by self-asserting *transformational* leaders motivated by strong *ideological convictions*, with *personal resolution* and *political will*. Decision-making systems in the parties are governed by idiosyncratic and ideological considerations. This has led to deinstitutionalisation of party politics. Policy-making processes are limited to dynamics taking place in a closed, small circle of party ‘leadership’ and the general pattern of interaction is ‘conformity’.

Therefore, while incentives to become an active, self-confident—and competent—MP are too weak, the tendency to comply with the demands and expectations of the party leadership is strong. SIGMA Report describes

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<sup>113</sup> SIGMA 2010 Report gives slightly different rates on page 25. “After the 1999 election, 54.2% of Deputies had never held parliamentary office before; in 2002 and 2007, the percentages were 80.5% and 49.3% respectively.”

and explains the *payoff* of the leadership ‘culture’ in Turkish political parties legibly:

[...] the opportunities for ‘back-bench’ Deputies, i.e. those who are not members of the party leadership, to help shape the policy profile of the party [...] are very limited. [...] turnover in Parliament is high, committee assignments uncertain, committee memberships might change after two years. [...] Thus, access to policy expertise is both difficult and the ‘payoffs’ of specialisation—in terms of Deputies’ policy influence or personal advancement—are, at best, uncertain”. (SIGMA 2010: 23)

This type of political leadership in parties is one thing, but when one party dominates the political scene for more than a decade as the governing party, the repercussions would not be restricted to this single party only, but influence the whole political system deeply. This is what has exactly happened during the ‘reform’ process. The governing AKP, based on its parliamentary majority, controls the Parliament and, generally, has the ability to impose its party policy goals.

Individual deputies do have considerable constitutional authority to act independently from their parties, if they choose so. Whether they are—ever—willing to use it, is another matter.

Kalaycioglu (1995) conducted two surveys, in 1984 and in 1988 respectively, of the attitudes, beliefs and backgrounds of the deputies of the Turkish Parliament. He identified four representational styles in the parliament: ‘traditional strongman’, representing the traditional agricultural interests of underdeveloped rural Turkey; ‘the gentleman of the periphery’, elected because of their ties to famous families or religious orders and—generally—act only to promote parochial interests; ‘lobbyists’ of the interests of big business and other organised interests; ‘diplomats’ who tend to work to promote a certain image of Turkey, acting almost as agents of the Ministry of Foreign Affairs. The latter two groups—from business, top-level bureaucracy, journalism or academia—were essentially different from the former two in terms of the interests they represent, their backgrounds and

life-styles, representing liberal, international and/or market interests. The former two groups, on the other hand, represented local, parochial, and/or traditional interests. In the 1980s they constituted about three fourths of all the MPs. (Kalaycioglu 1995: 42-59)

SIGMA Report, decades later in 2010—based on 2007 numbers, arrived at similar findings. According to Peer Review Report, four groups dominated the Parliament and despite long and frequent political upheavals, their shares remained fairly stable over time. “Deputies with a background in economics and business: 25.9%; education: 19.5%; law: 15.9%; engineering: 15.9%”. The report found “the social profile of the Deputies from the two largest parties—the AKP and the CHP—remarkably similar in terms of their professional backgrounds” (SIGMA 2010: 24). Also similar were the functions performed by a typical MP; so-called ‘case work’, required by primordial ties, continued to have precedence over ‘legislative’ activities. However, as elaborated elsewhere in this paper, *pork-barrel* services, albeit in different forms—sectoral rather than geographical—controlled by a small cadre representing the party leadership gained more importance. This not only further sidelined the individual MP but also contributed to the marginalisation of the Parliament as a whole as the legislative branch of the government.

One other important change that took place with fundamental effect on the effective functioning of the Parliament was the disappearance of fragmentation in the Turkish party system. As late as mid-1990s, Özbudun (1997) described the Turkish party system as “more fragmented than ever”:

The largest party in the December 1995 elections (Welfare Party) received only 21.4 percent of the vote. [...] Both major tendencies are now divided into two parties each [...] a high degree of volatility in the Turkish party system suggests an almost continuous process of realignment. [...] Another worrisome change in the party system is the increasing weakening of the moderate centre-right and centre-left tendencies. A fourth malaise in the party system is the organisational weakening of parties and of party identification ties. (87-89)

Özbudun explained this fragmentation with what Huntington (1991) described as *el desencanto*, disillusionment, “to be part of the more general problem of typical of many new democracies”. Party fragmentation actually reflected fragmentation of the *democracy coalition*. According to Huntington (1991) “The leaders of the new democracies often came to be viewed as arrogant, incompetent or corrupt or some combination of all three” (256). This happened in Turkey belatedly—or perhaps in a prolonged fashion.

Özbudun (1997) also argued that “despite the sense of disillusionment among many voters, this did not turn into an ideological challenge to the democratic system itself. Increased valorisation of democracy as an end in itself [was] operative in Turkey as in many other democracies” (89). But “a related response to democracy [...], authoritarian nostalgia” (Huntington 1991: 257) arrived after the experiment with democracy from 1983 until 2002. The surprisingly landslide electoral victory of the AKP in 2002, ever-increasing voting rates in 2007 and 2011 elections, resulted in a preference for a “strong leader who does not have to bother with parliament and elections” by the majority of the Turkish electorate.<sup>114</sup> Literally, the Turkish people see the Parliament—cynically, perhaps democracy itself—as an impediment, a liability and do not have much confidence in the Parliament—much less in political parties.<sup>115</sup>

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<sup>114</sup> World Values Survey, Turkey (2007).

Q. “[...] political systems [...] as a way of governing this country. [...]? Having a **strong leader** who does not have to bother with parliament and elections”. “Very good, fairly good”: Turkey, 58.9%. In 2011 this became 63%. “Fairly bad, very bad”: Turkey, 41.2%. In 2000 this was 73%. 31 December 2012.

<http://www.wvsevsdb.com/wvs/WVSAanalyzeIndex.jsp>.

For 2011 findings see; 2011 Turkey Values Survey. Summary of findings, 21 July 2011.

Yilmaz Esmer. Bahcesehir University. 28 December 2012.

[egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc](http://egiad.org.tr/userfiles/ftp/.../dunyadegerlerozet.doc).

<sup>115</sup> Ibid. Q. “[...] how much confidence you have [...] in Parliament?: “A great deal, a lot”: 61.5%.

Q. “[...] how much confidence you have [...] in political parties?: “A great deal, a lot”: 34.41%.

As discussed earlier, one other general characteristic of the Turkish political party system has been—at times, intense—polarization. Ergüder (1995), in mid-1990s predicted that “there [were] some signs that an effort to bridge the gap between the secularists and religiously-motivated political elites [was] underway. A broad consensus between political parties and social forces seem[ed] to have emerged [...]. The problem of the 1990s [was] to operationalize this consensus” (67-72). This did not occur. The Turkish political system is more polarized than ever today and the gap is widest. Wide-spread mutual distrust, polarisation and dominant political culture combine to make collaboration between political parties a real challenge. There is a general tendency to see those who are not ‘us’ as being ‘against us’. European Parliament in March 2011 Resolution—immediately after the intense and almost fanatical polarisation following the 2010 Constitutional referendum—made an unusual statement on this point:

[...] concerned about the ongoing confrontation between the political parties and the lack of readiness on the part of Government and opposition to work towards consensus on key reforms; urges all political actors, the Government and the opposition to work together to enhance political plurality in state institutions and to promote the modernisation and democratisation of the state and society [...]. (EP 2010: 3)

As for the parliamentary oversight and scrutiny—major parliamentary functions in consolidated democracies—the situation is less than promising. Peer Review Report makes a stunning observation:

[...] interview evidence suggests that oversight and scrutiny are not a central part of the opposition strategy. Thus, opposition Deputies (just like members of the governing party) allocate a great deal of their time to constituency service. Perhaps more surprisingly, the opposition does spend considerable resources on tabling draft laws, even though these have no chance of being adopted by the Plenary. (SIGMA 2010: 20)

This bold and straightforward statement indicates that while the political opposition does not have the ability to pass laws or amend them in Parliamentary committees or in the Plenary, neither does it have the will to really scrutinize the government's past performance and future intentions.

As for the cooperation with and openness to civil society, Encarnacion (2003) argues that "political parties (especially those fully anchored in society) are especially relevant to the production of social capital" because of their "capacity to integrate and mobilise the general public" and to "provide citizens and social groups with access to the policy arena thereby giving voice and leverage to civil society vis-à-vis the state" (41-42). For the purposes of this research, this argument sounds important for two reasons: political parties are 'primary' producers of 'social capital' which civil society has to rely on. Secondly, and perhaps more importantly in Turkish context, without 'links' to political parties, civil society in general and civil society organisations in particular has little to do in terms of participating in and having a voice in policy-making and legislative processes.

One caveat is important here: there are some civil society institutions with close and permanent links to political parties. However such civil society organisations are so closely associated with respective parties that they have become *de facto* extensions of these parties rather than autonomous members of civil society. This perception is shared, supported, supplemented and aggressively—proudly—maintained both by the civil society organisations with such links and those parties who incubate them. This is not only an impasse for an effective civil society but also a threat to the creation of an autonomous civil society and this trend in contemporary Turkish politics is giving clear signs of an increase rather than decrease.

The Parliament is the first level in the decision-making and legislative process and—for all practical purposes—is the only 'actor', open to civil society 'participation'—however qualified though. In recent years, two important initiatives to fundamentally reform the Parliament in the widest sense have been taken in connection with each other: SIGMA Peer Review

Report of 2011, and the Parliamentary Committee for drafting a new Rules of Procedure for the Parliament. Both have been carried out in cooperation with civil society and particularly international civil society and enjoyed large-scale support, but both have sadly failed and an important opportunity for reforming the TGNA and significantly improving civil society participation has been wasted.

SIGMA Report of 2011, took an *x-ray* of not only the TGNA but also—perhaps more—of the Turkish political system with its all shortcomings, flaws and illnesses. Its critical importance notwithstanding, the TGNA 23rd Term Report, while giving details such as ‘toilets repaired’, ‘curtains replaced’, ‘plant-information tags attached to flower pots’, did not even mention of the SIGMA Report. But it did mention the EU Twinning Project of 2008<sup>116</sup>, as the project which was “included among those that received the highest grade, conducted in a timely manner, without major problems, in the EU Commission publications”<sup>117</sup>—whatever this ‘inclusion’ meant to the drafters.

SIGMA Report was a significant non-partisan attempt to reform the TGNA, included substantial work and made comprehensive, coherent and unmistakable recommendations based on self-evaluation by the serving MPs. It was striking, particularly after the EU Twinning Project exercise about three years ago, that none of its recommendations had been carried through. None of the governing party Deputies—Pakdil, Erdem and Sönmez—who took part in the preparation of the SIGMA Report, was able to be nominated—hence run—for another term in 2011 elections. This

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<sup>116</sup> EU Twinning Project ‘Strengthening the Capacity of the Turkish Grand National Assembly’ (2006-2008): the overall objective was to improve the quality of Turkish legislation concerning harmonisation with the *acquis*. In particular, the Project aimed to strengthen the capacity of the Office for EU Affairs to EU Harmonisation Committee and the permanent committees by raising the awareness of the staff in the area of *acquis*. The Project included five evaluation meetings, 17 training seminars and six study visits to the Member States and European Parliament. See; Final Report. 12 February 2013. [http://www.yasader.org/web/yasama\\_surecine\\_katilim/3/final\\_report\\_10\\_04\\_2009.pdf](http://www.yasader.org/web/yasama_surecine_katilim/3/final_report_10_04_2009.pdf).

<sup>117</sup> See; (TGNA 23rd Term Report: 72)

situation signals more deeper problems obstructing real reform in the Parliament.

This finding is confirmed by the other unsuccessful attempt for reform; draft new Rules of Procedure for the Parliament. Despite the considerable effort dedicated to yet another non-partisan search for long-overdue reform and associated work, and after the agreement reached over a common text—supported by the EU and civil society as a whole—it has failed to become law.<sup>118</sup> Even the Speaker—from the governing party—who initiated this work, in a very unusual political manoeuvre, at mid-term, was replaced by another MP from the same party.<sup>119</sup>

And finally, comprehensive and unprecedented efforts of the Parliamentary ‘civil society’, particularly for improving civil society’s participation by sanctioning it in the Rules of Procedure for the TGNA and by drafting a law proposal specifically on the subject, have not given any fruit thanks to virtually complete lack of a political will—hence no support—to this end.<sup>120</sup> Obstacles to effective participation at the Parliament continue and there are no formal protocols that govern how civil society can ‘participate’.

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<sup>118</sup> One senior staff member in the Parliament commented that “the names of the MPs assigned to the Committee for a New Rules of Procedure had indicated at the outset that the Parties did not really want a new Rules of Procedure”. Interview, March 2012. The Speaker of the Parliament, Cemil Cicek formed yet another Committee for the Rules of Procedure in December 2012.

<sup>119</sup> Köksal Toptan (2007-2009)—who formed the non-partisan committee for a draft new Rules of Procedure in February—was replaced by M. Ali Sahin in August 2009.

<sup>120</sup> “[...] there is no system for accrediting interest and civil society organisations, so that the status of organisations invited to take part in committee meetings [...] is somewhat uncertain. [...] the unpredictability of committee agendas, [...] creates problems not just for Deputies [...] but equally for [...] civil society organisations. With legislation often put on committee agendas at short notice, it is, in practice, difficult for civil society organisations to respond effectively to invitations to present their views. [...] meetings at which time is set aside to allow a range of affected interests to state their views and opinions in a formal manner are rare” (SIGMA: 13).

As for the overall performance of the Parliament, as pointed out again and again in successive EC and EP reports, the findings of this research also suggest that the legislature is not independent from the executive and no ‘separation of powers’ is really applicable to executive-legislative relationship in Turkey. As one senior staffer put it; “Fingers are raised and brought down as directed (by the executive)”.<sup>121</sup>

### 3.3. Legislative process

Legislative process is the natural continuation of the political decision-making and policy formulation process and provides the legal measures/tools to implement strategic plans in respective policy areas. Legislative process involves two parallel—slightly desynchronized—sub-processes: ‘drafting’ law texts and then ‘making’ them into law. In Turkey, legislative process—and other parliamentary functions such as oversight and scrutiny—are mainly governed and regulated by the Constitution of the Republic of Turkey (1982)<sup>122</sup>—referred throughout as *the Constitution*; Bylaw on the Procedures and Principles for Preparation of Codes and Statutes (2006)<sup>123</sup>—referred as *the Bylaw-2006*; the Rules of Procedure of

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<sup>121</sup> Interview; March 2012.

<sup>122</sup> **The Constitution** of the Republic of Turkey. Law Number 2709, dated 7 November 1982. First adopted by the Founding Assembly (*tr.* Kurucu Meclis) on 18 October 1982 for referendum, published in Official Gazette No 17844, on 20 October 1982. Following referendum, republished on 9 November 1982, Official Gazette No 17863. (As amended as of 7 May 2010, by Law No 5982, Official Gazette No 27580, on 13 May 2010). 28 February 2012. <http://www.byegm.gov.tr/content.aspx?s=tcotrot>.

<sup>123</sup> **Bylaw** on the Procedures and Principles for Preparation of Codes and Statutes (*tr.* Mevzuat Hazirlama Usul ve Esaslari Hakkında Yönetmelik). Cabinet Decision date: 19 December 2005, No: 2005/9986, based on the Law Number 3056, dated 10 October 1984, Official Gazette: 17 February 2006, No: 26083. 04 March 2012. <http://www.mevzuat.gov.tr/MevzuatMetin/3.5.20059986.pdf><http://www.mevzuat.gov.tr/MevzuatMetin/3.5.20059986.pdf>.

the Turkish Grand National Assembly (1973)<sup>124</sup>—referred as *the Rules of Procedure*; precedent and convention.

Both drafting, i.e. writing laws, and legislation, i.e. making laws, involve various actors and organisations at different stages of respective processes. It must be noted that legislative process is *circular* in nature rather than linear.<sup>125</sup> The Constitution and amendments to it, some decisions of the judiciary, government programmes, national development programmes and plans, current requirements prompted by implementation of laws and bylaws, international relations—e.g. Turkey’s European Union accession process, social and technological developments may require new legislation.

Laws, by the Constitution<sup>126</sup>, can only be initiated either by the government or members of parliament—either individually or in groups. The Bylaw-2006 regulates and directs procedures for preparation of the government-initiated bills—draft laws, and covers the process from ministries to (including) Prime Minister’s Office. Proposals of law, initiated by MPs, are directly given to the Office of the Speaker of the Parliament<sup>127</sup>.

The Rules of Procedure, as its name implies, is about agreed-upon procedures through which legislation takes place once a *bill* or a *proposal of law* arrives at Speaker’s Office and given a ‘number’. Decision-making, policy (re)formulation and *developing* a law in the Parliament—and elsewhere for that matter—involve completely different dynamics and are

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<sup>124</sup> **The Rules of Procedure for the** Turkish Grand National Assembly (*tr.* Türkiye Büyük Millet Meclisi İç Tüzüğü). Decision Number 584, dated 05 March 1973. Official Gazette: 13 April 1973, No. 14506. 05 March 2012. <http://www.tbmm.gov.tr/ictuzuk/ictuzuk.htm>.

<sup>125</sup> Three other essential parliamentary functions of ‘executive oversight’, ‘scrutiny’ and ‘representation’—in addition to the adoption of the budget—are also closely related to legislation, and the associated processes are circular in nature; however this aspect is not particularly examined in this thesis.

<sup>126</sup> The Constitution of the Republic of Turkey (as amended as of 7 May 2010), Art 88.

<sup>127</sup> Bills (*tr.* Kanun taslağı) are initiated by the Government and they are subject to long, detailed and complicated procedures. Draft laws (*tr.* Kanun teklifi) are those prepared by Deputies—even by an individual, single Deputy—and directly given to the Parliament—to the Speaker’s Office. Appx. 80-90% of the law proposals which become law are brought to the Parliament in the form of bills, i.e. they are initiated by the Government.

mostly based on unwritten rules and procedures. Nevertheless, the two processes of political decision-making/policy formulation—which remains mainly within the purview of the government—and the legislation, in general sense a common effort involving other actors, are parallel, sometimes iterative processes. Needless to say, the very purpose of the Rules of Procedure is about the ‘procedural’ aspects of the legislative process; it excludes both political decision-making and policy formulation. But the legislative process does necessarily have a policy development/(re)formulation dimension, ‘governed’ by the Rules of Procedure.

Most of the drafting, or ‘writing’ the text of the law—in the case of *bills*—takes place in ministries and then given the final form in the Office of the Prime Minister. They represent two *black-boxes*, where *civil society*, or any other organisation for that matter, can possibly penetrate, let alone have any influence in the process in general. Perhaps one can name yet another *black-box* which is the parties, because political party groups also exercise tight control over the activities of their members. Once a policy decision is made, texts for legislation, in *bill* or *proposal of law* form are initiated from one of these three ‘sources’.

Political parties may—and do—impose restrictions on such initiatives and control—sometimes even censure—drafts prepared by their member Deputies, based on their Party and/or Parliamentary Group Internal Regulations. Therefore, although political parties are not entitled to ‘initiating’ laws, in practice they do so by using the channels open to the members of the Parliament. In practice, cover letters of *proposals of law* forwarded to the Speaker’s Office by MPs bear the stamps of *parliamentary groups*. This situation may be explained by party discipline and can be rationalised by measures in relevant Group Regulations enabling Deputies to challenge obstructive interventions through party organs.<sup>128</sup> However, clearly these are less than perfect examples of in-party democracy.

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<sup>128</sup> For examples, see; AKP Parliamentary Group Internal Regulation (*tr.* Adalet ve Kalkınma Partisi TBMM Grubu İç Yönetmeliği), Art. 28-32. 30 May 2012.

‘Drafting’ a law is essentially technical in nature and remains mostly outside the scope of this research. However, it is almost as problematic as the ‘making’ of it. The problems involve language—use of proper Turkish and standard terminology, quality of draft in terms of avoiding duplications, and more importantly, avoiding conflicts or contradictions with other, already existing laws, even with other articles of the very same law itself. There is a lack of coordination between organisations and institutions which have a stake in the same area of legislation and there is very little, if any input, from civil society. Since key cadre, in ministries, are replaced by every incoming government, novice bureaucrats struggle for survival rather than quality work in drafting.<sup>129</sup> Texts of laws are extremely long and complicated. Many aspects, actually not related to the essence of the basic law, but to its *day-to-day* implementation, even certain *nitty-gritty* details which would not require any regulation at all, are included in the legislated law itself, effectively turning laws into *by-laws* or *regulations*.

Problems involved in the ‘legislative’ process are deeper, more fundamental and certainly ‘political’ in nature: that is why, each attempt to solve them by way of a new rules of procedure, as explained below, has repeatedly failed. Legislative process is made work ‘very fast’ and there is always a *never-ending* need for many—and urgent—amendments to

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<http://www.akparti.org.tr/tbmm/icyonetmelik.pdf>; CHP Party Statute (*tr. Cumhuriyet Halk Partisi Parti Tüzüğü*) Art. 64, 68. 30 May 2012. <http://www.chp.org.tr/wp-content/uploads/2012/05/CHP-Tuzuk.pdf>; MHP Party Statute (*tr. Milliyetçi Hareket Partisi Parti Tüzüğü*) Art. 79, 80. 30 May 2012.

[http://www.mhp.org.tr/usr\\_img/\\_mhp2007/kitaplar/mhp\\_parti\\_tuzugu\\_2009\\_opt.pdf](http://www.mhp.org.tr/usr_img/_mhp2007/kitaplar/mhp_parti_tuzugu_2009_opt.pdf).

<sup>129</sup> Speaker of the Parliament Cemil Cicek, when he was Dpty. Prime Minister, indicated some of the problems associated with drafting at ministries as the “prominent example of poor quality” in the national education system: “[...] the areas where we can clearly see the reflection of problems of quality in the [national] education system are those related to legislative activities. [...] If there is a felt need to amend a law, again, in a month time, even before it goes into effect, this is not due to requirements of the society (public), but the inability of our colleagues who take part in law-drafting process, to take into consideration all aspects of the subject. [...] a problem of quality [...]” 17 January 2010. (Neziroglu & Bakirci 2011: 19)

existing laws.<sup>130</sup> Unavailability of the Parliamentary agenda in a timely manner and last minute changes to it, make the whole parliamentary process depleted with hurdles. The desperate need to balance the government's urge to pass the laws as soon—and as less problematic—as possible and the opposition's initiatives to delay the process and control the executive, for most of the time, presents insurmountable obstacles to proper functioning of the parliament.<sup>131</sup>

At first sight, it may seem as if the executive and the political opposition in the Parliament share legislative agenda-setting functions. However, the overwhelming majority of laws eventually adopted by the TGNA are based on government-initiated *bills*. Proposals of law submitted by the opposition Deputies, in practice, have almost no chance of becoming law. The whole process is firmly dominated by the executive, i.e. the governing party.<sup>132</sup>

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<sup>130</sup> Majority of the laws passed by the Turkish parliament are amendments to existing laws. Mehmet Ali Sahin, Speaker of the Parliament from 2009 to 2011, in January 2011 Symposium, giving some statistics, complained about the *overload* of the Parliament: “During the 23rd Term, we [the Parliament] received 1601 [*sic*] drafts and proposals, 415 [*sic*] of them had a chance to become law. In England [*sic*], 30-35 laws are legislated each year. In Germany they pass laws less than half of what we do. [...] 5434 Pension Fund (*Emekli Sandigi*) Law was amended 160 times, [...] Value-Added Tax (*Katma Deger Vergisi*) Law of 1984, amended 27 times in 44 years. [...] 3713 Anti-Terror (*Terorle Mücadele*) Law, 24 times, [...] 4734 State Bidding (*Kamu Ihale*) Law 20 times [...] (and) Law Number 6001, dated 25 Haziran 2010, on State Highway Administration, we amended (only) 27 days after it was passed by the [very same] Parliament.” (Neziroglu & Bakirci 2011: 23-24). As of end of the Term, the numbers were 1690—received, and 862—passed, respectively. See; TGNA 23rd Term Report, p. 79. 05 January 2013. [http://www.tbmm.gov.tr/bilgiedinme/23\\_Dnm\\_Faaliyet\\_Raporu.pdf](http://www.tbmm.gov.tr/bilgiedinme/23_Dnm_Faaliyet_Raporu.pdf).

<sup>131</sup> When a consensus between the government and the opposition can be achieved, it has been possible to pass three laws of 2700 articles in one single week, in January 2011. However as in the case of the Law on Mine-Clearing on the Syrian Border, a 6–article law took eight parliamentary sessions, from May, 12th through June, 3rd—22 days. (Neziroglu & Bakirci 2011: 13). How appropriate, passing laws of thousands of articles in a single week, is another subject for debate.

<sup>132</sup> SIGMA Peer Review Report of 2010 has made a comprehensive evaluation of the administrative capacity of TGNA. ‘SIGMA’ stands for Support for Improvement in

Draft *bills* are prepared by the ministry of primary responsibility, but coordinated with other ministries with related responsibilities in the same area. In most ministries, Strategy Development Departments<sup>133</sup> are offices of primary responsibility (OPR) for developing laws and regulations and the point of contact (POC) for overall coordination of the related work. That doesn't necessarily mean that each and every draft is actually prepared by this office.<sup>134</sup>

Each office, within the scope of government programmes, national development programmes/plans and action plans of respective ministries,

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Governance and Management, a common initiative of the European Union—EU, and the Organisation for Economic and Cultural Development—OECD. *SIGMA Report* addressed; the committee system; management of parliamentary business; executive-legislative relations; the legislative process and the quality of legislation; Parliament and EU accession; Parliament, the budgetary process and public accounts; parliamentary oversight and scrutiny; Parliamentary groups and Deputies; administration and personnel of the TGNA. The Peer Review Team, who prepared the report, paid four working visits to Turkey; in June and October 2009 and in February and June 2010. It was supported by an Advisory Group, Steering Group and a Working group from the TGNA, involving Deputies, General Secretariat and expert staff. The key capacity concerns highlighted by *SIGMA Report* are mentioned and put into current context in relevant parts of this thesis. For the full report see; [http://www.tbmm.gov.tr/yayinlar/sigma\\_report\\_final\\_eng.pdf](http://www.tbmm.gov.tr/yayinlar/sigma_report_final_eng.pdf). 05 January 2013.

<sup>133</sup> Strategy Development Departments—and their functions—have been established by Law No 5018 (*tr. Kamu Mali Yönetimi ve Kontrol Kanunu*) as amended by Law No 5436. They are not only OPR and POC for developing ‘ministerial drafts’, they also coordinate their ministry’s input to other ministries and to other state institutions’ work, prepare their ministry’s or government’s views on *draft laws* proposed by the MPs and participate in Parliamentary commissions—representing their ministry—and answer questions, ‘defend’ their institutional views, policies. However, their official responsibilities do not include anything related to the legislative process.

<sup>134</sup> Some ministries, the Ministry of Justice for example, form ‘drafting commissions’ involving a wide array of participants; “academics with expertise in this area, representatives of higher judicial bodies and first-degree courts are especially included in commissions. Besides, depending on the relevancy of the subject, representatives from civil society organisations also take part in the commission.” Statement by Akin Cakin, Dpty. Head of Laws Directorate, Ministry of Justice. (Neziroglu & Bakirci 2011: 84).

can—and do—initiate a drafting process if there is a felt need. Minister’s consent and/or directive, based on an initial analysis, is sought first. Once the first draft is ready, views and inputs from other agencies within the same ministry are collected by the Strategy Development departments and forwarded to the *initiator office* for incorporation. If there is complete consensus, the second draft or so-called *ministerial draft* is ready for coordination with outside agencies. Then, the same process is followed, this time for the third draft. *Bylaw-2006* calls for a 30-day deadline for provision of views, inputs or for raising objections to the ministerial draft. This is too close for a meaningful study of the draft especially if it is about regulating a contentious and/or complicated area with political, social, economic and other ramifications requiring multi-disciplinary approach and cooperation with external agencies—including civil society.<sup>135</sup>

If there isn’t any major divergence of views between the agencies involved, then, the fourth and the final draft at ministry level is ready for forwarding to the Office of the Prime Minister. If there are irreconcilable differences at any stage, they are first attempted to be solved through meetings; failing this, Minister(s) would have the final say. In such cases, the draft sent to Prime Minister’s Office would explain the points of differences and detailed background information on them. This—ministerial—stage, if ‘permitted’ by the political elite, is dominated by bureaucracy.<sup>136</sup>

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<sup>135</sup> *Bylaw-2006*, Art. 7. It is of course possible to extend the deadline, but, in practice, this is rarely done.

<sup>136</sup> One related aspect of ‘Turkish’ style *legislation* process is the systematic attempts made by *bureaucracy* to ‘incorporate’ provisions that would improve their social rights and increase salaries of civil servants. This can be done in such imaginative ways that even the minister himself may not be aware of it before it comes to *implementation*. In other times, a very unique relationship, reflecting the ‘critical’ psychological interaction between *minister the politician* and the *corps of civil servants*, may come into play: “If bureaucracy wants to avoid responsibility, then, includes an article in the draft law in order to *pass the bug* to politicians and the government stands behind that, brings it (to the Parliament). [...] Because the bureaucracy is scared, and in case something comes up, wants the minister is held responsible. And, the Minister, despite much criticism and objections, says; ‘Well, so

The same draft, at the time of its forwarding, is supposed to be posted in the web-site of the ministry—if it ‘concerns the public’. This, usually, is the first opportunity when civil society organisations as well as the general public be informed and can initiate action or attempt to provide inputs. The views of civil society organisations ‘may’ be sought by the OPR even before. But, if this ever happens, most of the time it is at a very late stage. The Bylaw-2006 describes coordination of the draft bill with ministries and other state institutions as ‘obligatory’; but, ‘it is possible’ to benefit from the views of ‘civil society organisations’ whereas ‘drafts that may be of interest to the public may be shared with the public through internet or the media’. So, coordination with civil society is simply discretionary.<sup>137</sup>

In addition to common problems of language and the lack of coordination, there are two main problems, confronted at the level of ministries: first, describing the actual need in the area intended to regulate by the *law* in hand, based on concrete data and other factors having an influence on, and secondly, inability to gather a multidisciplinary team that would be providing the needed expertise in a plethora of areas—legal, political, sociology etc.

Actually there are no specific—neither legal, nor administrative—obstacles to; first, deciding who and which organisations can positively contribute to developing a *good* text—that is, a verbal formulation which best reflects the expressed aims and intentions of the policy decision—for the bill, and secondly, maintaining a smooth, meaningful and productive

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be it, if the bureaucracy has prepared it that way let’s legislate it this way!’.” (Neziroglu & Bakirci 2011: 205).

<sup>137</sup> Bylaw-2006, Art. 6 - (1) Before drafts are forwarded to the Office of the Prime Minister, views of the ministries involved and those of other state institutions and organisations are taken (into consideration). [...] taking their views are compulsory. (2) The views of local administrations, universities, trade unions, professional organisations and civil society institutions, on the drafts, are also benefitted from. (3) Those drafts which are of interest to the general public, before being forwarded to the Office of the Prime Minister, may be shared with the public by the ministry of primary responsibility, via internet, media and information channels.

working relationship with ‘them’. These include civil society—think-tanks, other organisations, professional bodies, unions etc. However, in practice, this doesn’t happen—mainly for political *and* cultural reasons. *Bureaucratic politics* is one way, to explain this awkward situation, at least partly, but is not enough.

‘Parochialism’ is common in bureaucracy and all ‘parties’ to a draft legislation adopt personal, institutional, political, even ideological standpoints. There is very little intra and/or inter-ministerial coordination.<sup>138</sup> When it happens it is mostly for *window dressing*, generally too late and/or in a haphazard way. Views of others—as well as the requirements of the Bylaw-2006, are simply ignored. It is ironic that, often, even the advice of in-house advisors is not sought. The views/inputs are not made available in a timely manner for the OPR; when available, most of the time they are not worthy of consideration with no real added-value. This is not always because the providers are not competent enough. Since they know that their views/inputs are not taken seriously nor valued, they are not prepared for ‘wasting’ time in drafting inputs. This common behaviour has been institutionalised and creates a vicious circle extremely difficult to break. As a result, draft texts are prepared by a small circle of functionaries. This attitude is reinforced by a wide-spread prejudice regarding the ‘role’ of civil society as ‘trouble-makers’.

There is an almost *religiously* observed tendency for *ever-faster* legislative process; a constant urge to rush things and to produce as much legislation as possible in an ever-shorter period of time. This constant *race against time*, as a cultural ‘defect’, dominates the institutional culture in ministries—as elsewhere in the system—and does not allow quality work, resulting in a preference for *quantity* over *quality*.

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<sup>138</sup> An opposition Deputy gives a telling example: “[...] draft comes to the Parliament, bearing the signature of the ministry [*sic*] under it, representatives of the organisation [*sic*] come to the Commission, none of them is aware of the draft. It is bearing signatures of the whole Cabinet. The Commission forwards it to a sub-commission, drafting is restarted from scratch.” E. Haluk Ayhan, MP, MHP. (Neziroglu & Bakirci 2011: 210).

Given the rapid rate of turnover of the key personnel, hardly a case file is started, worked through and finalised by the same staff. Such discontinuity has proven counter-productive in terms of dedication, motivation and ownership of the projects. Although the need for a “professional, independent, accountable, transparent and merit-based civil service” and “a lack of consultation by civil service of relevant stakeholders in the preparation of policies and legislation” repeatedly included in EU progress reports<sup>139</sup>, these are yet to be materialized. Because of incomplete and sometimes contradictory work of poor quality, legislation is often amended in a piece-meal fashion, hastily and sometimes even before it goes into effect.

To make things worse, the lack of legislative systematization, disorderly, even messy, casuistic nature of the Turkish law and legal system with no ‘norm laws’ makes dealing with any draft, regulating an area or amending an already existing law a difficult and, for most of the time, a risky business which needs to be handled swiftly and with as less interference and ‘intrusion’ as possible.

Regulatory Impact Assessments (RIA)<sup>140</sup> which are required by the relevant circular are seldom prepared. This is mainly due to the attitude of

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<sup>139</sup> “[...] efforts are needed, in particular on the modernisation of civil service. Reducing red tape and promoting administrative simplification, as well as further developing a professional, independent, accountable, transparent and merit-based civil service remain priorities” (EC 2009: 9). “[...] no progress has been made on reforming the civil service system [...] to develop regulatory impact assessments (RIA) [...]”. Also, there is a lack of consultation by civil service of relevant stakeholders in the preparation of policies and legislation. Enforcement of common standards and uniform implementation of the rules across the civil service remain to be achieved” (EC 2010: 10). “[...] the comprehensive civil service reform required to modernise human resources management has yet to materialise” (EC 2011: 11).

<sup>140</sup> Regulatory Impact Assessment (*Düzenleyici Etki Analizi*): In the case of bills with “major revenue or expenditure implications”, RIAs are required by the Government Circulation on Regulatory Impact Assessment, dated 3 April 2007. It sheds light on the economic and social impacts of proposed legislation and its administrative feasibility and implementability. RIA is time-consuming, but nevertheless not binding. They help

bureaucracy which can be called ‘risk-avoidance syndrome’. Risk avoidance in ministries—and in state bureaucracy in general—takes the forms of avoiding detailed rationale for draft legislation on the one hand, but also including even routine bureaucratic actions in laws on the other—mainly for the purpose of shifting full responsibility to politicians. This syndrome sometimes in the form of ‘protecting’ information—refraining from sharing it—even from the minister himself, not only complicates the drafting process, but also makes participation by civil society ‘potentially’ cumbersome.

Risk avoidance, in order to avoid political controversy, may also prevent preparation of fully-developed drafts. Because politically-correct or the most-preferred option is not always ‘technically’ the best option. Anticipating the expectations at the next stage—Office of the Prime Minister—bureaucracy at the ministry stops at a politically-safe step. The coordinated final draft which is forwarded to the former is actually a rough draft far from being a perfect text. This tantamounts to applying self-censorship and leaving the real ‘ministerial’ work to the Office of the Prime Minister. One senior bureaucrat, Mustafa Dogan, Deputy Director, Acts and Resolutions, Prime Minister’s Office, attests; “[...] institutions (ministries) want to muddle through quickly. To that end, they even do not bother getting views of other institutions involved, but forward them (draft bills) to the Office of the Prime Minister directly” (Neziroglu & Bakirci 2011: 91).

One end result of this state of affairs at the level of ministries is reflected in the way rationales—both for the body of ‘law’ in general and for separate articles—are formulated and forwarded along with the texts. Rationales are important not only for later debates in Parliamentary committees and in the

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decision-makers in assessing potential impacts of the legislation, if and when implemented. The capacities in the ministries to carry out such assessments are in the process of being developed. Even when they are carried out, they are not made available to the TGNA—and to civil society, so that both can scrutinize legislation and question the rationales expressed in support of the bills. Circular for ‘Regulatory Impact Analysis’, 3 April 2007, published by the Office of the Prime Minister. 05 January 2013.  
[http://mevzuat.meb.gov.tr/html/26492\\_1.html](http://mevzuat.meb.gov.tr/html/26492_1.html).

Plenary, but also for implementation as they explain the original purpose and intention of the legislation. They are supposed to explain why the proposal was brought into discussion, what benefits or other results are aimed in introducing, amending or eliminating a particular regulation. This rarely happens and most of the time the rationales are either simply the repetition of the law texts themselves or legal/political rhetoric hardly related to a specific area of regulation.<sup>141</sup> Not only is this not demanded—nor criticised, by most politicians, bureaucrats intentionally avoid providing explicit rationales.<sup>142</sup>

Against all odds, if civil society does find the opportunity to participate in the process for preparation of policies and legislation, then the problem of *quality of participation* is confronted. No matter who or which civil society organisation participates, so-called ‘human resources’ that would evaluate and work upon the ideas, recommendations or proposals offered by the civil society for solutions or improvements, at technical level, are generally not available. When the state apparatus—bureaucracy and the Government—turn more open to participation by the civil society, this is in the form of expanding rather than deepening the participation. It is superficial, more concerned with the ‘appearance’ rather than the substance.

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<sup>141</sup> For example, one of the proposed articles—Art. 31—in the Third Judicial Package, read: “[...] the statement of ‘twenty years’ has been amended as ‘eleven years’”. And the *rationale* offered by the government just simply repeated—in a *poorly* formulated language—the amendment itself: “[...] the condition [*sic*] of having served in public service for twenty years, for those who would be selected to membership in the Council of State, is to be reduced to eleven years”. See; the Government Bill dated 30 January 2012 “*Yargi Hizmetlerinin Etkinlestirilmesi Amaciyla Bazi Kanunlarda Degisiklik Yapilmasi ve Basin Yoluyla Islenen Suclara Iliskin Dava ve Cezaların Ertelenmesi Hakkında Kanun Tasarisi*”. 05 January 2013. <http://www2.tbmm.gov.tr/d24/1/1-0565.pdf>.

<sup>142</sup> M. Akif Hamzaçebi, MP, Vice-Chair for CHP Parliamentary Caucus: “[...] in the ministry of [...] [we] were preparing a draft law and one colleague said: ‘Let’s not write the rationale that detailed; each detailed rationale would come back to us as questions in the Parliament.’” (Neziroglu & Bakirci 2011: 205).

Deputies can prepare ‘draft laws’ themselves, direct their advisors to formulate a law text<sup>143</sup> or can get assistance from staffers in the Bureau of Research and Analysis<sup>144</sup> of the Acts and Resolutions in the General Secretariat—once they indicate the subject, substance and aim(s) and purpose(s) of the regulation they want.<sup>145</sup>

However, as individual MPs are required to clear their law proposals with the Party Group first and get them stamped, their work—including, particularly, relations with civil society—is subject to scrutiny. They are not ‘encouraged’ to enter into any type of open ‘partnership’ with civil society and/or benefit, for instance, from their publications.<sup>146</sup> Therefore, although political parties and their Parliamentary groups have ample opportunities to benefit from civil society—and academic—input for their own legislative work and to cooperate with both think-tanks and advocacy groups in the Parliament—in Committees and the Plenary—this only happens in a sporadic fashion, if it ever happens.

One other vitally important defect in political parties is that there is no formal structure in party groups to mirror the Parliamentary Committee structure. So, even if civil society is willing to approach political parties for

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<sup>143</sup> See ‘The Rules of Service Contract for Employing Advisors for Members of Parliament’ (*tr.* Milletvekili Danismani Calistirilmasi Hakkinda Hizmet Sözlesmesi Esaslari), Art. 1, 5. 05 January 2013. <http://www.tbmm.gov.tr/genser/e2.html>.

<sup>144</sup> Arastirma ve Inceleme Bürosu. *tr.*

<sup>145</sup> TGNA Bylaw for Legislative Staffers (*tr.* TBMM Yasama Uzmanligi Yönetmeliği). Dated 13 December 2006, amended on 19 August 2010. Art. 30, (2), b) - “Preparing law proposals as outlined by members of parliament and assisting them by reviewing already prepared draft law proposals for correctness in terms of legislative techniques”. 05 January 2013. <http://www.tbmm.gov.tr/genser/m36.html>.

<sup>146</sup> Throughout the entire research process, not a single example of any reference to any civil society work or publication, in any proposal of law or government bill, has come across. Only once, one MP acknowledged one single publication and he even had the copy with him to ‘display’. And this was during an interview which was conducted after three long telephone conversations with advisors and the MP himself in advance—necessarily explaining the subject and the purpose of the research in length—thereby compromising the context and creating an unavoidable bias.

cooperation on a specific legislation, they are faced with the difficulty of finding a proper, regular contact or an institutionalised expertise.<sup>147</sup>

Similar to ministries, there is very little evidence that political parties—governing and opposition alike—are yet prepared to accept civil society as a legitimate partner—let alone an actor—in policy-making and legislation, particularly in policy areas related to ‘politics’. It is considered power-sharing in the party ‘leadership’ and a challenge to their freedom of action.<sup>148</sup> This attitude is a reflection of the dominant *zero-sum* culture in Turkish politics. An alternative culture of *cooperation* and *conciliation* does not take hold.

The Office of the Prime Minister represents the nerve centre of the Turkish political decision-making system. Since the draft bills prepared by the ministries are put into their final form here and forwarded to the Office of the Speaker for debate in the Parliamentary Committees before the Plenary, its authority is ultimate. The same goes for the proposals of law prepared by individual MPs—to include those of opposition parties. Because Prime Minister’s Office—relying on the governing party’s majority in the Parliament—not only directs work in Parliamentary Committees, but also provides and defends the view of the Government—along with the ‘bureaucracy’ representing the Ministry—in committees.

Also, as discussed above, because of the existence of the general trend for ‘risk avoidance’ at ministries, Prime Minister’s Office operates like a ministry and technical details of government bills are developed and

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<sup>147</sup> “The capacity of party groups to prepare effectively for committee work is limited; none of the party groups has a formal structure to complement or mirror the standing committee structure” (SIGMA: 22).

<sup>148</sup> This observation is confirmed by Carkoglu (2003), among others: “A small ruling elite (within the Turkish party system) that keeps any opposition, together with any civil society influence, out of their parties, dominates the Turkish parties. Hence, it is not surprising that civil society preferences for EU membership has failed to penetrate the parties and thus pressure the party organisations and their leaders to reformulate their positions in support of the EU membership” (189).

incorporated into the draft text here. Yet, this box is also closed to civil society participation.

Sometimes the Government itself, intentionally opts for using the Prime Minister's Office performing ministerial functions to avoid 'premature' public scrutiny and civil society's involvement, and for muzzling—at least limiting—political opposition to a government bill. For example, the government bill for the so-called 'Greater Municipality Law'<sup>149</sup>, a major regulation of 81 pages, involving thousands of cities, towns and smaller villages with millions of inhabitants, was handled by the Office, *not* the Ministry of Interior. It was drafted in the Prime Minister's Office behind closed doors, came to the Parliament on 8 October 2012, introduced as a 'norm law' and rushed through the Committee for Internal Affairs.<sup>150</sup> It became law on 12 November 2012, in about a month, in a passionate Plenary session which occasionally turned violent, even witnessed punching and fighting between the MPs.<sup>151</sup>

In the Office of the Prime Minister, Laws and Decrees Department is the OPR for processing the drafts.<sup>152</sup> Here drafts are reviewed for their conformity with the Constitution, other laws, general legal principles, government programmes, development programmes and more importantly, *if* they are in line with other—relevant—laws<sup>153</sup>. However, the main focus

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<sup>149</sup> See; The Committee for Internal Affairs Report, 31 October 2012, pp. 6-11. 16 February 2013. <http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss338.pdf>.

<sup>150</sup> The Chairman initiated the debate in the Committee immediately after the forty-eighth hour which was required by the Rules of Procedure despite the fact that the Committee members had seen this draft text of a major bill for the first time and hardly had time even to read it.

<sup>151</sup> 'Büyükşehir Yasası yumruklarla geçti', 12 November 2012. Hürriyet. 16 February 2013. <http://www.hurriyet.com.tr/gundem/21904224.asp>.

<sup>152</sup> See; Law No. 3056, 'The Organisation of the Office of the Prime Minister', Art. 2, 8.

<sup>153</sup> There are no norm laws *per se* in the Turkish legal system. However, some laws are called 'basic laws' and some other laws regulating the same area are supposed to conform to the former. However, there is no legal hierarchy or precedence between a law called 'basic' and another which is not called so. This turns into a kind of *hen or egg* problem and

of attention, at this level, is on the political aspects of the draft, rather than the ‘technical’ ones—which are supposed to have been tackled with at the level of ministries long before arriving at Prime Minister’s ‘desk’.

Then, a text is to be prepared for the Cabinet meeting. But, before that, views/inputs of other ministries are obtained, if not done before—and most of the time they *happen to be* absent. Sensitive items are dealt with through meetings, because bureaucrats are less than eager to raise personal or institutional views in ‘written’ form. But they are more prepared to voice their own or their ministry’s views in meetings, especially when no *minutes* are prepared and no notes taken. If there is not enough time for such meetings and/or written communication, given the constant air of ‘urgency’, less-than-perfect drafts can be forwarded to the Cabinet. Sometimes even the cabinet minister, whose ministry initiated the draft in the first place, can object to certain aspects of the text. Once endorsed, the *bill* is undersigned by the Cabinet as a whole and forwarded to the Office of the Speaker for legislative enactment.

If it is a ‘draft law’ prepared by a Deputy or a group of Deputies, then one of the ministries is designated as the ‘coordinating’ agency by the Office of the Prime Minister and a similar procedure is followed for preparing the government’s view on the subject ‘proposal’.

Once forwarded to the Speaker, *bills* are posted in the web-site of the Office of the Prime Minister.<sup>154</sup> If ‘civil society’ was not involved before, this may be *the first time* they can be aware of the existence of a legislative initiative.

### **3.3.1. Parliamentary committees**

The Constitution<sup>155</sup> and the Rules of Procedure of the Turkish Grand National Assembly<sup>156</sup> describe the duties and powers regarding the

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creates an endless—and probably hopeless—search for conformity because actually there are ‘no’ norms to turn or look to.

<sup>154</sup> See; website of the Office of the Prime Minister. 05 January 2013.

<http://www.basbakanlik.gov.tr/Forms/pDraftOfBill.aspx>.

<sup>155</sup> See; the Constitution, Art. 87, 88.

legislative process. The responsibility of the Speaker's office is 'purely' *technical* in nature. Even bills or draft laws which may be considered clearly in contravention of the Constitution—or do not meet formal-legal requirements—cannot possibly be returned to the *originator* or action can be refused by the Office of the Speaker, but just forwarded to the relevant Parliamentary committee(s) with a letter and supporting forms reflecting the *technical* and *legal* evaluations done by the staffers in the Acts and Resolutions Department<sup>157</sup>. The designation of the *primary committee* and the *secondary committee(s)* and forwarding action is done by the Speaker himself/herself, personally.<sup>158</sup> Because committees cannot deal with the 'work' which has not been forwarded to them—i.e. the work that they have not been tasked with—this is a very critical and politically sensitive action. As a result, once forwarded, primary committee has the 'ownership' of the draft—either a government bill or a proposal of law—with all associated tasks, responsibilities and prerogatives—with complete authority.

Committees work as the 'kitchen' of the parliamentary *business*. There are, at present, 17 standing committees in the TGNA, the membership of which ranges from sixteen to forty deputies.<sup>159</sup> They are primarily engaged in the scrutiny of draft legislation—bills, and to a lesser extent, proposals of

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<sup>156</sup> See; Rules of Procedure of the TGNA, Part 4, 'Making Laws'. Art. 73 - 'Bills prepared by the government, signed by all ministers, with rationale, are forwarded to the Office of the Speaker of the Parliament'. Art. 74 - 'Draft laws, prepared by the members of parliament, with rationale, are also presented to the Office of the Speaker. Proposals shall bear the signature of one or more MPs'.

<sup>157</sup> TGNA By-Law for Legislative Staffers, Art. 30 - 'By examining bills and draft laws as well as decrees for their conformity with the Constitution, the Rules of Procedure, general legal principles, legislative techniques and language of the Constitution; to prepare observations and suggestions in written form'.

<sup>158</sup> The committee whose report will be taken as the basis for debate in the Plenary session of the Parliament is the *primary* committee. The committee which provides views, on relevant articles or aspects of the 'work', to the main committee is called *secondary* committee. See; Rules of Procedure, Art. 23.

<sup>159</sup> See; TGNA website. 05 January 2013.

<http://www.tbmm.gov.tr/develop/owa/komisyon.liste>.

law. There is a considerable imbalance in the workload of committees and they vary widely.<sup>160</sup>

In committees, consideration may begin at least 48 hours after the draft legislation has been received. Committees are invited to meetings by their chairs. The invitation—and the agenda—is distributed to members of the committee, to the Prime Minister’s Office, to relevant ministries, parliamentary groups of political parties, to other committees with related ‘work’, and to the first Deputy who has signed the *draft law*; it is also posted on the Bulletin Board<sup>161</sup> (*Ilan Tahtasi*), at least two days before the planned date of the meeting, unless there is an urgent need. The Primary Committee is required to conclude its deliberations within 45 days, while the Secondary Committees, by the Rules of Procedure, are given only 10 days. These deadlines are rarely met; as a matter of fact, *other* considerations generally overtake, and while the work on a particular bill can be finalised *at speed of light*, another may take *ages*. As a result, in practice, such restrictions and control measures—over the capricious or arbitrary use of time by Committee chairs—are ignored and debates in committees may take place on the same day the subject appears in the agenda.

In the case of Secondary Committees, sometimes they may not even find time or a suitable time slot to draft their own agendas to discuss the subject in hand because a decision has already been reached and a report has been prepared by the Primary Committee. This is especially the case when *draft*

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<sup>160</sup> During the 23rd Term; the Committee on the Constitution received 65 drafts (out of which 30 reports were produced); the National Defence Committee received 47 drafts (out of which 36 reports were produced); the Justice Committee received 163 drafts (out of which 52 reports were prepared); the Internal Affairs Committee received 123 drafts (out of which 24 reports were prepared); the Foreign Affairs Committee received 509 drafts (out of which **403** reports were produced); and the Committee on National Education, Culture, Youth and Sports received 110 drafts (out of which 39 reports were produced). The Foreign Affairs Committee’s performance is impressive and does deserve closer examination. See; TGNA 23rd Term Report, pp. 14-20.

<sup>161</sup> For ‘Bulletin Board’, see; the Rules of Procedure, Art. 26.

*bills or proposals of law* are initiated by the Government or by the governing party Deputies. The inevitable result of this situation is that there is hardly enough time for member Deputies, to read the texts, let alone for getting prepared for debate, doing research, reading and debating reports from Secondary Committees—perhaps, establishing sub-committees for a more detailed investigation and evaluation of the subject—listening to experts from ministries, raising questions, and involving civil society<sup>162</sup>, if they can even be aware of the drafts suddenly introduced into committee agendas.

Meetings of committees are open to Deputies, members of the Cabinet and to ‘representatives’ of the government. They are also open to the media in principle. But, generally televisions are allowed filming at the opening of meetings, then, only reporters are allowed inside the meeting rooms, during the debates. This is, no doubt, as explained below, an extremely valuable opportunity for civil society, if properly used. Committees—i.e. *chairs*, in practice—can restrict or ban altogether any attendance or lift any restriction or hold ‘closed’ meetings.<sup>163</sup> The Committees are supposed to intensively debate the drafts and proposals which they receive, amend them if and as necessary, and once fully developed, forward them to the Plenary for final debate and legislative voting. However, despite these logical aims and purposes, in practice, some drafts—actually many of them—may not always be fully developed, and incomplete texts may find their way into the Plenary session of the Parliament.<sup>164</sup>

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<sup>162</sup> Rules of Procedure actually authorizes committee chairmen to invite experts and offer them the floor when they deem necessary. See; Art. 29, 30.

<sup>163</sup> *Closed* meetings are open to committee members and to the Cabinet ministers only. See; Rules of Procedure, Art. 32.

<sup>164</sup> The way parliamentary commissions work, in practice, has been heavily criticised in the Peer Review Report. “**Parliamentary oversight and control** of the Government is weak. [...] The key problem lies [...] in the **committee system**, which is characterised by very limited oversight and scrutiny role of committees, uneven committee workloads, weak intercommittee relationships and inadequate expert and administrative support for

The way parliamentary committees are governed has a vital effect on the participation of civil society in policy-making and legislation. Committees, *customarily*, are run by a ‘board’ of four individuals: chairperson, vice-chair, speaker and reporter/secretary. However, *Rules of Procedure* mentions of chairperson only and tasks him/her with “preparing the agenda of the committee, calling meetings, deciding those who will be invited to the meetings, and running meetings of the Committee”.<sup>165</sup> Since the majority of the committee members are from the governing party, ‘chairperson’ is always elected—by simple majority secret voting—from the same party.<sup>166</sup> Other members, effectively, has no say whatsoever in running the committee or deciding the agenda of the committee.<sup>167</sup> The chairman, arguably, maintains close *consultation* with the whips of the governing party, not only for drawing up the agenda but also running the meetings in line with the Government’s political ‘game plan’.

Committee chairmen—necessarily from the majority party—working in ‘harmony’ with the Government, are just a fact of life in parliamentary systems. However this fact, as in elsewhere, comes with its flaws also in Turkey. First of all, neither the government-initiated bills, nor draft laws proposed by the Deputies, i.e. party groups, are not signalled early on and, in the current Rules of Procedure, there are no rules, that would force action otherwise, Therefore, planning ahead for the Committee agenda is difficult. Once this can be done at all, keeping it intact, for a reasonable period of

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committees. Information extracted from the government is often not followed up.” (SIGMA 2010: iii-iv).

<sup>165</sup> See; Rules of Procedure, Art. 26, 27.

<sup>166</sup> The two exceptions to this general ‘rule’ are the Committee for Monitoring Human Rights and the EU Affairs (formerly Harmonisation) Committee where there are two vice-chairs, one of which is held by the main opposition party members.

<sup>167</sup> This aspect has also been criticised by the Peer Review Report: “There is a sharp divide between the governing and opposition parties that permeates nearly all of parliament’s activities. For example, all committee chairmanships go to the governing party and the same principle applies if subcommittees are formed. The governing party [...] controls plenary and committees’ agenda and priority is given to government business. Political or policy initiatives that cut across this divide are very rare” (SIGMA 2010: 6).

time, is even more difficult because there are always last minute interventions and, again, there is no rule in the Rules of Procedure that would prevent that. To make the Committee work more unpredictable, amendments need not be tabled prior to meetings. As a result, with precarious agendas—sometimes coming out of the blue, and with a number of amendments that can be introduced at any minute in the course of discussions—sometimes immediately before a voting on a specific article, it is difficult, if not impossible, for the Deputies—majority party *and* opposition alike—to get prepared for Committee work on a specific legislation.

In theory, Committees enjoy extensive powers for amending the proposed legislation—either bills or draft laws; but, in practice, these ‘powers’ are rarely exercised for amending government-initiated bills. Even making purely *technical* changes or *grammatical* corrections, let alone changes with political results—unless such amendments are ‘directed’ by the government itself—is a challenge.<sup>168</sup> However, “legislative proposals by Deputies from the opposition parties are routinely voted down in committees and not much time is spent debating them. Such proposals are typically rejected in their entirety rather than amended” (SIGMA 2010: 11) criticised Peer Review Report.

Committees are actually ‘political’ platforms where political debates, rather than technical, logical, result-oriented deliberations, dominate. While governing party Deputies consider defending government-initiated bills a *mission* for which they have to fight to the *last drop of their blood*, opposition Deputies are more than prepared to challenge them at any cost, ‘whatever it takes’. They are certainly not ideal fora where civil society can provide technical information and expertise, inform member Deputies and

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<sup>168</sup> M. Akif Hamzaçebi, MP, Vice-Chair for CHP Parliamentary Caucus: “I gave an example and said; ‘Mr. Minister, honourable members of the Committee, look, if you put this semi-colon here, [...]—or any other author, can only be covered by insurance if he/she writes on his/her own name.’ [...] Semi-colon was removed, of course, but when I left for another meeting, Mr. Minister (I was later told) voiced a criticism: ‘Hey you, you became occupied with full-stops and commas’.” (Neziroglu & Bakirci 2011: 207)

answer their questions who are willing to improve the legislative texts. There is, in principle, no such demand on the part of the Deputies, neither of the governing nor opposition parties. Furthermore, this ‘challenge’ and ‘defence’ spirit or psyche can take such extreme degrees that, occasionally Committee meetings witness physical attempts to pass bills or draft laws based on, virtually, numerical superiority of ‘foot soldiers’, i.e. deputies exerting brute force.<sup>169</sup>

One may wonder if it is not possible to overcome such hurdles and move the Committee work beyond a purely political—and meaningless—ritual, receiving technical/expert support from the General Secretariat and support from party groups, involving the media, interest groups, general public and the civil society—domestic and international? The answer, under the current circumstances, is ‘not impossible’, but very close to it..

First of all, as discussed before, turnover rates in the TGNA are extremely high. The latest Parliamentary elections, on 12 June 2011, also led to a major renewal of parliament with 349 first-time Deputies (64% of the total). However, despite clear and vital need, there is no realistic and practical system to prepare novice Deputies for the Parliamentary ‘business’, to familiarise them with parliamentary organisation and procedures, nor any other framework for a structured provision of information. The possibility of an orientation course for start-up and for an initial exchange of experiences, to be followed, later, by refreshment sessions in the form of a ‘political academy’ within either political parties or the Parliament itself or a combination of both, sounds like a relevant, even

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<sup>169</sup> On 11 March 2012, the debate on the contentious so-called “4+4+4 law” in the Committee on Education, Youth, Culture and Sports turned violent. It introduced major changes into the national education system which were opposed by the opposition parties. The first six articles of the draft took six days to ‘debate’. But once the Committee meeting room was occupied by more than a hundred governing party deputies, the ‘debate’ on the remaining 19 articles took only half an hour and the bill was ‘duly’ endorsed by the Committee. “‘4+4+4’ büyük kavgayla komisyondan gecti”. 11 March 2012. Milliyet. 05 January 2013. <http://siyaset.milliyet.com.tr/-4-4-4-buyuk-kavgayla-komisyon-dan-gecti/siyaset/siyasetdetay/11.03.2012/1514018/default.htm>.

logical suggestion. But this does not happen. The fact that neither the Parliament/Office of the Speaker, nor the parties or party groups are very much inclined to train and better prepare their Deputies for parliamentary functions and tasks, as explained below, is related to the essential features of the Turkish political system as a whole and the associated dominant political culture in Turkey. As a result, as exemplified elsewhere in this study, there is very little specialisation among Deputies—hence ineffective participation in both committee and the plenary work.

Individual advisors—supporting Deputies, may be coming from different sources: moved from another department of the Parliament, i.e. already worked there in another capacity, hence relatively better experienced for the job; on secondment from other branches of the state administration—which is a plus, or are employed on a contractual basis. Most of them are directly recruited by the Parliament, but others are on long-term secondment and once they move into Parliament, they receive a *parliamentary supplement* of approximately 35%. However, as has been already discussed, they are mostly oriented towards *constituency* business, a hard fact of life in Turkish political parties.<sup>170</sup> With few exceptions, there are no constituency offices for individual Deputies, and constituents often travel all the way to Ankara—the capital. This not only creates a major logistical burden for the

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<sup>170</sup> Until recently, each Deputy was entitled to an advisor and a secretary. The secretaries were all civil servants employed by the Parliament. From December 2011 on—effective on 15 January 2012, all personnel directly supporting Deputies were started to be called ‘advisors’ and were paid based on a similar status. So there are no ‘secretaries’ *per se* any longer. But all ‘advisors’ keep coming from a variety of sources, and are of varied status. (It is possible to employ an ‘additional’ personnel as well—e.g. driver—but not as an advisor.) See; Law No. 6253, Law on the Administrative Organisation of the TGNA, adopted on 1 December 2011. Official Gazette, 18 December 2011, No. 28146. 05 January 2013. <http://www.tbmm.gov.tr/genser/6253.pdf>.

General Secretariat<sup>171</sup>, but also a strain on the limited time of the Deputy—and his/her *advisors*, and, reportedly, on their purse, for many of them.

Expert support provided to Committees by the General Secretariat is aimed at Committees as a whole, rather than being reserved for individual Deputies. Yet, both interviews and observations clearly indicate to the fact that each and every request from the Deputies is taken very seriously by staffers and they try their best to meet demands. However, it should be noted that as far as legislative business is concerned this is basically restricted to clerical support, e. g. typing texts, incorporating amendments, making corrections, and has nothing to do with the *substance* of the legislation, which is under strict control of the ‘chairman’. After all, chairmen are primary POCs for the parliamentary staff—legislative experts and supporting staff—serving the committee. Besides, not all Deputies have the opportunity to become a committee member and enjoy support from ‘staffers’—in addition to his/her own advisors. Anyhow, expert and administrative support for committees is very limited, with only one or two legislative experts serving for each committee, in a very limited physical space, sometimes—in the case of the Justice Committee, for example—each expert, practically sharing respective ‘corners’ of already too small committee meeting room, as their ‘offices’, permanently.

As for the parliamentary groups of political parties; the number of expert and supporting staff working for these groups and the physical and technical infrastructure available to them are also very limited. There is a chronic disconnect between the party groups and individual Deputies. This is true, surprisingly, also for those Deputies serving in the Parliamentary committees. As a result, it is no wonder why SIGMA Report (2010) found committees’ ability, in the TGNA, “quite restricted”:

Bottlenecks in the timely provision of expert and administrative support, coupled with a high volume of bills, tight deadlines and limited

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<sup>171</sup> The number of visitors to TGNA in the 23rd Term, was 2.184.277, more than 500.000 annually—on average, 3.500 visitors to Deputies daily. See; TGNA 23rd Term Report, pp. 101-103.

incentives for Deputies to allocate individual time to legislative scrutiny, mean that committees' ability to probe and, where necessary, challenge the rationale and substance of government bills is quite restricted. (8)

Secondary committees provide inputs and views on parts of the 'work' in the agenda of the primary committee, relevant to their own area of specialisation; for example, a draft bill could be dealt with by the Justice Committee—as the primary committee—and also in committees of the Plan and Budget and the Committee on the Constitution—as secondary committees. Secondary committees are supposed to provide views on certain aspects or on certain articles of a draft or proposal, as indicated by the Speaker when the bill or draft law is first sent to the committee.<sup>172</sup> However, this specification is seldom done and secondary committees use discretion in selecting which aspects or what articles are in their area of interest and make their own decisions accordingly.

In practice, the general perception of 'secondary' committees—practically all committees when they are designated *secondary* by the Speaker—is that their views are not regarded seriously and their work, if they produce any work, is wasted. As a result they may choose not to debate the 'work' which they are *tasked for* as secondary committee. There are committees—actually most of them—which have not included *any* 'secondary' work in their agendas. When government bills or draft laws are supposed to be considered in both committees (sometimes in more than one secondary committee), the latter simply ignores the tasking or provides an evasive, sketchy or perfunctory response for a 'view', the best. Under such circumstances, while even opposition MPs are impotent to make any difference or open a debate, let alone enforcing amendments<sup>173</sup>, there is very

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<sup>172</sup> See; Rules of Procedure, Art. 23.

<sup>173</sup> During the debates on the Greater Municipality Law in the Committee of Internal Affairs members of the opposition parties introduced more than a hundred motions for amendments, all of which were rejected by majority votes. In order to help the procedure be completed in a 'timely' fashion, even the Committee for Planning and Budget, secondary committee as tasked by the Speaker—and whose report was required by the Rules of

little civil society can do to participate or to contribute to decision-making, law writing/drafting or legislation at later stages. The best that many of them do, most of the time, is to provide a short, general overview.<sup>174</sup>

On the other hand, Primary Committees, well aware of the very fact—since this is a phenomenon *common to all*—do not take the reports of Secondary Committees worth-considering, if they ever arrive, and even if they include valid contribution. Sometimes such reports, are not even distributed to the members of the Primary Committee. This situation creates yet another *vicious circle*—similar to that of in ministries. The absence of any obligation, on the part of the Primary Committees, for taking the reports of Secondary Committees into consideration has had a negative effect on this result.<sup>175</sup>

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Procedure—hastily provided a letter that “due to work-load they were unable to provide a view of the Committee”. See; The Committee for Internal Affairs Report, 31 October 2012, pp. 155-184. 16 February 2013. <http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss338.pdf>

<sup>174</sup> For example; government bill on Collective Labour Relations Act (Toplu Is Iliskileri Kanunu), came to the Parliament on 31 January 2012, forwarded to Committees on 7 February, received by the primary—Committee on Health, Family, Labor and Social Affairs, and secondary committees—and the EU Harmonisation and the Justice Committees on the 8th. The primary committee, included it in its agenda and debated the bill on 9 February and formed a sub-committee. The EU Harmonisation Committee debated the draft on 16 February and submitted its report on 22 February. However, the attempt by the opposition MPs to open a debate “at least on those articles related to the *EU harmonisation process*” was blocked by the majority who argued that theirs was a “secondary committee anyway”. The sub-committee met on 14, 15, 29 February and 1 March and submitted its report on 5 March which was debated in the primary committee on 7, 8, 13 March. The EU Harmonisation Committee report had nothing related to the EU accession process. The Justice Committee did not produce a report. The primary Committee submitted its report, based on sub-committee report, on 13 March 2012. See; Committee Report. 12 February 2013. <http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss197.pdf>.

<sup>175</sup> During the 23rd Term of the TGNA, in the course of four years, major committees—the Committee on the Constitution, the National Defence Committee, the Justice Committee, the Foreign Affairs Committee and the Committee on National Education, Culture, Youth and Sports have not prepared *even a single report* for the government bills or proposals of law which were referred to them by the Speaker, as secondary committees. The Internal

At the end, if simple majority of members attending the session—provided that it is *quorate*—supports and vote *for* the ‘draft/proposal’, the final text—and the Committee’s report explaining its rationale—is forwarded to the General Assembly. If it is not supported then a *rejection report* would be prepared and forwarded.

One prominent example that exposes the dominant *institutional culture* in committees—particularly in Secondary Committees—is the EU Harmonisation Committee. The establishment of a committee specifically responsible for relations with the European Union in the Parliament was proposed by a group of AKP Deputies<sup>176</sup> in 2003. The rationale in the draft law, argued that “Turkey was the only country among the EU’s 15 member and 13 candidate countries, without such a committee” and that “the establishment of such a committee for EU-related business only, similar to those in other candidate countries, would indicate the importance attached to the EU accession process by the Turkish Parliament”. The Committee would be tasked to “provide views on the compatibility of legislation with EU *acquis*; monitor all activities related to accession, including accession negotiations; prepare annual evaluation reports for the Parliament and the government; debate reports related to EU accession, prepared by the Turkish government and EU institutions; monitor developments in the EU and inform the Parliament accordingly; carry out all types of activities to create a favourable public opinion for the EU accession process”.

It was clear that there was a perfect understanding of the needs and requirements for the functions of this committee. However, it would ‘permanently’ be a Secondary Committee and would debate only those bills and draft laws referred to it by the Speaker as a secondary committee.

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Affairs Committee—as a secondary committee, prepared reports for only 3 legislative drafts—out of 227. See TGNA 23rd Term Report, pp. 14-20.

<sup>176</sup> Report of the Committee on the Constitution on the Proposal of Law prepared by Salih Kapusuz and 28 AKP Deputies for the establishment of the Committee on Relations with the European Union in the Parliament. No 2/102, dated 3 April 2003. 05 January 2013. <http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss111m.htm>.

This committee was established by Law No 4847<sup>177</sup>, for the purposes of; “monitoring the developments in the accession process; following EU policies and inform the Parliament; assessing the compliance of draft legislation with the *acquis*”. Art. 5 stipulated that “the annual reports prepared by the committee at the end of each legislative year, after being submitted to the Speaker’s Office, if suggested by the Board of Spokesmen, could be included in the Plenary agenda, read and a debate could be opened”, and these reports would be made available by the Speaker’s Office to the government and relevant ministries.<sup>178</sup> However, until the end of the 23rd Term—July 2007 to April 2011—this never happened and not a single ‘report’ was read, let alone a debate was opened in the Plenary.<sup>179</sup>

Even the government did not bother to inform the Committee regularly on developments relating to the accession negotiations and the accession strategy. SIGMA Report, in 2010, found Committee’s “role in following EU policies on behalf of the TGNA as a whole [...] largely perfunctory”; EU policy, “very much executive-dominated” and raised some major concerns about this situation:

Parliamentary structures and processes for handling EU-related business are insufficient to assess the compliance of draft legislation with the *acquis*; to monitor the developments in the accession process; to follow EU policies; to conduct relations with the EU institutions and

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<sup>177</sup> Law No. 4847, Law on the EU Harmonisation Committee, adopted on 15 April 2003. Official Gazette, 19 April 2003, No. 25084. 05 January 2013. <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4847.pdf>.

<sup>178</sup> Ibid, Art. 5.

<sup>179</sup> The *annual reports* prepared by the EU Harmonisation Committee are no more than a short summary of events and the list of visits, certainly a far cry from the original intention of the establishment of this committee. As a secondary committee, during the 23rd Term, it received 77 drafts—government bills and law proposals alike—and prepared reports for only 31 of them. 23 drafts were returned to Primary Committees, because they had already prepared their own reports, hence *no need* for an EU Harmonisation Committee *input*. 23 drafts were still ‘waiting’ at the end of the term. The Committee, except for the visits and attending conferences—mostly abroad—held 14 meetings only, less than four per year. See TGNA 23rd Term Report, pp. 37-41.

with the national Parliaments of member and candidate states; and, in particular, to effectively control the Government's EU-integration policy. (iv, 18)

Probably because of this criticism, the Law No 4847 was amended<sup>180</sup> in December 2011 and the committee took the name of the EU Affairs Committee. The two amended articles raised the status of the Committee to a 'standing committee', in terms of its functions and the procedures the Committee would follow. The new Art 5 requires the Committee "to listen to the member of the cabinet (that is the EU Minister) in preparing its reports". "The Bureau of the Assembly may include its reports in the Plenary agenda to be read and debated", that is, its role still remained 'largely perfunctory'. Throughout the first year of the 24th Term, from June 2011 to July 2012, the EU Affairs Committee had only eight meetings and prepared a total of eight reports as a Secondary Committee—out of 45 legislative texts referred to it by the Speaker. The 'long-expected' report "to inform the Parliament on the developments in the EU accession process" is yet to be prepared and debated.<sup>181</sup>

Legislative staffers (so-called 'experts') in committees are key for carrying out the committee business. However they are insufficient in numbers, training and most of the time physical working space. 'Perceived' discrimination due to personnel with different status performing same functions is not a positive force. High circulation of staffers between committees hardly allows specialisation. Yet, ironically staffers are most open to civil society and eager to facilitate participation, however they have no formal authority, nor resources or time.

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<sup>180</sup> Draft Law prepared by AKP MP Salih Kapsuz and 3 more Deputies (one from each opposition party, CHP, MHP, BDP) for amending Laws No 3067, 4847, 3686. 05 January 2013. <http://www.tbmm.gov.tr/d23/2/2-0900.pdf>.

<sup>181</sup> See; TGNA 24rd Term Report, 1. and 2. Years, p. 38. 6 January 2013. <http://www.tbmm.gov.tr/raporlar/FaaliyetRaporu.pdf>.

As for the functions of staffers, MPs' minds are quite confused.<sup>182</sup> Although they are called 'experts' (*tur. uzmanlar*), they are staffers, i.e. those responsible for doing the staff work for the committee—in practice for the Committee Chairman. They are not supposed to provide expert opinion in committees which should be done by representatives of respective ministries, those of the Office of the Prime Minister or the Government, experts from the civil society or academia—certainly not by 'staffers'.

However, staffers are closer to the sole decision-makers in committees—Chairmen—even closer than the governing party MPs in Committees. They share the same physical space, endure basic hardships of the committee work, for long working hours, sometimes until morning. They may even become personal friends, even like family members. Therefore, civil society would need to reach the 'staffers' as the best *conduit*.

Staffers are overwhelmed by the sheer bulk of the work, working continuously for long hours and have little chance for a leave or vacation. Endless expectations and demands by MPs—not only from committee members, but potentially from 'any' MP—make life extremely difficult and stressful for the staffers. Nevertheless they are invaluable assets for the civil society once and if they can be included in their networks.

Committee Chairmen fully control the Committee work—agenda, schedule, working hours, actions to be taken, civil society or academia to be invited etc. However even they are bound with the decisions already taken by the governing party leadership. There is virtually no example of a Committee Chairman adopting an attitude which is not fully yielding to the direction of the governing party leadership. This is widely accepted by MPs of all parties as a 'fact' of Parliamentary life and most of them even do not bother challenging it. Even the opposition MPs are simply disinterested in

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<sup>182</sup> Bekir Bozdog, MP, Vice-Chair for AKP Parliamentary Caucus: "Why isn't it more effective in committees? There isn't enough expertise in committees.. [...] But, what do we have there? Only those who know the requirements of the Rules of Procedure and providing advice in this sense. [...] It is important to have experts on rules and procedures, but also those knowledgeable on the substance of the business are also needed, not only one in each committee, many.." (Neziroglu & Bakirci 2011: 199).

and indifferent<sup>183</sup> towards the committee work due to what can cautiously be diagnosed as ‘learned helplessness’<sup>184</sup>. There is no desire nor possibility to establish an independent will, in committees, in spite of the Government.<sup>185</sup>

The forms and conditions under which civil society, affected interests, i.e. stake holders, and individual experts can present their views to Parliamentary committees, how these views can be capitalized on, reflected in committee reports and communicated to the Plenary otherwise, are not regulated in the Rules of Procedure. Besides, even if civil society can find the opportunity to express their views on legislative proposals, the current 45-day limitation for primary committees and 10-day limitation for secondary committees<sup>186</sup> do not usually allow them the time to consider these views in earnest.

One way of having an influence, at least some sway, by the civil society is to make their reports, survey results and other publications available to committee members, particularly to the chairmen. But they end up either at the top of an advisor’s extremely busy desk and risk getting lost there or stay in a committee staffer’s cabinet—if he/she has one—forever. For example, it is ironic that the staff, in general, are even unaware of the

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<sup>183</sup> One senior staffer explains: “When the recent [...] Report was released, we prepared a summary for the Committee members. Nobody asked for additional information or asked for anything about the report (comparison with previous reports, issues first raised or repeated, criticism or praise etc). There was no request for additional research. [...] Recently, commission discussed the draft text from the Ministry of [...] on [...]’. The members came to the Committee room even without opening the cover of the *dossiers* we had prepared for them—this includes also the opposition MPs.” Interview; March 2012.

<sup>184</sup> ‘Learned helplessness’: “[...] in psychology, a mental state in which an organism forced to bear aversive stimuli, or stimuli that are painful or otherwise unpleasant, becomes unable or unwilling to avoid subsequent encounters with those stimuli, even if they are “escapable”, presumably because it has learned that it cannot control the situation.” Encyclopaedia Britannica.

<sup>185</sup> For a typical debate in a Plenary session on the way committees work, see; TGNA Minutes, 7 November 2012, Fourth Session. 16 February 2013.

<http://www.tbmm.gov.tr/tutanak/donem24/yil3/ham/b01701h.htm>.

<sup>186</sup> See; Rules of Procedure Art 37.

existence of *TÜSIAD Ankara Bulletin* and *TÜSIAD Ankara Bulletin Legislation Process*, periodicals published—and distributed—regularly each month. One staffer casually recalled: “Once, we had TESEV reports brought, with some *difficulty*”.

One secure way of delivering publications is personal visits to Parliamentary committees, party groups and to individual MPs. And some civil society organisations do try this. However, there is limited time, it is one-way—i.e. in the form of offering input, not engaging into a dialogue—and both sides are fully aware of the inability of the Parliamentary committees to challenge Government policy—even if their value is properly appreciated and they are given priority for a reading and/or is summarised for MPs or committee members. One senior staffer, when questioned about civil society products, exclaimed: “There are no documents arriving from civil society organisations. Members in the Committee even do not read what WE prepare for them. There is no interest (in any publication)”.<sup>187</sup>

### **3.3.2. General Assembly**

Plenary, or the General Assembly, is TGNA’s highest and final decision organ where *oversight* and *scrutiny* of the executive as well as legislation take place. Government bills and proposals of law can become law, if only they are adopted by the Plenary. Plenary is the first stage in the legislative process, when draft legislation is debated in front of all Deputies, and more importantly, before political leaders. Plenary sessions are also broadcasted nation-wide.<sup>188</sup> It is doomed to become a forum on which a long and

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<sup>187</sup> Interview; March 2012.

<sup>188</sup> In July 2011, the Speaker of the Parliament ‘decided’ to restrict the broadcast of Parliamentary debates to five hours a day—from 14.00- to 19.00—and only three days a week—Tuesday, Wednesday and Thursday—because “longer broadcast hours created an undue burden” for the Turkish Radio and Television, TRT, and was not in line with the Protocol dated 1995. Later, this was even reduced to four hours a day because “broadcast of the TRT sports programmes were negatively affected”. Vatan daily, 21 February 2013. ‘Meclis Tv için kampanya!’. 22 March 2013. <http://haber.gazetevatan.com/meclis-tv-icin-kampanya/516569/9/Haber>.

sometimes fierce political—occasionally turning physical—struggle takes place between those who are supporting the draft legislation and those who are against it.

Plenary works three days a week: Tuesday, Wednesday and Thursday, from 15.00 to 19.00. However, in practice, it gathers earlier and works into late night, sometimes early morning. Plenary agenda and the working calendar, per the Rules of Procedure, are drawn up by the Board of Spokesmen, eventually subject to Plenary vote.<sup>189</sup> Bills, draft laws and other ‘business’ that come from the Committees are debated and voted on, normally Wednesdays and Thursdays. Plenary agenda is prepared for one or two weeks, on Tuesdays, but updated daily. It is printed each day the Plenary is in session, distributed to Deputies and posted in the web-site of TGNA.

Reports from the committees, once printed in the TGNA Print House, are first given a ‘Serial Number’, and then distributed to party groups, committees, Deputies, relevant departments within the General Secretariat, and finally published in the ‘List of Incoming Papers’<sup>190</sup>. Only after 48 hours from their receipt, they are included in the relevant parts of the Plenary Agenda, as final items. However, since the Agenda can be amended at any time, by the Board, and failing that, by the governing/majority party, government-initiated bills or proposals of law by the governing party Deputies, i.e. the party group, always have the chance to *jump up* higher in the agenda. If this 48-hour time lapse is ignored and a *draft bill* or a *proposal of law* is suddenly included in the Agenda, all actors involved in

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<sup>189</sup> The Board of Spokesmen is composed of the Speaker and one representative of each of the party groups. It makes its decisions by *consensus*. The Plenary follows the proposal as agreed by the Board. If the Board fails to agree, the vote of the Plenary—that is of the majority or the governing party—on the agenda is decisive and final. See; Rules of Procedure, Art. 19, 49.

<sup>190</sup> List of Incoming Papers: This list includes all bills, draft laws, official communication (*tezkereler*), committee reports, and reference information related to questions, parliamentary inquiries, general debates, motions of censure and parliamentary investigations.

the legislative business—Deputies, legislative experts, parliamentary advisors—would be in trouble for making necessary preparations for the impending debate.

Like the situation in committees, the Plenary stage of legislation is also open to amendments. It is possible to table amendments to draft legislation during the course of plenary discussions, even immediately before the voting on any one article takes place. Perhaps one of the major problems of the legislative process in Turkey—*poorly developed* draft texts of law—makes such amendments inevitable. Because, they are not prepared with the widest possible participation, consultation and inputs not only from state institutions, but also from individual experts and the civil society. However, as evidenced by the high number of legislation amending existing laws, and repeated complaints from all involved, *unilateral* and arbitrary amendments, proposed at Plenary stage—imposed by the governing majority, alone cannot solve the problems originating from the *exclusive* and ‘politically’ confrontational, conflictual process of law-making. Peer Review Report, pointed to the link “between legislative procedures and the quality of legislation”:

The high volume of legislative business; [...] the tight deadlines imposed; an expectation on the part of the government to be able to proceed speedily with its bills; imbalances in committees’ legislative workload; the practice of late additions to the plenary agenda; and ample opportunities for introducing amendments to bills during the final plenary stages of the legislative process, combine to make the in-depth consideration of bills and draft laws difficult. (SIGMA 2010: 12; Neziroglu & Bakirci 2011: 59)

The problem of ‘quality—in legislative process—can best be seen in the odd practice of ‘norm laws (*temel kanun*)’—as understood in Turkey and explains several illnesses of Turkish political system—and political culture.

The ever-pressing need to pass as many laws as possible, in as short a time as possible, has prompted the ‘invention’ of mechanisms intended to

speed up the legislative process. An amendment to the Rules of Procedure in 1996, introduced a ‘special method of deliberation’ for *Basic Laws*—or, more correctly, for draft legislation considered ‘norm’ law<sup>191</sup>—even if they are not *per se*. Actually, looking at the way this ‘mechanism’ is practised and at its results, one can better call it the method for NOT to deliberate.

When the Plenary decides to consider a *government bill* or *draft law* as a ‘norm law’, its articles are grouped into sections not exceeding 30 items and the Plenary takes each group as a whole for consideration, not individual articles one by one as usual. Time reserved for each ‘group’ is shorter and there is much less debate. Motions for amendments are restricted to two *per article* and they are not debated before being voted on. Sometimes even laws which cannot possibly be considered ‘norm’ law can be subjected to a similar procedure just because they have several articles—or even if they have less than 30 articles altogether. It is worrisome for the quality of legislation in the TGNA that the ratio of such ‘basic’ laws has been in constant increase since 1991 when this ‘method’ was first introduced into the Turkish legal system, reaching to 55% of all laws—and 60% of the articles—passed by the Parliament during the 23rd Term. (Iba 2011: 197-99)

The ultimate shape this ‘degeneration’ of the legislative process can take is the practice of *bag-law* which literally means one big ‘law bag’, either amending several laws of completely different nature or introducing new articles to several laws, which are, again, of different nature, unrelated and the areas they regulate may not overlap even remotely. It has become customary that into such ‘bags’ anything, any ‘regulation’ or ‘de-regulation’ can be dropped at any time. Sometimes this happens early in the morning, while few Deputies, having stood against the legislative *marathon* of a long

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<sup>191</sup> Basic Laws are, in some sense, ‘norm’ laws. The Rules of Procedure describes them as ‘those laws containing general principles having fundamental and systematic effects on a branch of law entirely, stipulating essential norms that should be maintained in enacting other laws in this branch’. However, those laws named ‘norm’ or ‘basic’ are of the same status as any other law in the Turkish legal system. See; Rules of Procedure, Art. 91.

day and night, almost asleep and can hardly question the necessity or real rationale behind a motion suddenly tabled.<sup>192</sup>

Parliamentary staff rightly describe the Committees as “kitchen of the Parliament”. Since the dishes are already prepared (?) in the ‘kitchen’, the Plenary is where they are served. One may add some ‘salt’ or ‘pepper’, giving some additional flavour, but cannot serve a completely new dish. In practice, the exclusive right of introducing amendments is reserved for the majority party.

The Plenary, like the committee work, is strictly controlled by the Government. The parliamentary agenda is decided and distributed, virtually at the last minute. Legislative time is allocated as the Government sees fit. The practice of late additions to the Plenary agenda is also common. There is not a rolling legislative plan that clearly indicates what the Government is intending to legislate and what its priorities are so that not only the political opposition, but also civil society can know and take initiative to ‘participate’. The timing of the submission of bills, setting the agenda, deciding priority bills, allowing debate on particular bills or individual articles, supporting or not supporting motions for amendments are all at the discretion of the executive.<sup>193</sup>

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<sup>192</sup> A typical example of such a motion occurred on 26/27 June 2009. During the debate for amending the Law No 5271, Art. 250, on the “authority of civilian Criminal Courts over military personnel for certain crimes”, governing party tabled a motion amending one single word, replacing ‘*hali dahil* (including the case of)’ with ‘*halinde* (in case of)’, leading to fundamental consequences of major political and judicial significance. This last minute critical change was introduced, minutes before it was tabled, to opposition MPs present in the Plenary as an ‘editorial correction’, early in the morning, at 01.05 and received unanimous backing. See; Law No 5918, Art. 7. 6 January 2013.

<http://www.tbmm.gov.tr/kanunlar/k5918.html>.

<sup>193</sup> Typical examples of how this exclusive, self-claimed right can be abused by the governing majority were provided by two motions related to the Greater Municipality Law, Art 2, first in the Committee of Internal Affairs and then in the Plenary respectively. The borders of two large municipalities in Istanbul—Sisli and Sariyer—were amended by a motion made—and supported—by the governing party MPs in the Committee. Later, during the Plenary debate, early morning on 9 November 2012, at 3 AM, this time a motion

The opportunity for introducing last-minute amendments<sup>194</sup> from the floor during the Plenary stage of the legislative process does not allow proper consideration of bills and draft laws. This practice largely ignores any civil society involvement. As envisaged in Art 88 of the Rules of Procedure, it is always possible to recommit the bills from the Plenary to Parliamentary committees, particularly when major amendments are suggested, to allow a thorough (re)consideration of amendments—hence an opportunity for civil society to participate. But, this is seldom done and it is very difficult to ensure—once such amendments are introduced in the Plenary—that bills are internally consistent.

There is almost no time dedicated or reserved for Parliamentary oversight or scrutiny. There are high number of written questions and requests for Parliamentary inquiries, however most of them remain unanswered, when an answer is actually given, it is most likely to be perfunctory.

There is not a system of rapporteurs, akin to those operated in some Parliaments in Europe. Regulatory Impact Assessments, even if they are prepared—cursorily—are not made available to the TGNA. Committee reports, as discussed above, are made available. However they mainly reflect the respective political positions of the political parties and even if some important technical, procedural details are included in statements of dissenting opinion lodged by opposition MPs, they are simply ignored. The Plenary debate is built upon the so-called ‘Committee text’ only.

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introduced by the Minister of Interior himself—catching the opposition off-guard—changed the borders of three major municipalities, Cankaya, Yenimahalle, Etimesgut in Ankara, affecting hundreds of thousands of inhabitants while they were asleep. See: The Committee for Internal Affairs Report, 31 October 2012, pp. 155-184. 16 February 2013. <http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss338.pdf>; and TGNA Minutes, 7 November 2012, Twelfth Session. 16 February 2013. <http://www.tbmm.gov.tr/tutanak/donem24/yil3/ham/b01701h.htm>.

<sup>194</sup> There are many opportunities to introduce amendments, even after the Plenary debate has already started. It is even possible to introduce an amendment on a particular article immediately before the debate on this article starts. See, Rules of Procedure, Art 87.

Rights of the political parties to exercise effective oversight without having to secure the prior agreement of the Speaker or the Bureau, in other words the Government, in practice, do not exist—turning ‘oversight’ into a kind of *potestative right*.<sup>195</sup> Once a text is legislated, the implementation of it by the executive is discretionary. There is very little opportunity and mechanisms<sup>196</sup> by which the Parliament can scrutinize the measures taken by the Government, in a systematic and effective way.

### 3.3.3. Office of the President

As the Speaker or the Vice-Speaker presiding the session pronounces—after the final voting on the entire text of the *draft bill or law proposal*, ‘*kabul edilmistir* (passed)’, it becomes a ‘law’. The signature of approval by the President is the latest phase of law-making. However since this action is not a ‘condition’ for becoming a law, it is not considered as part of the legislative process. Nevertheless, it is an important part of the overall process and offers a—last—opportunity for civil society to intervene and try an influence. Because, the Constitution has entitled the President, if he/she does not agree with certain aspects of the law—already passed by the Parliament—he, within 15 days, can return it to the Parliament for reconsideration of certain articles or the whole law.<sup>197</sup> President would explain the rationale behind such a decision and normally share it with the public as well.

This does not necessarily mean that the civil society should wait until the legislative text has been adopted by the Parliament and forwarded to the Office of the President. Review and examination of ‘laws’ in President’s Office starts long before—as soon as they are included in the Plenary

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<sup>195</sup> For a discussion on ‘potestative’ rights versus ‘obligatory’ rights see; (Sartor 2006: 20-23).

<sup>196</sup> “The TGNA should consider setting up special bodies within Parliament to track developments” (SIGMA: 37). “Committees should become central sites for executive oversight and control. [...] Committees should regularly discuss the Accountability Reports produced by ministries” (SIGMA: 36).

<sup>197</sup> See, the Constitution, Art. 89.

agenda—and there is no logical or practical obstacle to civil society making the President know the views on a particular bill or draft law. To the contrary, General Secretariat of the Office of the President, obtains the texts of government bills or draft laws proposed by Deputies in advance, and starts examining them. This examination sometimes includes inputs from and/or views of individual experts, academics and civil society, in addition to *in-house* experts as well as those from state institutions. The President is briefed on the results of this study and only then he/she makes a decision for either promulgating it or returning to the Parliament for reconsideration. Even if the ‘law’ is voted on, without any change, and sent back to the President for promulgation, it is still possible for the President to challenge it at the Constitutional Court—if he deems that the legislation is unconstitutional. Therefore, there is ample opportunity for civil society to get involved and make their views/concerns be known, even after the Plenary stage, i.e. after legislative texts turn ‘law’.

#### **3.3.4. Civil society in legislative process**

Civil society, necessarily communicates and, again if and where possible, cooperates with various actors involved in the legislative process and, if possible, in the political decision-making process, directly or indirectly. Civil society initiatives sometimes even precede the decision-making, setting the agenda. And, from then on, the push and momentum for particular legislative outcomes are maintained or at least this is what is ideally wanted by civil society. The vital need for this vigour and the ‘crusading’ spirit on the part of civil society have very good reasons.

For most Deputies, ‘service’ to constituents takes up a large part of their limited time and energy. As a consequence, not only the executive oversight and scrutiny, but also legislative functions are *squeezed out* and there is very little incentive to engage with the civil society. This is also true for the advisors serving Deputies. Their priorities, naturally, are linked to those of their ‘bosses’.

The overwhelming pressure to pass bills and proposals of law as soon as possible, in both committees and the Plenary, puts civil society as a whole, in the position of an ‘unwanted visitor’, a *nuisance* which has to be tolerated and—albeit reluctantly—given a chance to show up and ‘talk’, but leave as soon as possible and, ideally, not come back again (!).

In practice, the *letter* of the Art. 30 of the Rules of Procedure is interpreted—by committee chairs—with an ‘inclusive’ understanding to cover ‘experts’ also from the *civil society* who may not be civil servants as spelled out in the text. However, there is no clear reference, in the *Rules of Procedure*, to either *civil society* in general or to *civil society organisations* in particular. Even the word ‘civil society’ does not exist in the existing Rules of Procedure. The invitation of civil society representatives—either personally or as representatives of certain organisations—in Committee meetings, their selection, having a chance to speak and voice their views, are all subject to decisions of the chair of the Committee.<sup>198</sup>

The floor is first offered to the government representative (for draft bills) or to the first name (for proposals of law) who has signed the cover letter, then to Committee members, followed by other Deputies who are not members of that Committee but present in the room. ‘Government’ may respond to questions, if raised. Only then, outside ‘experts’—academics, other individuals—and civil society representatives may have a chance to voice their views. As a matter of fact, because of time limitations, civil society can hardly have a chance to speak; if there are many representatives, only a few of them may have the opportunity to talk. Most of the time, none of them—even if they have been officially invited—can ever have a chance to chatter even a couple of words.

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<sup>198</sup> It is naturally not possible to invite each and every civil society organisation working in the relevant area. Above all, neither the time available, nor the physical space in committee rooms—which are *rather* small and less than convenient in terms of their general design—would allow that. Those which have already applied for permission to participate in certain sessions and active in the area of ‘work’ in hand—in the form of publications, conferences or other activities—would normally be given priority.

In the Plenary, political tension is generally high and it is the forum where Deputies would *make an impression* in front of their party ‘leaders’. So, as in the Committees, it is very difficult to set aside political arguments from technical details and facts related to the matter at hand, hence very little, if any, demand for civil society involvement, also there. Nevertheless, there are ways and opportunities, if properly used by the civil society, that would influence the Plenary agenda. The Rules of Procedure of the Parliament, Art 59, allows three parliamentarians, each make a speech, not exceeding five minutes, on urgent subjects of extraordinary nature. The same goes for the government, but for ten minutes. This is an opportunity for civil society to influence the agenda or articulate an issue through MPs—or the Government, in theory. Also there are other ways laid down in the Constitution—Art 98, and regulated by the Rules of Procedure—such as *questions, parliamentary inquiries, general debates, motions of censure and parliamentary investigations*. Of these means of parliamentary supervision; questions, inquiries and debates may also provide opportunities for civil society to get involved.<sup>199</sup>

To sum up, without a first plenary reading of draft laws and bills, prior to their detailed consideration in committees, neither the political opposition, nor the general public, or civil society has any information, nor chance, to initiate any effort to participate effectively in the legislation process. The outcome of the overall legislative process is simply unpredictable. Committees and the Plenary are dominated by ‘political’ discussions. Since

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<sup>199</sup> The Constitution, Art 98 - The Turkish Grand National Assembly shall exercise its supervisory power by means of questions, parliamentary inquiries, general debates, motions of censure and parliamentary investigations. A question is a request for information addressed to the Prime Minister or ministers to be answered orally or in writing on behalf of the Council of Ministers. A parliamentary inquiry is an examination conducted to obtain information on a specific subject. A general debate is the consideration of a specific subject relating to the society and the activities of the state at the Plenary sessions of the Turkish Grand National Assembly. The form of presentation, content, and scope of the motions concerning questions, parliamentary inquiries and general debates, and the procedures for answering, debating and investigating them, shall be regulated by the Rules of Procedure.

there is no clear-cut line between *political arguments* and *inputs* from external sources—in Committees and the Plenary—civil society, even if given a chance to ‘participate’, hesitates to do so because of the risk of becoming embroiled in government-opposition confrontation.

As pointed to, in Peer Review Report, “ineffective participation of NGOs and interest groups further weakens the parliamentary law-making process.” (SIGMA 2010: iii), but it seems this is currently not an ‘issue’ which is considered seriously, nor given priority by the government, the Parliament, or the political parties. Even if civil society strives for an influence with very limited capacity, *chronic* absence of advance planning and unpredictable agendas—both at the Committees and the Plenary—makes it very difficult to materialize. Besides, there is no formal or semi-formal protocol, similar to those in the EU or elsewhere, that would govern and facilitate consultation between the government and civil society as a whole.<sup>200</sup>

### 3.4. TGNA Rules of Procedure ‘saga’

First Rules of Procedure for the Turkish (Ottoman) Parliament was prepared in 1877, immediately after the Constitution of 1876 went into effect. This first constitution of the Turkish political history was designed based on a political regime that can be called *constitutional monarchy* today. Ottoman dynasty, based on hereditary and religious—*Khaliphate*—

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<sup>200</sup> For example, see; European Commission ‘General Principles and Minimum Standards for Consultation of Interested Parties by the Commission’ COM (2002) 704. 6 January 2013. [http://ec.europa.eu/transparency/civil\\_society/consultation\\_standards/index\\_en.htm](http://ec.europa.eu/transparency/civil_society/consultation_standards/index_en.htm). Compact Voice-UK. 6 January 2013. <http://www.compactvoice.org.uk/>. Compact, Consultation and Policy Appraisal: Compact Code of Good Practice. 6 January 2013. [http://www.hackney.gov.uk/Assets/Documents/c-consultation\\_policy-5.pdf](http://www.hackney.gov.uk/Assets/Documents/c-consultation_policy-5.pdf). Also; IAP2 Public Participation Spectrum developed by International Association for Public Participation; inform, consult, involve, collaborate, empower. 6 January 2013. <http://www.fermilabcommunity.org/pdfs/spectrum.pdf>. “This spectrum is important particularly for changing the existing (mis)perception, in Turkey, of the consultation itself as ‘participation’” (Agduk 2010: 121).

line of succession, maintained the prerogative to rule the country.<sup>201</sup> The Turkish Grand National Assembly of 1920, initially adopted *Nizamname-i Dahili* of the lower house of the Ottoman Parliament and worked with the same rules until 1927 at which time TGNA passed a new rules of procedure (*tr.* Dahili Nizamname) of its own. The 1973 Rules of Procedure (from then on called *Ictüzük*), replaced the 1927 one and, although it has been amended several times—and became a ‘patchwork’ of rules—is still in force.<sup>202</sup>

On average, every 50 years, a new rules of procedure was introduced and immediately after it went into effect, serious—and endless—complaints about it were raised by both the governing and opposition parties. That’s why, ever since the first Ottoman Parliament of 1876, ‘amending’ or ‘replacing’ the rules of procedure always had a place in the political agenda and much effort was devoted towards this end.

A new Rules of Procedure was a clear necessity for various reasons. Comprehensive amendments to the Rules of Procedure, since 1973, upset its systematic; while some articles and regulations became virtually impossible to practice, some other practices with no real basis, became routinely practised. It is hardly possible to argue that parliamentary business is run in the proper manner—planned and according to a programme. Governing parties are unhappy with the ‘slow’ and cumbersome way legislative process is run. On the other hand, opposition parties complain about the lack of real opportunities for Parliamentary oversight of the executive. Participation of individual Deputies in the legislative process and scrutiny of the executive decisions and actions is severely limited. Plenary-heavy work of the Parliament—and extra-parliamentary mechanisms—makes committees and committee work absolutely ‘redundant’.

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<sup>201</sup> 1876 Constitution was called *Kanun-i Esasi* (‘Essential Law’). The Ottoman Parliament had two chambers. Both *Meclis-i Mebusan* (House of Representatives) and *Meclisi-i Ayan* (House of Lords) had their own *Nizamname-i Dahili* (‘Internal Procedures’).

<sup>202</sup> 1973 Rules of Procedure of the Turkish Parliament (*tr.* Türkiye Büyük Millet Meclisi Ictüzüğü) was amended “155 times in the course of 36 years” (Neziroglu & Bakirci 2011: 227). Bearing in mind that it was first written for a two-chamber parliament, one can imagine the extent of these amendments.

Several committees—*commissions* as they are called in TGNA—were formed in order to either amend it or to draft a new set of rules from scratch. Most recently, in 2008, yet another—a non-partisan—committee was formed to draft a *custom-design*, brand-new Rules of Procedure, after 35 years.<sup>203</sup>

The so-called Reconciliation Committee on the Rules of Procedure first adopted the ‘aims and principles’ that would govern their work.<sup>204</sup> These would improve democratic conduct, i.e. increase *pluralism, participation, transparency*; address the deep-seated challenges of *longer-term agenda-setting*, government-opposition divide and extreme polarisation which has proven *destructive* for an effective legislative process; enhance the functioning of committees as platforms where the bills/draft laws—free from political confrontation—would be perfected for the Plenary. It introduced a *Board of Committee Chairmen* with considerable powers, curtailing government control of the agenda and legislative process. It—would—radically change the way the TGNA’s business is managed and improve and strengthen the ‘role’ of opposition parties.

Of particular importance for the subject of this thesis, it paid special attention to improving chances and opportunities that would be made available for the civil society to participate more effectively in the legislative process. It introduced rules, for civil society—and professional associations, trade unions etc.—to offer written views and make oral

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<sup>203</sup> Reconciliation Committee on the Rules of Procedure was established on 16 October 2008 and completed its work on 16 February 2009. The members were Salih Kapusuz (AKP), Ali Topuz (CHP), Nevzat Korkmaz (MHP) and Selahattin Demirtas (DTP). The new draft Rules of Procedure was presented to the Speaker’s Office on 06 April 2011, by two MPs—Ankara Deputy Salih Kapusuz and Istanbul Deputy Ali Topuz—as a *proposal*, and was referred to the Committee on the Constitution on 11 April 2011. After the elections of June 2011, in the 24th term, Ankara Deputy Salih Kapusuz, once again—this time alone—presented it to the Office of the Speaker in July 2011. The draft did not bear the stamp of the *AKP Parliamentary Group*. For the text of the draft TGNA Rules of Procedure of 2009/2011, see; <http://www.tbmm.gov.tr/d24/2/2-0003.pdf>. 6 January 2013.

<sup>204</sup> For a detailed list of aims and principles, see Neziroglu & Bakirci (2011), pp. 229-30.

contributions during committee meetings. As a *revolutionary* change, it suggested stand-alone ‘hearings’, organised and planned for civil society-deputies interaction only. As a result, *decision meetings* of committees would be separated from ‘hearings’ and released from the pressure of the time-table, both civil society representatives and deputies would be freely focusing on discussing the facts related to particular items in the committee agendas.

Parliamentary Academy<sup>205</sup>, as an idealistic, even ‘utopic’ idea, for not only improving civil society participation, but also sustaining the improvements made in this respect by providing the institutional infrastructure, was also included in the draft Rules of Procedure.

The ‘strong support’—with only minor suggestions—given to this draft Rules of Procedure by the Peer Review Team is a clear testament to the non-partisan Reconciliation Team’s openness to external assistance and inputs as well as its objective, apolitical, result-oriented approach:

The central aim of improving the legislative process in the TGNA, as is given expression in the draft Rules of Procedure, is strongly supported by the Peer Review Team. In line with European developments, the thrust of the changes proposed seeks to rebalance the responsibilities between committees and the Plenary and to ensure that both committees and the Plenary dispose of the information necessary to allow for informed debate. (SIGMA 2010: 34)

The new ‘draft’ Rules of Procedure introduced fundamental changes to the way committees were formed, administered and run, improving their

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<sup>205</sup> Parliamentary Academy: “For the purposes of doing research and studies related to the Parliament and the processes of legislation and oversight; improving the cooperation between the Parliament and public institutions, conducting common studies with universities, cooperating with international counterparts, enabling civil society to participate, organizing training and education programmes, doing publications; a Parliamentary Academy is established. Procedures and Principles related to the Parliamentary Academy are decided by the Bureau of the Assembly.” Draft Rules of Procedure of 2009/2011, Art. 119.

effectiveness considerably. Since draft bills and law proposals would have been fully developed through intensive and rational debate and external assistance in the form of *effective* participation from the civil society, academia, individual experts and other interest/professional organisations would be sought, Plenary phase of the legislative process would necessarily be closed to last-minute interventions, nugatory debates and loss of time. Agendas, both in the Committees and the Plenary, as well as the Government's legislative 'plan', would be based on consensus and, once agreed, difficult to change—for an extended period of time. Since all the actors involved—including civil society—would have known the Parliamentary agenda in advance, they would have the chance to get prepared to make a meaningful contribution and to really participate. The chances for making motions were restricted and last minute moves as well as the practice of special legislative mechanisms for *basic laws* and the weird 'invention' called *bag-law*, would have been eliminated altogether.<sup>206</sup>

The drafting committee completed its work in four months, in February 2009 by drafting an 'agreed-upon' text, in consultation with outside experts and with inputs from the civil society. The Speaker's Office organised a symposium<sup>207</sup>, in January 2011, to discuss and perfect it with the widest possible participation from both the bureaucracy—the drafters of laws—and the politicians—policymakers.

The fact that although this committee was able to fully agree on the new draft Rules of Procedure, and no party raised any objections to any articles of it, it took more than 'two years' to move it to the Committee on the Constitution is telling; however, it is not surprising.

It is easy to understand why the General Secretariat of the TGNA—as the facilitator—worked so hard for such a long time—clearly taking some 'career' risks—for making a nonpartisan agreement on a 'democratic' Rules

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<sup>206</sup> For a detailed account of the new draft Rules of Procedure of 2009/2011, see; Neziroglu & Bakirci (2011), pp. 144-77.

<sup>207</sup> Symposium on the Legislative Process, TGNA, 17 January 2011. 6 January 2013. [http://www.tbmm.gov.tr/yayinlar/Kanun\\_Yapim\\_Sureci\\_Sempozyumu/sempozyum.pdf](http://www.tbmm.gov.tr/yayinlar/Kanun_Yapim_Sureci_Sempozyumu/sempozyum.pdf).

of Procedure possible. It is also reasonably easy to explain why the governing party was so reluctant for a comprehensive change—and eventually opted for a set of rather *surgical* amendments.<sup>208</sup> But it is equally difficult to explain the behaviour of the opposition parties. After their representatives, in the Reconciliation Committee on the Rules of Procedure, presumably in coordination with their respective party administrations, agreed with and gave their full support to it, opposition parties behaved as if there has been no such an agreement and that they were happy with the current—1973—Rules of Procedure.

Mehmet Ali Şahin, Speaker of the Parliament said, during the 2011 Symposium: “We sent (draft Rules of Procedure) to political parties for their examination and views. But when I said, later; ‘Let’s take up this rules of procedure, debate it in the Parliament and adopt it as a law’, some Vice-Chairs of Parliamentary Groups said; ‘Yes, the Committee, in fact, prepared a good draft but we have some reservations on its certain articles and certain

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<sup>208</sup> Governing party—AKP—representatives gave conflicting indications of their expectations from the new Rules of Procedure. Deputy Prime Minister (Current Speaker of the Assembly) Cemil Cicek, during the TGNA Symposium of 2011 was clearly in favour of *selective* amendments to the Rules of Procedure: “[...] the abuse of the mechanisms in the Rules of Procedure, against their intended purposes, damages the credibility of the Turkish Grand National Assembly. [...] For a better legislation we need a new rules of procedure. There is a draft rules of procedure on which we have all agreed upon. We hope that this rules of procedure, or at least an important part of it, can be discussed in the Assembly before the next term. Really, making use of the opportunity brought about by the 3rd channel (TRT-3/Parliament Tv), there is a tendency to talk about anything other than what we are debating about. [...] As a result, I would like to state that, the majority of the blockage we are faced with in the legislative process originate from the Rules of Procedure” (Neziroglu & Bakirci 2011: 20). However another senior politician in the same party, Bekir Bozdag, Vice-Chair for AKP Parliamentary Caucus, categorically agreed with the technical necessity for a new rules of procedure: “We need a change in the rules of procedure [...] and (new) arrangements that would make the Plenary work like a plenary, that would turn our standing committees more powerful, and that would make the processes more open to contributions from all. [...] This is a fault of the Parliament. [...] Regretfully, we failed in getting rid of this common sin of us, in correcting this state of affairs” (Neziroglu & Bakirci 2011: 201).

approaches'. What are these reservations? Nothing, so far, has been brought forward in this respect" (Neziroglu & Bakirci 2011: 25). Later on, first the *agreed-upon draft* new rules of procedure disappeared from the web-site of the TGNA. Then, on the last day of 2011, the governing party—in the form of a *draft law* proposed by five Vice-Chairs for AKP Parliamentary Caucus—introduced a package of amendments only to certain articles of the current Rules of Procedure.<sup>209</sup>

These amendments were particularly on restricting the number of motions on each article which is being debated, limiting speaking times and eliminating the need to 'read'—hence avoiding 'waste' of time—at the Plenary. It was referred to the Committee on Constitution—only, as the primary committee—on 4 January 2012, by the Speaker's Office. The Committee on the Constitution first debated the proposed draft (No 2/242) on 19 January 2012 and decided to establish a sub-commission composed of five deputies—three from AKP, one from CHP and one from MHP. MHP Deputy, in the subcommittee, proposed the Primary Committee deliberate on the *agreed-upon* draft rules of procedure previously prepared—during the 23rd Term—rather than the limited package prepared by the *governing party only*. Failing an agreement to that, he left the meeting, and filed a text reserving his—and his party's—position.<sup>210</sup> He, basically, said that "different from the way other bills and draft laws were prepared, amendments to the Rules of Procedure must have been based on conciliation, compromise, getting contributions from other parties".

The CHP member of the Committee, too, proposed that deliberations take the 2009/2011 draft new Rules of Procedure, previously prepared, as the basis—not the AKP package, but he stayed in the meeting. At the end, he remained 'against' the entirety of the amendments. As a result, sub-

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<sup>209</sup> Amendment package to the Rules of Procedure—Draft Rules of Procedure proposed by Giresun Deputy Nurettin Canikli and his friends—dated 30 December 2011. It was bearing the stamp of the AKP Parliamentary Group. See; <http://www2.tbmm.gov.tr/d24/2/2-0003.pdf>. 6 January 2013.

<sup>210</sup> See; Committee on the Constitution Report No 156 (2012), dated 30 January 2012, p. 12 and pp. 28-31. 6 January 2013. <http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss156.pdf>.

committee report, with minor amendments to the original draft, reflected the views of three members from the governing party only. Both opposition Deputies, pointing to the 2009/2011 non-partisan draft Rules of Procedure, drew attention to the need for a *cross-party consensus* on a major legislation like the Rules of Procedure of the TGNA, said that the AKP package cherry-picked some items from the original study and they accused the governing party of trying to “muzzle the opposition”. Also, later in the Committee, on 26 January 2012; opposition accused the government of attempting to “turning the Speaker of the House into a chronometer” and “moving the Parliament away from being a parliament, making it a *law-producing factory*” and that “ignoring the draft new Rules of Procedure by the Committee was irreconcilable with (the notion of) democracy”.<sup>211</sup> They also argued that the unilateral attempt, by the governing party, to amend the Rules of Procedure was unconstitutional. Five members from the opposition CHP wrote, in their note of reservation<sup>212</sup>:

The logic and rationale of a regulation of this nature (as required by the Constitution) is clear. [...] It must be done through conciliation and dialogue, [...] without imposition of (one single political party) group(s). Leaving the Draft Text which was prepared by the common work of four parties and forwarded to the Committee on the Constitution on 11 April 2011 [...] creating a *fait-accompli* is unacceptable. [...] Problem is not originated from laws that are not passed in a timely manner or deliberations take a long time. Problem is caused by inability to produce drafts that would meet the needs, and government’s patronising style of politics. [...] patalogic and narsictic understanding, is causing heavy damage on legal and political stability. [...] The aim is to turn the TGNA into an institution ‘that makes production, based on orders’.

When the Report by the Committee on the Constitution, of 30 January 2012, came to the Plenary, and immediately jumped to the top of the

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<sup>211</sup> Ibid, pp. 28-31 (MHP), p. 32 (BDP).

<sup>212</sup> Ibid, p. 24-27.

agenda, this initiative caused much reaction from the opposition parties and resulted in serious turmoil and confrontation in the Plenary session for about two weeks. The opposition parties even physically occupied the floor in the Plenary, effectively obstructing proceedings. On 9 February, through discussions between the leaders of respective parties, following the debate on the first 9 articles of the draft Rules of Procedure<sup>213</sup>, it was shelved for ‘the time being’, “until an agreement can be reached with the opposition parties”.<sup>214</sup>

The work of three years, all energy and time and good-intentioned efforts, were wasted. At the end, the TGNA, instead of adopting an already agreed-upon comprehensive set of rules, chose to conflict over selective amendments and eventually ended up with the old Rules of Procedure which were passed in 1973—under military scrutiny.

Peer Review Report offers an explanation for this strange turn of events, which, as far as the initiative for a new Rules of Procedure is concerned, overlaps with the findings of this research:

[...] change is not an easy undertaking. The main challenges result, first, from the dual nature of parliaments as both eminently political and administrative institutions; second, from the pervasive influence of the majority–minority distinction on all aspects of the organisation of Parliament; and, third, from the interdependence between parliamentary reform and developments in the broader political system. [...] political and administrative parliamentary reforms are interdependent, but that formal powers and responsibilities for reform are dispersed in the organisation, which makes co-ordinated approaches difficult to sustain. The distinction between majority and minority parties as a basic structuring principle for the operation of Parliament bears the risk that parliamentary reform itself becomes quickly embroiled in a government–

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<sup>213</sup> TGNA, 24th Term, 2. Year, Session 64, 9 February 2012. 7 January 2013.

<http://www.tbmm.gov.tr/tutanak/donem24/yil2/ozet/064.htm>.

<sup>214</sup> Hürriyet, 9 February 2012. “Fights gave results: debate on the rules of procedure were postponed”. 7 January 2013. <http://www.hurriyet.com.tr/gundem/19882016.asp>.

opposition dynamic [...]. (SIGMA 2011: 43)

This was exactly what happened in the TGNA. EU, both in 2009 and 2010 Progress Reports<sup>215</sup>, included the failure in adopting a new Rules of Procedure for TGNA, indicating the importance attached to it because of the connection between the Rules of Procedure and the effective functioning of the Parliament.

As a matter of fact, a deep government-opposition divide and widespread polarisation of the political system as a whole do not allow cross-party co-operation, even on subjects of ‘vital’ importance and of ‘national’ nature—including foreign policy.

### **3.5. EU role and influence on ‘reforms’**

The story of ‘Europeanization’ in Turkey is a long, complicated and painful one. The Association Agreement—Ankara Agreement—between Turkey and, then, the European Economic Community (ECC) was signed in 1963—half a century ago. It took more than 30 years for Turkey and the European Union to form a *customs union* in 1995. And eventually, the European Council—after the ‘humiliating’ rejection at the 1997 Luxembourg Summit—granted Turkey the status of *candidate country* in December 1999 in Helsinki. The Accession Partnership<sup>216</sup> for Turkey was adopted by the Council of Europe on 08 March 2001—and updated in 2003,

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<sup>215</sup> “[...] work on improving parliament’s rules of procedure has yet to be completed. A draft proposal was finalised in February by the Consensus Committee on Rules of Procedure” (EC 2009: 7). “No progress has been made on improving Parliament’s rules of procedure. Adoption of the draft finalised in February 2009 by the Consensus Committee on Rules of Procedure is still pending, due to lack of consensus between the political parties” (EC 2010: 9).

<sup>216</sup> Council Decision on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey. 08 March 2001. 2001/235/EC. 12 July 2012. [http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Decision&an\\_doc=2001&nu\\_doc=235](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=2001&nu_doc=235).

2006 and finally in 2008<sup>217</sup>—and the Turkish Parliament adopted the National Programme for EU, on 19 March 2001, in ten days. Following the developments related to Cyprus and its accession—as the Republic of Cyprus—to the EU in 2004, Negotiating Framework for Turkey<sup>218</sup> was finally agreed upon in October 2005. The text was referring to “an open-ended process, the outcome of which cannot be guaranteed beforehand”, “the Union’s capacity to absorb Turkey”, “long transitional periods, derogations, permanent safeguard clauses, i.e. clauses which are permanently available”. Nevertheless, Turkey started negotiations in good faith.

It is possible to identify rough episodes, in the calendar of Turkey-EU relations, based on which one can better see the complex connection and interaction between domestic politics, regional politics, foreign policy, political aims, changing—sometimes conflicting—priorities, tools mobilized and the rhetoric changed on both ‘sides’. Helsinki in 1999, marked a beginning. Until 2005, when the Accession Partnership for Turkey finally became a reality, there was an upward trend in relations. After the strings attached to 2005 decisions by all European institutions and the objections raised by some Member States, plus the impasse encountered in overcoming the problem of Additional Protocol due to Cyprus connection, relations rapidly soured. From 2005 on, for a short period of about a year, there was some hope of progress which ended in disappointment on both sides. This was followed by a ‘cooling’ period of two years, during which neither the EU nor Turkey seemed too eager to move forward. Then, from 2007—general elections in Turkey—through 2010, Turkey was the ‘pulling’ partner of the *partnership*. In a sense, there have been two false *honeymoon*s in the course of 10 years—from 2000 to 2005 and from 2007 to

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<sup>217</sup> Council Decision on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey. 18 February 2008. 2008/157/EC. 11 July 2012. <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0157:EN:NOT>.

<sup>218</sup> Negotiating Framework for Turkey. 03 October 2005, Luxembourg. 11 July 2012. [http://ec.europa.eu/enlargement/pdf/st20002\\_05\\_tr\\_framedoc\\_en.pdf](http://ec.europa.eu/enlargement/pdf/st20002_05_tr_framedoc_en.pdf).

2010. Each period overlaps with *reforms* in the ‘security sector’ and the ‘judiciary’ respectively. Under the rubrics of ‘meeting the Copenhagen political criteria’ and ‘fulfilment of Accession Partnership priorities’, the Turkish government took unprecedented steps, arguably, towards these ends. The European Union, in turn, took steps that paved the way for further reforms, facilitated the political initiatives, supported the reform process by providing incentives in the form of—sometimes quite vague—promises, financial assistance and political statements reflecting *reform priorities*, encouraging progress, in regular reports.

The European Commission regularly reports to the European Council and the European Parliament on the progress made by Turkey—in preparations for EU membership—since 1997. These are called ‘progress reports’. The European Parliament also, since 2006, based on EC progress reports, adopts resolutions making its views known by Turkey and the Member States. In these reports, the situation in terms of the political criteria, among other things, is analysed and this analysis also covers issues related to ‘security sector’ and ‘judicial’ reforms.

These reports are mainly *elite-oriented*, effective tools for encouraging reforms and for challenging ‘self-declared’ success by respective governments. They are drafted in line with EU policies and strategies, taking into account domestic—and increasingly regional, international—developments, in coordination with respective national authorities of the EU member states.<sup>219</sup> They are politically motivated, well prioritised and serve to clearly defined political ends. Two examples of ‘strategic’ approach in EU reports are the subjects of integration of the Ministry of Defence with the Turkish General Staff and the establishment of ‘Judicial police’.

The subject of *integrated MoD and General Staff* was—either directly or indirectly—repeatedly mentioned in successive reports, but following the reform in the NSC disappeared altogether from 2005 on, to reappear again

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<sup>219</sup> This coordination is not restricted to EU and EU member states only. Many other international and multinational organisations are also involved in this overall coordination effort to the degree possible and practicable.

in EC 2011 Turkey Progress Report. However, this was followed by a warning to the Government about “the need to ensure the continued secular integrity of the armed forces and their operational capability” in the draft EP Resolution on the Turkey 2011 Progress Report, in March 2012.

The need for a Judicial police was included in the EC 2004 Regular Report, was accepted by the Government and included in the legislative package introduced in 2005 for amending the Code of Criminal Procedure (Art 167) in 2005, but was not implemented. The subject disappeared from reports from 2007 on, but reappeared in 2011 in an emphatic style. (EC 2011: 18)

Financial assistance provided under various programmes/projects, since 2002, is another *instrument* available to EU authorities. Multiannual Indicative Planning Documents (MIPDs) set out the priorities for assistance under Instrument for Pre-accession Assistance (IPA) based on the needs identified in the Accession Partnership and progress reports. In this context, under both the national programme and the Civil Society Facility, EU financial support is provided to *civil society*, in particular to enhance civil society organisations’ capacities, their administrative and communication skills, and encourage a *civil society dialogue* between Turkey and the EU. Technical assistance is also provided to the Turkish government promoting good practices on support of *active citizenship*.

To encourage *civil society dialogue* between Turkey and the EU, support is also given for participation by Turkey in EU programmes and agencies. Projects in areas such as media and civil society organisations are co-financed. However, difficulties in implementation continue. The Court of Auditors Report in 2009<sup>220</sup>, identified a series of weaknesses in the management of the IPA and the European Parliament<sup>221</sup> requested the

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<sup>220</sup> The European Court of Auditors Special Report No 16/2009. ‘The European Commission’s Management of Pre-Accession Assistance to Turkey. 10 July 2012. <http://eca.europa.eu/portal/pls/portal/docs/1/8032768.PDF>.

<sup>221</sup> “[...] calls on the Commission to implement the recommendations of the Report [...] requests the Commission to launch, in particular, an evaluation of the entire programme of

Commission to launch an evaluation of the entire programme and implement the recommendations of the Report.

Starting early 2009, there was a marked intensification in relations. In December 2008, the Government adopted the National Programme for the Adoption of the Acquis (NPAA). In January 2009, a full-time EU Chief Negotiator, with the status of State Minister, was appointed. Political dialogue—Association Committee—meetings were held in March 2009 at Ministerial level, and then in February and July at Political Directors level. A number of high-level visits from Turkey to European institutions also took place during the same period. The Association Council met in May. The Multi-Annual Indicative Planning Document 2009-2011—focusing on institutions directly concerned with the political reforms in the judiciary and the law enforcement services—was adopted by the Commission in July 2009. Eight sectoral sub-committees were held in a year—between November 2008 and October 2009. The Reform Monitoring Group (RMG)—made up of Minister for Foreign Affairs, the State Minister for EU Affairs and Chief Negotiator, and ministers of Justice and Interior—met under the chairmanship of the Prime Minister, in February, for the first time since the group was first established in 2003, and expressed Government’s commitment to the EU accession process.<sup>222</sup> The RMG continued to meet regularly in different parts of the country underlining the determination of the government to involve the ‘people’ more closely in the accession process. Turkey also accepted to resume formal negotiations on an EC-Turkey readmission agreement in 2009.

This upward trend in relations—and in the reform process—continued in parallel in the year 2010. In January, a new European Union Strategy for

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the pre-accession assistance and report about its implementation to the European Parliament” (EP 2009: Art 52).

<sup>222</sup> RMG started to have regular—and more frequent—meetings in 2009 and held four meetings between May and December 2009, followed by five meetings in 2010, only one in 2011 and two in 2012. 11 July 2012. [http://www.diab.gov.tr/default\\_b0.aspx?content=416](http://www.diab.gov.tr/default_b0.aspx?content=416).

Turkey's Accession Process<sup>223</sup> was prepared with the aim of speeding up the accession negotiations and increasing public awareness and support for accession. The new strategy was based on four pillars; continue negotiations on opened chapters, continue work on 'other' chapters, democratisation, (public) communication. Under the second pillar it aimed; "Civil society organisations, universities and other non-governmental groups [...] effectively incorporated into the process". The ambitious, but telling statement—under the third pillar of democratisation—was simply mirror-imaging the EU reports: "Political reforms in the fields of human rights, democracy and rule of law constitute the backbone of the accession process. [...] The progress achieved in the political reforms field will pave the way for other reforms".

It was even stated in the Strategy paper that, the Secretariat General for EU Affairs, based on the decisions taken at the RMG, proposed the Council of Ministers, in January 2010, to legislate special procedure for the TGNA so that one week in each month could be reserved for debates on draft laws related to the accession process; this never happened. Against this background, on 15 March, the Turkish Council of Ministers adopted the 2010-2011 action plan<sup>224</sup> outlining the legislation to be enacted and studies to be carried out on each chapter of the negotiations. The Association Committee met in March 2010, the Association Council in May 2010 and, again, eight sector sub-committees were held.

As a result, when the draft constitutional amendment package forwarded to the TGNA by the Government, in Spring of 2010—which started a long chain-process ending in a complete transformation of the Turkish judiciary, prominent among others, the relations with the EU and the activity on the part of the Government was at its highest. The European Parliament in its

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<sup>223</sup> European Union Strategy for Turkey's Accession Process. January 2010. 11 July 2012. [http://www.ab.gov.tr/files/strateji/yabs\\_en1.pdf](http://www.ab.gov.tr/files/strateji/yabs_en1.pdf).

<sup>224</sup> European Union Strategy for Turkey's Accession Process, 2010-2011 Action Plan. 15 March 2010. 11 July 2012. [http://www.ab.gov.tr/files/strateji/2010\\_2011\\_action\\_plan.pdf](http://www.ab.gov.tr/files/strateji/2010_2011_action_plan.pdf).

resolution in February 2010<sup>225</sup>, commended the initiatives of the Turkish Government to encourage active participation and debate.

Meanwhile, EU authorities kept an eye on the legal, political and psychological environment from civil society perspective. In 2009 Progress Report, undue delays in “registration of associations and foundations, in particular local representations of international NGOs (International Crisis Group and the Raoul Wallenberg Institute)” were stated. Still as of end of 2009, the EU found the *legal framework* on associations “broadly in line with European standards”. However, “considerable progress (needed) to be made as regards its implementation, as associations still (faced) disproportionate scrutiny of their activities, which in some cases has led to judicial proceedings” (EC 2009: 20)

The inclusion of civil society organisations in policy-making and legislative processes was another area that was monitored by the EU and covered in EU reports. This is related to the so-called ‘democracy-promoter’ role of the EU. Ostensibly, EU support to civil society and civil society projects and programmes in Turkey are synchronized with EU policy aims in line with EU-Turkey relations and Turkey’s accession process. This is true in terms of allocation of funds, however, in terms of implementation there is a wide-spread disconnect between the agencies deciding policy and allocating funds, and those implementing the projects—official and private/contract alike.

The outreach, in terms of the EU aims and purposes for supporting civil society projects in Turkey is extremely limited. There is no sign of a deliberate, wide-scale, aggressive public information campaign. ‘Public’ activities are conducted within a very small circle of civil society ‘leaders’, activists and a very limited number of journalists.<sup>226</sup> Networking is often

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<sup>225</sup> “Welcomes the broad public debate on a range of traditionally sensitive issues such as the role of the judiciary [...] the role of the military [...] and commends the Turkish Government for its constructive approach and its role initiating that debate.” (EP 2009 Resolution, Art: 1). “[...] notes with satisfaction the broad consultative process on which it was built” (EP 2009 Resolution, Art: 9).

<sup>226</sup> Interview, January 2012.

mentioned but rarely practiced. *Visibility* versus *low-profile* approach is a difficult—sometimes an impracticable—choice to be made by those civil society organisations operating in Turkey. The sarcasm hardly hidden in the words of a senior official of a prominent Turkish civil society organisation active in the field of judiciary were echoing a common and firmly-rooted attitude: “I haven’t seen or read reports of the EU Commission or the European Parliament. They are prepared based on the information *made available* to them”. She did not hesitate to voice strong criticism of EU ‘stance’ although she had *never* read even a single report. This is a most critical shortcoming.

Institutions of the EU or civil society organisations funded by EU resources—particularly for projects related to democratisation—mainly cooperate with the Government and partnerships for such projects are reserved for government-affiliated organisations or institutions that are more supportive of Government policies—largely neglecting communication with the political opposition. Although this policy has had practical benefits in the short run, it seems to have been counterproductive in terms of ensuring long-term mass support and non-partisan cooperation.

In this context, Lundgren (1997) argues that “the most established form of political assistance is aid to civil society. By supporting individual citizens and groups of citizens, an external actor may contribute indirectly to political reforms and to the building of a democratic culture” (94). According to her, the aid to support political institutions or civil society can be provided through different channels or mechanisms: directly to the government of the recipient country, to local NGOs or by funding NGOs in the home country, which in turn transmit the aid or run projects in the recipient country.

Her discussion—and comparison—of the aims and the methods used by the EU for aid to Turkey and Poland respectively is very helpful for better understanding the bilateral dynamics involved—between the EU and Turkey—in the whole ‘reform’ process. She asserts that, while the aid to Turkey was mainly intended for only helping civil society, the aid for

Poland was intended both for political institution building and to help build an active civil society. Besides, the EU aid to Poland was through cooperative arrangements—a fourth way. Only cooperation projects, between EU NGOs and Polish NGOs, were supported. However, aid to Turkey was in the form of direct support to Turkish NGOs. Also, EU support to civil society in Turkey almost exclusively focused on human rights organisations which made up, in Poland, only a small fraction of the total aid. Where did the differences in the approach and aims originate from? One possible explanation is that the main idea was to integrate Polish civil society with that of Western Europe. For Turkey, a similar ambition simply did not exist. (Lundgen 1997: 99-100)

Based on this set of observations, one may presume that the EU has a stronger interest in Poland becoming a democracy than in Turkey doing so. The consequences of this conception—and its actual application to aid to civil society in Turkey—have been far-reaching. It has been directed to limited, selective aims, mostly uncoordinated and isolated from the larger political context, and particularly devoid of a comprehensive *vision of democratisation*. The EU aid to civil society in Turkey has not enjoyed the much needed political support and synergy that could come from better coordination and ‘serious’ work. There was almost no real ‘political’ ownership of the projects supported. They have been implemented in a piecemeal fashion and the results, naturally, have not been too impressive.

Lack of a proper understanding of the ‘EU’ and EU accession process gives rise to a general suspicion in Turkey, which is traditionally associated with the West.<sup>227</sup> There is very little, if any, that is being done to ensure correct perception of the EU and this publicity problem directly and indirectly hampers civil society’s effective functioning. The clear suspension of negotiations with the EU in 2006 and the perceived indifference on the part of the Turkish government just supported this

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<sup>227</sup> “In short, neither CHP facing GP (*Genc Parti*), nor AKP facing MHP in their core constituencies in coastal or center Anatolian provinces respectively, could afford to push EU-related issues beyond subtle linkage to various reforms debates” (Carkoglu 2003: 190).

perception and had a negative effect on civil society and its democratisation efforts. President of the European Movement Turkey, Haluk Günugur, in mid-2010, expressed this frustration:

The attitude and the rhetoric of the Turkish Government and that of the Office of the Speaker of the TGNA, on the role and importance of civil society about the EU and their attitude vis-a-vis ‘civil dialogue’ are now just making me laugh. [...] The European Union and its civil society organisation International European Movement are pretending as if they will accept Turkey and the Turkish Government in power pretends as if becoming an EU member. This secret consensus satisfies both sides nowadays.<sup>228</sup>

Global civil society also focuses on supporting ‘democratic governance’, e.g. mechanisms, processes and institutions, and tries to foster ‘democratic principles’ by providing “policy-advice and technical support, assistance for strengthening capacity of individuals and institutions”.<sup>229</sup> The prevailing principle of dealing with *governments* in “strengthening civilian oversight” and “participation in legislative and decision-making processes through established consultation platforms and mechanisms”<sup>230</sup> seems to work against the very purpose of such projects. Their views at the level of ministries are *taken* but not always implemented. Besides, there are ambiguities as to which office has the authority to make critical decisions. In the absence of ‘ownership’, national counterparts often represent the main obstacle to efficient implementation.

Most of the EU projects are related to the ongoing democratisation process in Turkey and are politically sensitive in nature. The lack of political consensus inside the country, on the substance, scope and pace of

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<sup>228</sup> Prof. Dr. Haluk Günugur, 13 July 2010, *abvizyonu*. 13 January 2013.

<http://www.abvizyonu.com/ab/ozel-roportajavrupa-hareketi-turkiye-ulusal-konseyi-baskani-profgunuguru-istifaya-goturen-nedenler.html>.

<sup>229</sup> Interview; April 2012.

<sup>230</sup> *Ibid.*

intended reforms does not allow coherent attitude vis-a-vis these reforms. Political *change management* and implementation of civil society projects has to go hand-in-hand within an overall, comprehensive ‘government programme’ which really does not exist. This situation makes partnership and networking very difficult and results in low ownership.

### **3.6. Parliamentary ‘civil’ society**

Civil society, as discussed in Chapter 2, is the term used for describing a sphere composed of individuals and organisations that voluntarily come together, position themselves outside the *state*, *market* and *family* relations—in other terms, excluding the *political* sphere, *economic* sphere, *private* sphere, but including *public* sphere—for the primary purpose of contributing to the provision of common good for the society as a whole. There are some 100.000 organisations in Turkey (STGM Report 2012: iii, 2) that can be listed as civil society organisations in the form of associations, foundations, labour unions, public sector trade unions, professional associations and chambers.<sup>231</sup> When almost 60.000 cooperatives of various nature are added, then the total number exceeds 160.000. Three of them are professional associations representing parliamentary staff in TGNA. This is important for the purposes of this thesis because some of their efforts, as professional organisations, is exclusively dedicated to improving participation by the ‘civil’ society in legislative process and making this participation more effective.

These three organisations are the Turkish Association of Legislation (Yasama Dernegi/YASADER), the Association of Parliamentary Advisors (Parlamente Danismanlari Dernegi/PDD), and the Association of Legislative Experts (Yasama Uzmanlari Dernegi/YUDER) which is not as active as the other two beyond “supporting its members’ professional and

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<sup>231</sup> See; for associations, <http://www.dernekle.gov.tr>, for foundations, <http://www.vgm.gov.tr>, for labor unions, <http://www.csgeb.gov.tr>, for chambers, <http://www.tobb.org.tr>, for cooperatives, <http://www.koopkur.org.tr>. For other unions, see Official Gazette: 07 July 2011, No 27987. 8 January 2013.

cultural development” although its Bylaw<sup>232</sup> allows for “collaboration with NGOs” on matters related to legislative process. Particularly one of them—YASADER—is certainly punching way above its weight, at least they tried very hard, until recently.

One publication is a typical case in point for understanding the importance of what I call ‘Parliamentary civil society’ and the critical—perhaps even revolutionary—role they volunteered to play: *Advocacy and Influencing Policies* by Istanbul Bilgi University<sup>233</sup>. It perfectly exemplifies the concepts such as linkage strategies (technocratic approach, coalition building, grass-roots mobilisation) and the ‘actors’ who adopt and implement them—international governmental organisations, nongovernmental organisations, epistemic communities forming *transgovernmental* coalitions. The whole production process of this publication and the production team involved also partly explain how the two-level-game in Turkey—with respect to relations with the EU and the international community—was operated in the period leading to the reform ‘moment’ of 2010 and how it was reversed afterwards. Furthermore, it also helps better understand the limits of *linkage concept* of Mayer (1992). At the end of the day, it is the ‘substantive quality of available ideas’ that shapes principles, conceptions and eventually the behaviour.

*Advocacy and Influencing Policies* was produced in the course of 2007-2009 and was published in January 2010. It represents a coalition for the purposes of “making NGOs more active in finding solutions to problems in their environment, supporting NGOs in leading national and international administrations to formulate necessary policies and contribute to making NGOs an important actor in democratisation process in Turkey” (Yentürk *et al* 2010: 3). This publication represented a common effort between a private university—Istanbul Bilgi University (NGO Education and Research Centre), Turkish Parliament (indirectly, over Parliamentary civil society,

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<sup>232</sup> See; YUDER Bylaw, Art 2. 10 January 2013. <http://www.yuder.org/bilgi.asp?aid=27>.

<sup>233</sup> See; <http://www.aciktoplumvakfi.org.tr/pdf/savunuculuk.pdf> and <http://stk.bilgi.edu.tr/cd/10/index.html>. 8 January 2013.

YASADER), an international NGO (National Democratic Institute, NDI of the US)<sup>234</sup> and the whole effort was funded by yet another international NGO (Open Society Foundations, of the US)<sup>235</sup>.

The contributors included not only those scholars associated with the university and the NDI but also two ‘officials’ from the Parliament—the Director General of Laws and Decrees of the TGNA and the Deputy Director of the same Directorate—an extremely rare, perhaps unique happening in the Turkish bureaucratic culture and practice. Although they participated in this work as members of a ‘parliamentary’ civil society organisation, YASADER—not under their official hats—doubtlessly, this could not possibly happen without an explicit prior permission, even support from the Speaker of the Parliament, if not also from the Government, albeit tacitly.<sup>236</sup> They wrote about ‘The opportunities for the civil society to participate in the legislative process in the Parliament’ (Neziroglu 2010) and ‘Participation of the civil society in Parliamentary oversight’ (Kocaman 2010).

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<sup>234</sup> **National Democratic Institute (NDI)** is a nonprofit, nonpartisan organisation working to support and strengthen democratic institutions worldwide, through citizen participation, openness and accountability in government. Through an office in Ankara, NDI has worked with the Parliament of Turkey on various aspects of reform, towards its development as a more effective, representative and professional institution. To promote citizen engagement in the political process, the Institute has advised civil society organisations working to strengthen their organisational structures and capacity for influencing public policy. NDI programmes in Turkey have been funded by the National Endowment for Democracy and the U.S. Department of State Bureau for Democracy, Human Rights, and Labor. 03 March 2012. <http://www.ndi.org/turkey>.

<sup>235</sup> **Open Society Foundations** closed its Representative Office in Turkey in January 2009 and continues its activities as a Turkish NGO—Open Society Foundation-Turkey (*tr. Acik Toplum Vakfi*). 8 January 2013. <http://www.aciktoplumvakfi.org.tr/>.

<sup>236</sup> Irfan Neziroglu was succeeded by Habip Kocaman as the new Director General of Laws and Decrees, and Neziroglu himself was promoted to the post of Secretary General, in 2011, after the time of publication of *Advocacy and Influencing Policies*.

In one of these articles the question of ‘Why civil society should participate in the legislative process in the Parliament’ is answered in a comprehensive way:

The MP-NGO connection is not an alternative to MP-citizen link. [...] It can be argued that, without civil society, citizens, individually, are very rarely interested in the legislative process and attempt to influence it directly. [...] First of all, participation by the civil society brings representative democracy nearer to direct democracy. [...] Civil society participation and a robust Parliament-citizen relation improve the prestige of the Parliament in the eyes of the citizens. [...] One other benefit of an effective civil society participation is the improved quality of legislation. [...] Yet another advantage is the fact that, then, the citizens would own these laws and become better disposed toward respecting them. (Neziroglu 2010: 49-50)

Apparently, two senior officials of the Parliamentary staff consider the participation of the civil society in the legislative—and oversight—process not only as a necessity to improve the legislative efficiency but also as a factor that would reinforce the perception of political legitimacy (on the part of citizens). This is important in itself. But once this attitude is put to the test of behaviour, it gains real meaning.

YASADER publications is not limited to contribution to and participation in this single Project—*Advocacy and Influencing Policies*. Another book, *Handbook for Civil Society Participation in the Legislative Process* (2011), was first published in 2009 by YASADER. It was financially supported by the Black Sea Trust for Regional Cooperation (BST)<sup>237</sup> and MATRA<sup>238</sup> (Second edition), facilitated by the NDI. It is the

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<sup>237</sup> **The Black Sea Trust for Regional Cooperation** (BST) is a grant-making programme of the German Marshall Fund. BST operates in Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Romania, Turkey, Ukraine, and Russia. It promotes, among other aims, strong, effective civic sectors. It operates by affirming the value of citizen participation in the democratic process and by strengthening a critical set of institutions that lie at the nexus of state and society. Initial investment for BST has been provided by the German Marshall

first example of its kind—produced by the ‘Parliament’ in order to encourage and invite active and effective participation by the civil society in the legislative process. Because the publication was found too sophisticated by some ‘users’, also a more concise summary in the form of a booklet was also prepared for easy use, with involvement from *Ucan Süpürge* (Flying Broom), a women’s organisation working for the improvement of democracy and civil society.

YASADER—again assuredly, supported by the Secretariat—i.e. the Speaker—also involved in many other projects, which—if succeeded—would have transformed the civil society participation radically, not only in the legislative process, but also in law-writing/drafting process, as well as agenda setting in the general public. They organised conferences, workshops and advertised the idea of a Legislative Academy. YASADER members sometimes under their ‘civil society’ hat, sometimes under official civil servant hats—to be frank, sometimes wearing both hats at the same time—were quite instrumental in making the cross-party agreement on a complete, *non-partisan* draft Rules of Procedure possible in 2011. They adopted a purely technocratic, scientific approach and—in cooperation with international civil society—probably went, for good reasons, beyond their

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Fund of the United States, the United States Agency for International Development, the Government of Romania, the Charles Stewart Mott Foundation, and the Ministry of Defence Republic of Latvia. The Robert Bosch Stiftung is also contributing to the activities of the BST as well as the Lynde and Harry Bradley Foundation which contributed to the early activities of the Trust. 03 March 2012. <http://www.gmfus.org/grants-fellowships/grantmaking-programs/black-sea-trust>.

<sup>238</sup> **MATRA** is a bilateral assistance programme of the Netherlands with the aim of supporting social transformation in countries neighbouring Europe by contributing to development of an open, pluralist and democratic society, respecting rule of law. It is aimed at cooperation with civil society and with central, regional and local authorities. The MATRA programme is active in Turkey since 2000. Twinning with Dutch organisations or with partners from other MATRA countries or new EU member states is possible, but this is not a condition for applications to MATRA. 02 March 2012.

<http://istanbul.nlconsulate.org/the-consulate-general/departments/matra-and-human-rights/more-information/matra.html>.

remits and crossed the limits of traditional bureaucratic culture, as either civil servants or as members of the Parliamentary civil society.

YASADER got involved in several common projects in partnership with Turkish and international/foreign NGOs and with support from various sources, primarily for improving the participation of civil society in the legislative process. Some of the major projects are Legislation School for Civil Society Organisations<sup>239</sup>, Civil Society Participation in the Legislative Process<sup>240</sup>, Legislation School for Local NGOs<sup>241</sup>, Parliamentary Oversight Symposium<sup>242</sup>.

These activities must be seen against a background of various EU-related similar projects in which the TGNA was a partner or host, or just took unilateral initiative such as the memorandum on Relations Between NGOs and the Parliament in Some European Countries<sup>243</sup>, Panel on Participation of the Civil Society in the Legislative Process<sup>244</sup>, TGNA Common Working Groups Initiative<sup>245</sup>, the EU Twinning Project on Strengthening the Capacity of the TGNA<sup>246</sup>, Inclusive Civic Engagement in Legislation

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<sup>239</sup> YASADER-Turkish Association of Legislation, 20-21 June, 2009, Ankara, Turkey.

<sup>240</sup> In partnership with TGNA, MATRA-The Netherlands, 2009-2011, Ankara.

<sup>241</sup> YASADER-The Embassy of the Netherlands. 2011-2012. 10 January 2013.

[http://www.yasader.org/sayfa/index.php?option=com\\_content&view=category&id=35&Itemid=53&lang=en](http://www.yasader.org/sayfa/index.php?option=com_content&view=category&id=35&Itemid=53&lang=en).

<sup>242</sup> Organized by the TGNA, YASADER and YUDER. 8 May 2012.

<sup>243</sup> TGNA Research Center, November 2007. 10 January 2013.

[http://www.yasader.org/web/yasama\\_surecine\\_katilim/6/aeastmrkzbilginotu.pdf](http://www.yasader.org/web/yasama_surecine_katilim/6/aeastmrkzbilginotu.pdf).

<sup>244</sup> TGNA and YASADER, November 2007. 10 January 2013.

[http://www.yasader.org/web/yasama\\_surecine\\_katilim/5/PANEL2007BILGI.pdf](http://www.yasader.org/web/yasama_surecine_katilim/5/PANEL2007BILGI.pdf).

<sup>245</sup> See; [http://www.yasader.org/web/yasama\\_surecine\\_katilim/4/tbmmocg.pdf](http://www.yasader.org/web/yasama_surecine_katilim/4/tbmmocg.pdf). 10 January 2013.

<sup>246</sup> EU-supported project. Partner countries: Turkey-Italy-Hungary, 17 December 2007- 31 October 2008.

[http://ec.europa.eu/enlargement/fiche\\_projet/document/TR%2006%2003%2005%20Strengthening%20the%20capacity%20of%20the%20TGNA.pdf](http://ec.europa.eu/enlargement/fiche_projet/document/TR%2006%2003%2005%20Strengthening%20the%20capacity%20of%20the%20TGNA.pdf). 10 January 2013.

Making in Turkey<sup>247</sup>. In terms of other major activities, the TGNA Symposium on Legislative Process in Ankara and the MATRA-supported conference on Strengthening Legislative Process<sup>248</sup> in Istanbul, both in 2011, are prominent. Particularly the former's proceedings, which have been published in book form (TBMM 2011) is very useful for the civil society to better understand not only the mechanisms and opportunities but also the potential hurdles in participation in the legislative and law-drafting processes.

PDD has adopted a relatively lower profile in terms of civil society projects. However, it has taken on the primary responsibility for the implementation of the project for 'Inclusive Civic Engagement in Legislative Process in Turkey'. In this, first 'advisors' were trained by British and Turkish experts in preparation for the implementation phase. The Project covered four provinces (Bursa, Corum, Mardin, Mersin) and involved citizens, civil society institutions, bureaucracy and local administrators. Two legislative initiatives—both unrelated to daily politics and contentious issues—were taken as subjects of pilot field-work: 'Law for the Protection of Personal Data'<sup>249</sup> and 'Law for the Trade of Fresh Fruit and Vegetables'. Former failed and became null in the 23rd Legislative

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<sup>247</sup> UNDP-supported project. The Office of the Prime Minister of Turkey, YASADER and PDD. 2008-2009. 10 January 2013.

<http://www.undp.org.tr/Gozlem2.aspx?WebSayfaNo=1272>.

Government decision, No 2008/14502, dated 22 December 2008, on the "Paper signed between the Government of the Republic of Turkey and the United Nations Development Programme—UNDP—on 19 June 2008 for the Project on Inclusive Civic Engagement in Legislation Making in Turkey", Official Gazette No 27112, dated 16 January 2009.

<sup>248</sup> Pre-Accession Transformation Programme. Strengthening Legislative Process, Istanbul Conference. 21-22 February 2011. 'Effective Participation of Civil Society Organisations in Legislative Process and Consultation: A Search for a Model'. 10 January 2013.

[http://www.meclishaber.gov.tr/develop/owa/haber\\_portal.aciklama?p1=107187](http://www.meclishaber.gov.tr/develop/owa/haber_portal.aciklama?p1=107187).

<sup>249</sup> "Law for the Protection of the Personal Data". The draft bill was prepared by the Ministry of Justice and forwarded by the Office of the Prime Minister to the Parliament on 22 April 2008. This subject did become 'contentious' later years, but was not in 2008.

<http://www2.tbmm.gov.tr/d23/1/1-0576.pdf>. 03 February 2012.

Assembly, but the latter was passed by the Parliament in March 2010<sup>250</sup>. The slogans used during the field-work signalled the main thrust and purposes of the project: “*Yasalar Sizi Etkilemeden Siz Yasalari Etkileyin* (Before Laws Have an Effect on You, You Have an Effect on Laws)”, “*Yasasin Halk* (Let the People Legislate)”, “*Anlatmaya Değil, Dinlemeye Geldik* (We Came to Listen, not to Talk)”. And in response, the mostly asked question, by the people, was “If America (the United States) was behind this project”, NOT how to participate, reflecting enormous cultural obstacles faced by such pioneering projects, which are discussed in following chapters.

Parliamentary ‘civil’ society, after all, is made up of staffers—so-called experts, advisors and senior administrators—and is part of the General Secretariat. As such, it is composed of individuals tasked with supporting the Speaker, the Bureau, the Board of Spokesmen, the Plenary, Parliamentary Committees, party groups and Deputies. They are civil servants who have voluntarily chosen to involve in civil society based on—mostly, but not exclusively—a sense of civic duty. There is a complex interaction between their ‘civic’ motives, their official positions and responsibilities, the political clout and the overall political environment they are working in. They are faced with and sometimes suffer from various personnel problems beyond their control and these have negative effects, not only on their professional performance but also on their effectiveness as members of the Parliamentary *civil society*—their self-proclaimed, self-styled role.

Peer Review Report (SIGMA 2010) listed major personnel problems of TGNA. According to this report; government-opposition divide spills over into the daily work, staff management is influenced by political actors through direct and indirect means. Two rather important findings of the

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<sup>250</sup> Law No. 5957, on Regulating the Trade of Fresh Fruit and Vegetables and Other Commodities Having Supply and Demand Regularity (*tr. Sebze ve Meyveler ile Yeterli Arz ve Talep Derinligi Bulunan Diğ er Mallarin Ticaretinin Düzenlenmesi Hakkında Kanun*), adopted on 11 March 2010. Official Gazette No. 27533, dated 26 March 2010.

report are about the results of these problems: *compartmentalisation* and *de-motivation*. (25-29) One staffer—expert—grudgingly voiced what was clearly the general sentiment of experts who were recruited through competitive procedures: “There is very little expertise available in ministries because assignments are generally made based on fellow-townsmanship, kinship, regionalism or sectarian preferences rather than merit, qualification and competence.” He was referring to the same practice within the TGNA in an indirect way.<sup>251</sup>

From the perspective of general political culture, there is ‘no’ demand for civic activity. Even initiatives such as “Democracy Education and School Assemblies” firmly and personally supported by the Speaker of the Parliament—Cemil Cicek—did not have a chance to come even closer to their declared aims.<sup>252</sup> The implementation of the programmes such as Democratic Citizenship and Human Rights Education of the Ministry of Education<sup>253</sup> is supposed to change this attitude in the mid-to-long term. However, for the time being, there is very little, if any, regular cooperation between the Parliament, civil society, bureaucracy<sup>254</sup> and academia in

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<sup>251</sup> Interview, March 2012.

<sup>252</sup> See; ‘Bylaw for Democracy Education and School Assemblies’, No 2004/2564. 11 January 2013. [http://mevzuat.meb.gov.tr/html/2564\\_0.html](http://mevzuat.meb.gov.tr/html/2564_0.html), and <http://tandis.odhr.pl/documents/hrecompendium/en/CD%20SEC%202%20ENV/Democray%20Education%20School%20Assemblies%20Project%20Turkey%20ENG.pdf>.

<sup>253</sup> TR 2009/0136.01 Democratic Citizenship and Human Rights Education is one of the 33 projects supported by the European Commission under the Instrument for Preaccession Assistance (IPA)—Transition Assistance and Institution Building Component—Part 2, of the National Programme for Turkey. Project’s purpose is to increase institutional capacity of the Ministry of National Education to design, develop and implement democratic citizenship and human rights education (EDC/HRE) that corresponds with European core values from pre-school to secondary education; with a view to fostering a democratic school culture and society. 04 March 2012. [http://www.cfcu.gov.tr/SPOs/FAs/FA\\_2009\\_Part\\_II.pdf](http://www.cfcu.gov.tr/SPOs/FAs/FA_2009_Part_II.pdf).

<sup>254</sup> To the workshop on ‘Civil Society Participation in Legislative Process’, on 15-16 March 2012, bureaucrats participated for the first time after two years, and the last time since this was the final meeting of the long-standing project. They simply stated that the draft law and amendments under discussion that would strengthen civil society participation “required

implementing ostensibly comprehensive and ambitious plans/programmes towards such ends. The absence of ‘academic’ input in implementation and advancement of similar projects is noticeable.<sup>255</sup>

Also missing, vitally, is the political input—avoiding *ownership*. There has been no involvement of the political elite—e.g. MPs, political party representatives, the Government—except for limited participation by their advisors. The three main pillars of the entire scheme—training and education, legislative law, improving civil society participation—would be standing on the fourth pillar, *strengthening the legislative process* itself. The latter, necessarily required active participation and contribution from the political elite. One typical example is the Civil Society Common Working Groups initiative.<sup>256</sup> Led by civil society organisations such as Human Rights Common Platform (IHOP) and Civil Society Development Centre (STGM) as well as YASADER and PDD, with the ambitious aim of bringing Deputies of different political parties—with similar concerns on particular subjects—together and to make them cooperate with civil society, eventually leading to improving civil society’s contribution to legislative

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political decision” and “since there were too many civil society organisations, their views could only be taken over the internet”.

<sup>255</sup> For example, in the final meeting of the ‘Civil Society Participation in Legislative Process’ on 15-16 March 2012, NGOs, staffers and bureaucrats, after two years of deliberations spent considerable time on the “role of civil society”. With a meaningful academic input such issues would have been clarified at the outset, years ago.

<sup>256</sup> The initiative first approached to 60 MPs and formed 13 groups—at least ten MPs in each, shared by the media in a press conference on 23 January 2008, in the Parliament. On 07 February, 13 MPs representing 13 groups and more than 250 civil society representatives came together for a meeting called ‘Prejudices are not Allowed in’. The initiative had its first meeting in Ankara on 9-10 October 2008. Coordinators were Sanar Yurdatapan—singer/composer, human rights activist—and a former Deputy Ahmet Faruk Ünsal (AKP). In a parallel effort, Local Forums Common Working Group were also initiated and first 19 Local Forums were formed—each with 20-25 participants, NGOs and Deputies. A call was made by representatives of the 19 forums and the chairmen of standing committees in the Parliament to form them in all provinces at the 09 October meeting. 2 May 2012.

[http://www.yasader.org/web/yasama\\_surecine\\_katilim/4/tbmmocg.pdf](http://www.yasader.org/web/yasama_surecine_katilim/4/tbmmocg.pdf).

process. The initiative was started in 2008, but from 2009 on gradually drew down and disappeared mainly due to a lack of interest on the part of the MPs.<sup>257</sup> Attempting to strengthen the legislative process, without deputies, tantamount to trying to treat a patient in absentia.

The projects are run by a hand-full of civil society ‘enthusiasts’ in the TGNA, not enjoying the practical or moral support of neither the political leadership<sup>258</sup> nor their fellow colleagues in general. Nevertheless, perhaps inevitably, there are management problems which hamper effective implementation too.

On the other hand, although considerable efforts and resources are committed to improving participation of the civil society in the legislative process, there is almost no visibility of these efforts in the TGNA, nor parties or individual MPs—or their advisors—are really informed about them. One senior MP—former minister—indicated that he has “never heard of even the existence of professional associations within the Parliament”, neither has the extensive work on the draft new Rules of Procedure ever come to his attention.<sup>259</sup> And yet, to put it straight, even in the civil society itself, there is virtually no interest in TGNA-led efforts and initiatives to improve participation of the civil society.<sup>260</sup> This behaviour is difficult to explain.

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<sup>257</sup> Sanar Yurdatapan, in early 2009, complained about shortcomings in terms of participation by the Deputies—the key to the success of this initiative. “Civil society is not taken seriously”. 14 August 2009, Bir Gün. 11 January 2013.

[http://www.birgun.net/actuel\\_index.php?news\\_code=1250242967&year=2009&month=08&day=14](http://www.birgun.net/actuel_index.php?news_code=1250242967&year=2009&month=08&day=14).

<sup>258</sup> One mid-level TGNA official opening the final two-day workshop on the ‘Civil Society Participation in Legislative Process’ on 15 March 2012, delivered a five-minute speech and left immediately.

<sup>259</sup> Interview, May 2012.

<sup>260</sup> For example, in the final meeting of the ‘Civil Society Participation in Legislative Process’ on 15-16 March 2012, very few NGOs which showed up—Pozitif Yasam Dernegi, AKUT, Mazlum-Der, Human Rights Platform (Helsinki Citizens), Afet Gonüllüleri Vakfı, NDI (National Democratic Institute), ODER (Otistic Children Association), Narlidere Zihinsel Ozürlüleri Koruma Projesi, Türkiye Küçük Millet Meclisleri Projesi, Seffaflik

The same observation is applicable also to the international civil society. They adopt a piecemeal approach to projects they support. Head of an international NGO stationed in Ankara and actively supporting the reform process since 2008, did not even hear of the names of major civil society organisations in Turkey. Nor had he heard of the draft new Rules of Procedure that would facilitate ‘his’ work a lot.<sup>261</sup> There is virtually no cooperation between and within them. In one case, diplomatic representatives of the same country, i.e. diplomatic staff of the same Embassy were not aware of the two simultaneous civil society activity—taking place in Istanbul and in Ankara—supported by the very same staff. Furthermore, neither NGO was aware of each other’s activity, let alone coordinate, synchronize and mutually support.

To sum up, civic efforts of the Parliamentary civil society, no matter how praiseworthy and exemplary they are, so far have failed to play the role they volunteered for. The mammoth but unsuccessful effort to improve civil society participation has clearly exposed the major problem blocking a comprehensive reform in the TGNA: *lack of political will*. ‘Civic’ action by ‘bureaucrats’ without political support and backing did not provide for the organisational, institutional and structural reforms required for institutional capacity building and this situation does not bode well for the civil society.

### **3.7. How civil society operates in Turkey**

The way civil society operates and takes part in the *consultation* process, or whether it actually *participates*, is related to the *role* and *status* granted to civil society, not only by the legal framework but also by the mental framework dominant in the Turkish political culture. The degree of acceptance, by various political and bureaucratic actors, of the civil

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Derneği (Transparency International), Ucan Süpürge (Flying Broom), Sivil Toplum Gelistirme Merkezi Derneği/Kapasite Gelistirme Derneği—and those from the bureaucracy who attended the meeting, after two years of deliberations, spent almost a whole day on the meaning of ‘participation’.

<sup>261</sup> Interview, April 2012.

society—as an ‘actor’ or a ‘partner’—in the decision-making, drafting and legislative processes, decides the way it operates and ‘participates’. The key here is to understand what ‘participation’ means to those involved.

For the *majority*, it is simply making the draft legislation available for the public and the media so that they—public—can make their views known should they wish so. In this case, even if the executive—and the bureaucracy in general—displays willingness to talk to civil society and adopts a more inclusive attitude, the result is expanding, rather than deepening and improving the quality of interaction. This is seen in the common habit of bureaucracy in Turkey, in general, to make draft bills available only after they finalise them, i.e. when they are forwarded to the Office of the Prime Minister. (The ‘time’ factor, which has already been discussed above, has an important impact on this attitude) That’s why, ministries, Prime Minister’s Office and political parties are three *black-boxes* closed to any ‘participation’ particularly on politically sensitive subjects.

There is also a general distrust—even hardly concealed *contempt*—attached to the notion of ‘civil society’ which is reflected in the dichotomy between the socially-favoured attitude in the form of *rhetoric* and the actual behaviour. One typical example was given by the Deputy Prime Minister Cemil Cicek who said, during a symposium on civil society’s participation in legislative process, in January 2011:

In today’s world, civil societies play an important role in the process of legislation. I don’t know what the number of our civil society (organisations) is, but the civility of some of them is self-proclaimed. They are invisible, but only their nameboards are visible. When one sends draft bills or a proposal of law, no answer is forthcoming. [...] and later they complain and say ‘nobody asked for our inputs, if we were asked we would have said this and this’. What has to be done is to make active contributions at early stages of the drafting process. (Neziroglu & Bakirci 2011: 19).

But, six months later, when he became the Speaker of the Parliament, in the *preface* to the publication on the very symposium, he said: “[...] first of all, while drafting a law, views of other organisations and those of the civil society should be particularly sought” (Neziroglu & Bakirci 2011: 5). Despite the more *positive* attitude he adopted, clearly his understanding of the civil society’s role did not include ‘participation’ as an equal partner, but restricted to ‘receiving’ views which may or may not be accepted.<sup>262</sup>

The hesitation to involve civil society in ‘processes’ is common not only in the political elite but also—increasingly—in the bureaucracy as a state of ambivalence spreads through the state institutions along with the ‘perceived’ challenge, even ‘threat’ posed by the civil society. The participation beyond consultation is considered by many ‘sharing the political power’ without responsibility. This is related to the wider ‘participation’ debate currently ongoing in contemporary democracies. Civil society, in this sense, is the way to complement—rather than replace—representative democracy by providing alternative and new ways for citizens to ‘participate’.

As a result, eventually it comes to if ‘participation’ by the civil society is considered *legitimate* and accepted in a *meaningful* way or not. The answers to these basic questions have proven unaffirmative and have discouraged even the most good-intentioned attempts in Turkey. One example is the modest but *pioneering* ‘Countdown: European Movement 2002’ initiative. The initiative, led by Cengiz Aktar, was launched early 2002, for the purpose of supporting the process leading to the EU Copenhagen Summit in December 2002, at which time Turkey expected to secure candidate status.<sup>263</sup> It was short-lived, but critical in terms of its effect on government

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<sup>262</sup> Cemil Cicek, as the Speaker of the Parliament, would make a sincere, systematic and sustained effort to involve civil society during the drafting process of a new constitution, later in 2012, and would personally lead the initiative.

<sup>263</sup> See; (Aktar 2005). December 2002 Copenhagen Summit confirmed Turkey’s candidate status but deferred the opening of negotiations to 2004, provided that “the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfills the Copenhagen political criteria”. See; EU

policies in a fateful year. But there are civil society think-tanks and other organisations which sustained a long-standing, systematic effort—against all odds—in order to support the democratisation, and attempted to participate in the decision-making, law-making and legislative processes in Turkey through direct and indirect ways based on *mid-to-long* term goals and programmes.

Turan (1997) argues that a society “employing means more appropriate to a political democracy [...] presumes the presence of a democratic culture or a mindset which precedes the emergence of problems regarding the identity of the political community” (292). In Turkey, this critically needed *mind set* has not evolved before the emergence of current problems, and as a result, the means employed in coping with them are not particularly appropriate to a political democracy. *Identities* continue to remain at the basis of the most contentious problems of Turkish politics, society and polity.

The Turkish democracy has come a rather long way and now can be considered quite an experienced political system. However, *systemic problems* continue to dominate the system. Elites are still unable to work together and compromise, the public is largely indifferent to the problematic of ‘participation’ and there is widespread disillusionment with democracy, hence search for a strong leader—versus a democratic leader. As a result, in Huntington’s words, the political system in Turkey has become the typical example of ‘cyclical pattern’, sadly alternating “back and forth between democratic and authoritarian systems”, the change of regime performing “the same function as the change of parties in a stable democratic system” (1991: 279). Under mercurial conditions, the often-repeated, self-proclaimed mission of securing or protecting democracy can be the main obstacle to promoting democracy simply because fundamental *democratic values* are not generally and genuinely internalised.

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Presidency Conclusions of 29 January 2003. 14 July 2012.  
<http://ec.europa.eu/research/era/docs/en/council-eu-27.pdf>.

The term civil society, a ‘Western’ institution, has a negative connotation and there is a negative attitude and behaviour associated with it. In recent years, the rhetoric of “Foreign agents damaging Turkey and Turkish interests” has gained more weight than ever. As a result there is a tendency towards *selective democratisation*. It is readily adopted by the political elite, as a whole. Turkey-EU relations are used for promoting long-term domestic political goals with a short term perspective towards EU. Therefore, there is a selective and instrumental adoption and application of the *acquis*. This is certainly not the most favourable environment for civil society’s participation in the political decision-making process as far as—and particularly—the democratisation process and related reforms are concerned. There is a fundamental resistance to the idea of participation in any form, from any circle. ‘Political authority’ is traditionally perceived as ‘absolute’, not restrained or limited, in practice, unaccountable beyond regular elections. Therefore, ‘sharing’ it, is considered unfair and even illegitimate.

Özbudun (1997) argues that “consolidation of democracy requires a balanced relationship between civil society and political society. [...] the impact of civil society upon political society would be one of informing, monitoring, checking and pressuring the latter, but not one of replacing it” (85-86). However, in Turkey, it seems that neither the political role nor the status of civil society—as a legitimate partner—is recognised by the political society nor such a role is expected or demanded by the general public.

Currently, there are basically two modes of political decision-making. Key political decisions—on politically sensitive subjects—are made in small, closed groups and related policies are formulated accordingly. The follow-on work, i.e. ‘drafting’ the laws in ministries or at various levels of the bureaucracy, including the Office of the Prime Minister, are *technical* in nature and are *strictly* based on the already made key decisions. The whole *legislative* process, then, turns into a not too meaningful *ritual*. This mode sometimes takes the form of bypassing the whole bureaucracy and the

Parliament and the bills are introduced at the last minute, immediately before a vote is taken in the Plenary. In this case, the whole political system is meant to rubber stamp the initially made political decision(s) and there is virtually no chance or opportunity for the civil society to involve in any form, let alone participate.

If the matter in hand is not politically too sensitive or general sentiment in the public is in line with Government's political aims, then, while major decisions are still made at the very top and/or prior political endorsement is obtained before the proper drafting process is initiated, there may be a chance for the civil society to participate. However, depending on the substance of the subject and the inclination or preference of the Government to involve civil society, this chance would be limited in terms of the time available, and still restricted in terms of access to the system. If civil society does have the chance and gets access, then *participation* is mostly symbolic, in the form of 'offering' input and a favourable reception is mostly not forthcoming.

The chance for a real participation is highest for subjects with little or no political sensitivity or for those not carrying any risk of being politically manipulated. In such cases, 'cooperation' with civil society may turn into impressive showcases as was the case in Law No 6284, in 2012.<sup>264</sup>

Decision-making models and leadership styles that dominate the Turkish political scene also play a role in the complex interaction between the executive, i.e. Government and bureaucracy, and civil society. Until mid-2000s, the political decision-making system—traditionally a combination of *organisational process* and *governmental politics* models—was run by a 'political' leadership of *laissez-faire* nature. Policy was developed through a general interaction pattern of 'rational' actors. Role, governmental and systemic—rather than societal and idiosyncratic—factors played a role. From mid-2007 on, the system was dominated by a *transformational* leader—not a coordinator or manager, but rather an *inspirer* or *visionary*—

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<sup>264</sup> Law No 6284, 'Law for the Protection of the Family and Prevention of Violence against Women', adopted on 8 March 2012. Official Gazette, 20 March 2012, No. 28239.

motivated by strong *ideological convictions*, with *personal resolution* and *political will*. Where the ultimate decision unit is an insensitive predominant leader his personality, orientations, view of the world shape the policy. Then, shared images dominate among decisionmakers and other ‘operatives’ who are reasoning by *metaphor* and *analogy*—rather than rational decision-making—in line with the leader’s *world view*. When policy-making process is limited to dynamics taking place in a closed and small circle of decision-makers and/or advisors, conformity becomes the general pattern of interaction. This style of leadership, in essence, is closed to any ‘interference’ by civil society.

Canes-Wrone’s—among others—discussion of the ‘strategy of pandering’ (2000: 104)<sup>265</sup> is applicable to Government-civil society relations in Turkey. Essentially, in the competition for the support of public opinion, given the established patterns of interaction between the political decision-making and the public opinion, the political landscape displays a clear dominance of the ‘political leadership’ over civil society. This is mostly due to control of and access to information and almost absolute government control over the media. A very *docile* civil society reflects the fundamental problem facing civil society in Turkey; a sense of weakness, dependency and inability to bring about a change, however modest.

The more legislative items are associated with parochial identities the stronger is the resistance to participation which is considered ‘interference’.

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<sup>265</sup> The carrying out of the ‘Strategy of pandering’ would change depending on the belief about whether citizens are *well-informed* or *misinformed* or *uninformed*. Canes-Wrone *et al* discusses in length *full pandering* as “occurring when a government official always selects the policies voters want” or *forward-looking pandering*-policy leadership, “leaders engaging in the opposite behavior”, despite a “lack of popular support for doing so”. If the competition for the support of public opinion, between the political leadership and civil society, involves what Geer (1996) calls “democratic leadership”, i.e. “politicians moving public opinion toward his or her policy position”, it is easier for the civil society to compete because the rules of the *democratic game* apply equally and fairly to both ‘parties’. (Canes-Wrone *et al* 2000: 104-105)

Such a psychological disposition is hardly conducive to a more co-operative governing-opposition relations and to participation of civil society.

Regionalism is complimented by ‘sectarianism’. Almost a *cult-like* attitude existing in particular groups or sub-groups—in political parties, bureaucracy, civil society, and increasingly in academia—categorically rejects involvement of any kind by ‘outsiders’ and is closed to any contact, communication or interaction with them. This includes civil society. Any initiative, in any form, taken by the civil society sparks off a wave of rumours, and conspiracy theories start to spread. Even the most ordinary civil society projects can easily turn into a contentious issue. “There is a kind of ‘paranoia’ about any initiative directed at improving people’s participation” says one senior civil society official.<sup>266</sup> This is exacerbated by the deeply rooted distrust and suspicion towards ‘West’ and the civil society associated with the West takes its fair share. Politicians are restricted and restrained by the anticipated public perception of the legislative initiatives if they involve civil society, let alone the initiatives which are advocated by them.

Most of the Deputies, coming from small towns with little, if any, foreign language ability nor experience of the modern world, in addition to the above-mentioned impediments, experience difficulty in correctly perceiving the role of civil society in democracies—a natural and integral part of the political system in the West—its sources of funding, international networking etc. Therefore, they prefer to maintain a ‘safe’ distance from civil society.

The dominant culture of Turkish elite appears to be ‘looking’ self-reliant, confident—in most cases, overconfident—of his/her competence, no felt-need for further education or self-improvement for either professional or intellectual purposes. ‘Individuality’ and self-confidence may sound desired features of a mature personality. However, when they are not based on a robust education, experience and eagerness to excell through continual training, education and personal development, they constitute major

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<sup>266</sup> Interview; January 2012.

obstacles to cooperation and team-work with others. This situation results in an avoidance behaviour vis-a-vis any potential ‘confrontation’ with diverging or challenging views. Hence, there is no interest in civil society products, inputs, alternative approaches, even if they are made available and/or accessed. This is a tendency which is ‘proudly’ displayed and even uttered more by younger generations. When some interviewees were asked if they needed to get any assistance or contribution from civil society organisations in performing their functions as advisors to MPs or civil servants, they took such questions as an insult to their ‘competence’ and a challenge to their professional ‘qualifications’.

The more individuals are of similar socio-economic, ideological backgrounds and the longer they work together, share similar institutional identities—hence represent similar sub-cultures, they are more prone to ‘group-think’ and resulting self-censorship. Then, once such a general institutional culture gradually develops and settles in, it is extremely difficult to change it for better or worse. Currently, the common feature of the institutional culture in Turkish bureaucracy is one that avoids, even resists civil society and refuses cooperation. This was, until recently, the prominent characteristic of the institutional culture in the Turkish military. Now that the military has completely walled itself off, the civilians in bureaucracy and the politics, ever aggressively defending their turf, have turned more ‘militaristic’ in this sense.

It also appears that ‘avoiding clash’ with the *executive* has become a common feature of the organisational culture in Turkish bureaucracy. The overall psychological environment reflected by the group-think is described by some interviewees as ‘cultural oppression’, practically obstructing free-thinking and quality work. One judge from the Court of Appeals explains that:

When government bills—related to judiciary—are referred to the court, the text is distributed to boards and chambers of the Court for comments and inputs, but they are *seldom* actioned; neither the inaction is questioned nor action is enforced. It’s very difficult to work on a *draft*

*bill* or *government bill* to arrive at a common understanding and common view through discussion and argument because the views are too diverse to reconcile. Therefore the views expressed as *inputs* are mostly ‘personal’, individual views or—depending on the subject—the personality and/or beliefs of the President of the Court decide the outcome, i.e. constitutes the institutional view”.<sup>267</sup>

On the other hand, since following certain ‘democratic’ procedures for drafting and making laws—legislating—is considered ‘waste’ of time, there is a never-ending search for ‘easy’—simple, flexible, short, not too complicated—procedures on the part of the governing party, in order to pass bills without major ‘trouble’ in the Parliament. The opposition is no different in terms of what to be expected from the legislative process and its *teleological* purposes, particularly in a democracy.<sup>268</sup> Where legislative process—hence outcomes—are not taken as the end-product of a democratic process, quite naturally and unavoidably, there isn’t much incentive to involve civil society.

The phenomenon that can be called ‘problematic of time’ is a major obstacle to quality legislation and meaningful civil society participation, no matter how constructive this contribution may actually be. Ostensibly, there is an obsession with ever speeding up the legislative process. Anything that would slow down the legislative process—such as involvement of the civil

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<sup>267</sup> Interview; December 2011.

<sup>268</sup> Bekir Bozdag, MP, Vice-Chair for AKP Parliamentary Caucus: “[...] TGNA urgently needs a formal regulation for legislative process and techniques. [...] (this regulation) may be in a law form. (Then) it would be difficult to amend it, but Bureau of the Assembly can also deal with this requirement in a certain way. Because then, it would be easier to amend when needed” (Neziroglu & Bakirci 2011: 200). M. Akif Hamzacebi, MP, Vice-Chair for CHP Parliamentary Caucus; “[...] in the subcommittee [...] members delve into the subject, hear out all parties involved; problems and solutions are put forward; the end text may not be (exactly) what the MP would like it to be, but at least problems would have been discussed in some length” (Neziroglu & Bakirci 2011: 219).

society—is considered unwarranted and unjustified. SIGMA Report explains this with the existence of a particular legislative culture:

It is against the backdrop of a legislative culture in which formal or informal restrictions on the volume of government bills are not deemed feasible that the management of business becomes strongly driven by the desire to increase ‘legislative throughput’, i.e. to speed up processes so as not to become overwhelmed by volume. (SIGMA 2010: 10)

There is a clear consensus among bureaucrats that politically-imposed time restrictions and deadlines constitute a major burden on the quality of work.<sup>269</sup> However, if the nature of this resentment and displeasure is related to the quality of legislation *per se* is questionable. It may simply be related to the increased workload and long working hours. The latter is more in line with the legislative culture often hinted and/or manifested by civil servants and politicians alike.<sup>270</sup> If this is not related to a genuine desire to improve the quality of legislation—which seems to be the case—then, even if the

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<sup>269</sup> Bureaucrats are quite straightforward in speaking out on that point and voicing their annoyance, in interviews as well as during on-the-record workshops: “rushing the legislative process does not allow proper study and examination (of the draft bills)”, Adem Keskin, Legal Advisor in the Ministry of Health (Neziroglu & Bakirci 2011: 42). “[...] we sometimes run into difficulty, particularly when the space is too brief between the time a draft bill reaches the General Secretariat for the Office of the President and the time it is included in the Plenary agenda” Emin Sunmaz, Director, Legal Affairs in Acts and Resolutions and Legal Affairs, Office of the President (Neziroglu & Bakirci 2011: 187).

<sup>270</sup> Mustafa Dogan, Dpty Director, Acts and Resolutions, Office of the Prime Minister; “[...] it is important that the ministries should take views of the civil society organisations on a draft before they submit it to the Office of the Prime Minister. (However) if this was made obligatory, [...] this could have an obstructive effect on the legislative process as well” (Neziroglu & Bakirci 2011: 90-91). M. Akif Hamzacebi, MP, Vice-Chair for CHP Parliamentary Caucus; “There are suggestions for a second chamber, which I don’t agree with. [...] if there was a Senate of the Republic, then laws would also go there and mistakes would be corrected (they argue). This (simply) prolongs the legislative process” (Neziroglu & Bakirci 2011: 208).

time factor was eliminated, there would not be an increased willingness to 'accommodate' civil society.

### **3.8. 'State' of civil society in Turkey**

TACSO Turkey 2011 Report<sup>271</sup> provided an analysis of the civil society environment, an overview of the main features of civil society, main achievements and shortfalls, and institutional and organisational capacity needs of civil society in Turkey. It listed as major problems faced by the civil society in Turkey; inadequate financial resources (71%), inadequate volunteer support (38%), weak voluntary culture at local and national levels (35%), problems regarding legal framework (30.5%), collaboration and dialogue with others in the same area of interest (19.5%), weak relations with central government (17%), weak relations with the local government (16%). It concluded:

[...] the government came to at least recognise the civil society as an actor, even if it is only a discourse change and on paper and not sincerely aimed at the attempts to call for civil society for consultation. [...] in most cases, the attempts only stay at the first levels of participation: providing information or hearing through general consultations. [...] The consultations are made either in a very broad gathering of various civil society organisations regardless of expertise areas [...] or with relatively smaller number of CSOs that are not necessarily experts in the field. [...] although they were called in to participate in such consultation meetings, they did not have much effect on the results, and monitor the proceeding steps. (TACSO Turkey 2011: 12)

The problems faced by the civil society in Turkey are also specified in the latest STGM report in 2012. The main purpose of the Impact Evaluation Survey Final Report (2005-2010) was to evaluate STGM's support to civil

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<sup>271</sup> Technical Assistance to Civil Society Organisations (TACSO) in the IPA Countries, Turkey Needs Assessment Report 2011. 10 February 2013.  
[http://tacso.org/doc/TR\\_NA\\_Report.pdf](http://tacso.org/doc/TR_NA_Report.pdf).

society organisations, its contribution to the development of the civil society in general and looking for additional ways to improve such support.<sup>272</sup> The findings largely overlap with the findings of TACSO report.

Legal, administrative, political and mental/cultural infrastructure for civil society participation in decision-making and legislative processes—both in the state bureaucracy and in the Parliament—is largely absent in Turkey.<sup>273</sup> The relations between the executive and civil society are replete with serious problems of communication. Notwithstanding, civil society, dedicates its already scarce resources primarily at seeking to influence the executive stages of law-making. The Parliamentary stages of the legislative process—Committees and the Plenary—are largely ignored.

Absence of development in civil society networks is a major shortcoming. Civil society organisations—including, even civil society think-tanks—are essentially voluntary initiatives of individuals. Naturally friendship ties, at least initially play a role in any of such organisations. However, the main problem in Turkey is that such a start remains almost the sole basis for these organisations, hampering institutionalisation. Inter-agency interaction and cooperation remain limited to interpersonal relations between ‘friends’. Real, systematic, effective cooperation with other civil society organisations—for the purposes of democratisation—is negligible. ‘Networking’ with international civil society organisations—and others—is largely one-way and mostly restricted to providing funding to various projects. Therefore, the struggle to ‘participate’ is a lonesome crusade.<sup>274</sup>

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<sup>272</sup> STGM, since 2005, carried out three different projects, one for every two-years: from 2005 to 2007, *Strengthening Freedom of Association for further Development of Civil Society*; from 2007 to 2009, *Supporting Civil Society Development and Dialogue in Turkey*; from 2009 to 2011, *Civil Society Development for Active Participation*, covering about 2000 rights-based civil society organisations. (STGM Report: 7-8)

<sup>273</sup> Also in TACSO Report: “[...] viable participation/consultation mechanisms for working with government/public are either absent or ineffective and obscure” (TACSO Turkey 2011: 27).

<sup>274</sup> Regarding cooperation and networking—or lack of it—within civil society, that of between TESEV and TÜSIAD—two most active and influential—is striking. TESEV’s

On the other hand, civil society itself, in most cases, is the major obstacle to its own success. Fundamental ideological differences and other cultural reasons lead to ‘framing’—of individual names, funding sources, perceived aims, networking with certain CSOs—and seriously hinder civil society cooperation. There is a self-imposed isolation based on a deep-seated prejudice. Most members of most of the CSOs participate in activities of one—their *own*—organisation only. The interviewees claimed that they ‘would’ participate if they were invited, but they never took the initiative to reach out—to ‘others’. For instance; one of the civil society organisations working on the constitutional amendment package in the course of 2010-2011 received an invitation from a prominent CSO to participate in a study. They “refused to participate”, said a senior member interviewed, because “of the name of the individual leading the study, the foreign source funding it, the ‘reputation’ of this particular CSO and their cooperation with a ‘rival’ CSO” he explained. “Our participation would legitimise their end product” he added. Another senior member from the same CSO, after voicing the same attitude in a separate interview, when questioned about the rationality of this behaviour, admitted that this “shouldn’t have been the way civil society works, but (she) could not help”.<sup>275</sup>

The same goes for the publications; members read or are interested in their *own* publications only. Their perception of the ‘other’, then, is necessarily *distorted*, resulting in the denial of—potentially—valuable partners or allies in the civil society. One CSO member, referring to two civil society organisations—included in this study—said that she had “never

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Chairman—Can Paker—is also a member of TÜSIAD and it was him who initiated the Tanör report in 1997. He was also the first chair of the Parliamentary Commission of TÜSIAD, in 1995-96 period. He was involved in EU Political Criteria working group, and the report prepared by Prof. Süheyl Batum in 2001. This situation is tactfully explained by one TESEV staff: “Although there isn’t a cooperation like walking ‘arm-in-arm’, there is indeed a relationship that can be described as ‘elbows touching’”. So, there may—or may not—be more cooperation than can be observed from outside—between these two cousin organisations.

<sup>275</sup> Interviews; December 2011 and January 2012.

seen or read any of their publications, neither was (she) interested in what they were saying, because (their) views (did) not overlap (with those of herself)”. Realizing the undeniable contradiction in this statement she added: “I’m prejudiced in that respect—I know this is not the way it should be in democracies”. She described the views of one prominent organisation, on the constitutional package of 2010, as being *supportive* of the government position while they had actually fundamentally *opposed* to its basic premises.<sup>276</sup>

Again, when it comes to coordination, linkage and synergy between initiatives led by different countries—even if such efforts are supported from a common EU facility—the situation can become confusing, to say the least. For example, EU may ‘task’ the Netherlands and the Netherlands may sub-contract certain projects, outsourcing to international professional companies. For the company employee the project at hand is just a ‘job’, a disposition which is hardly compatible with the spirit of civil society. There is also some sensitivity, which makes much sense in the Turkish context, necessitating the adoption of an ‘advisory’ role and avoiding ‘lecturing’. Also, not all embassies and foreign civil society organisations are equally well prepared to stay abreast of domestic developments.<sup>277</sup> On the other hand, being well aware of the currently extremely polarised political climate in Turkey, they are—understandably—reluctant to adopt a more assertive stance and would rather maintain a physical and emotional distance.<sup>278</sup> Involvement of Turkish ‘agencies’ as the ‘owners’ of such initiatives—

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<sup>276</sup> Interview; January 2012.

<sup>277</sup> One foreign diplomat, interviewed in May 2012, said that “the Government considered civil society a nuisance until 5 years ago, but today they considered it an ally” and that the “general environment was positive”. However, the European Parliament Resolution of March 2012—less than two months before this statement—was reminding the Turkish Government “the pledge to base the (Constitution) drafting process on the broadest possible consultation of all segments of society as part of a process which genuinely engages Turkish civil society” (EP 2011: Art 8).

<sup>278</sup> Despite repeated attempts, it has proven virtually impossible to reach some of these international organisations’ resident representatives in Turkey for interviews.

using funds and benefiting, or not benefiting, from the results—does not help much to alleviate the situation.

In the case of two conferences, held in the same week—virtually overlapping—one in Ankara and the other in Istanbul—in May 2012, supported from the *same* EU source, ‘coordinated’ by the *same* resident embassy, on the *same* subject—democratisation and civil society participation—as part of projects which are ongoing for *years*, not a one-time event; respective organisers—and the participants—were mutually unaware of even the existence of the ‘projects’ involved, let alone the conferences held at the same time. Furthermore, when there is a time-lapse between implementations of various projects, there is simply no memory and the efforts are simply lost in outer space.<sup>279</sup> This intractable problem is the major source of waste of effort and resources, and most importantly, it is very discouraging for the civil society—i.e. individuals working in it—from taking further initiatives.<sup>280</sup>

A culture of ‘charity’ dominates the cultural dimension of civil society environment in Turkey and favours *belief-based*, i.e. religious, associations. However the culture of *timely paying* membership dues—in ‘other’ civil society—is prominently very weak, to say the least. There is nothing these organisations can really do to enforce the membership rules—and dues.

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<sup>279</sup> The main reason—and explanation—for the ineffective role played by Turkish authorities in coordinating such efforts appears to be lack of time, i.e. intense tempo, workload, and frequent turn-over of personnel. Plus, see above ‘Culture’.

<sup>280</sup> A MATRA supported Project, from 2006 to 2009, involved Utrecht University—coordinator—the Netherlands Institute of Human Rights, Istanbul Bilgi University and the Turkish Justice Academy, and aimed at improving respect for ‘human rights’ within the Turkish judiciary. However, from 2009 on, Turkish judiciary was subjected to even more and intense criticism in EU Progress Reports in terms of *internalisation* of human rights and improving standards within the judiciary. See; MATRA TR 13112 ‘Training of Turkish Judges and Public Prosecutors on Human Rights and Strengthening Local Capacity for the Internalisation of Human Rights Standards’. 27 February 2013.  
<http://www.uu.nl/faculty/leg/nl/onderzoekinopdracht/internationalcooperationprojects/projecten/Pages/turkey.aspx?refer=/faculty/leg/nl/onderzoekinopdracht/internationalcooperationprojects/projecten/turkey>.

Since there is no institutional funding, ‘hunting’ for funds consumes much of their energy, time and exhausts their enthusiasm. Constant preoccupation with finding the funds vital for institutional survival is a major distraction from a consistent pursuit of certain legislative subjects. On the other hand, relying on government funds and/or foreign donors have their respective political and psychological disadvantages *vis-a-vis* independent funding.

The governments and international institutions that have supported civil society programmes in Turkey are increasingly less inclined to lend support. Funds are provided for shorter periods, making sustainability and lasting impact more difficult. For example, MATRA support for various projects, from 2011 on, changed in nature from bulk/large scale support to big and long-term projects which were centrally administered, to smaller-scale, shorter-term, locally administered projects.<sup>281</sup> “This is getting worse, as budgets get tighter and tighter and governments become more selective and even opportunistic” explains a senior civil society staff, resented.

‘Absorbing’ EU funds, properly, has particularly been a constant source of annoyance even irritation between the Turkish government and the EU authorities. Since 2009, assistance under IPA is supposed to be managed by the Turkish authorities and the Commission just carries out the accreditation process. However, concerns about the local capacity for managing these funds have repeatedly been voiced in EU Progress Reports.<sup>282</sup>

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<sup>281</sup> Interview; September 2011.

<sup>282</sup> “Turkey needs to complete preparations for the transfer of management responsibility under the rural development component (V), vigorously address system weaknesses including regarding monitoring and further improve the quality and efficiency of the project and programme cycles” (EC 2009: 6).

“Turkey needs to strengthen its capacity to absorb funds, achieve results and implement in a timely manner components I-IV. [...] The supervision by the National Authorising Officer needs to address system weaknesses, including monitoring and control, and further improve the quality and efficiency of the project and programme cycles” (EC 2010: 6).

“[...] delays continued to occur and Turkey needs to strengthen its capacity to deliver results, absorb funds, develop a project pipeline and implement all IPA components in a timely manner” (EC 2011: 5).

Shortage of stable funds—compounded with the shortage of capacity to *absorb* and *manage* those already available—presents a formidable challenge for long-term employment of area experts and administrative staff. This does not bode well for an institution—such as civil society—offering, in principle, expert opinion.<sup>283</sup>

The problem of visibility—or lack of it—appears to be yet another obstacle to operational success of civil society. Visibility creates a sense of legitimacy, hence political power to have an impact on the political decision-making and legislative processes. With almost no resources of their own, civil society in Turkey has to rely on the media—as catalyser—over which it has no control. On the other hand, civil society itself not only lacks resources to increase their visibility but also their efforts to that end is very limited. ‘None’ of the civil society organisations in Turkey pursues an aggressive media campaign in support of their public policy aims and objectives. Neither do they have dedicated staff for jobs directly and exclusively related to the media and public relations.<sup>284</sup>

Some of the civil society organisations have more visibility and enjoy more media interest than others. Columnists’ interest, in general, is higher than that of the editorial staffs. However, public relations in general—and the media in this respect—is an area which is taken care of as a ‘secondary’ job by any one staff member, often in an amateurish style. Financial constraints is one but not the only reason for this outcome. “Since we are quite small (an organisation), we find it difficult to become very active in our outreach. We would love to organise events which are mainly outreach rather than (simply) training. But again we are limited by our funds. We are

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<sup>283</sup> “The majority of CSOs are not satisfied with their human resources. Over half of the paid staff positions (60%) are positions of an administrative or financial nature, 15% are in areas of expertise and only 8.5% are professional managers” (TACSO Turkey 2011: 18).

<sup>284</sup> TUSIAD is an exception in that sense. They do have a media office and dedicated funding for media relations and publicity in the form of not only publications but also media appearances and other occasions. However, even they are not eager to pursue a consistent media policy in support of their policy initiatives and prefer to remain within the boundaries of a ‘defensive’ posture.

operating in a marketplace of ideas but we are not marketing our ideas as effectively as we should” says a senior staff from an international civil society think-tank, active in Turkey.<sup>285</sup>

Although all civil society organisations—understandably—claim success, few of them actually measure it. Evaluations of success are rare in both Turkish and foreign/international civil society organisations. When they are conducted, they are mainly in the form of internal, in-house evaluations, between ‘friends’. “We don’t have a systematic way of lessons-learned. We do have hot wash-ups, (then) write a report, and talk how to improve, but all is informal” says one senior staff. “We don’t have a lessons-learned mechanism, save very informal talk or exchange of views between us. No external evaluation. Things are not run very professionally here, I have to say. The whole business is run by five-six individuals here” says another.<sup>286</sup> Self-assertive claims naturally do not help much and, as a result, weaknesses and challenges remain unaddressed.<sup>287</sup> Bearing in mind the enormous efforts undertaken with limited resources, lack of a comprehensive evaluation system that would match these efforts appears to be a major flaw.<sup>288</sup>

To make the lack of an evaluation system worse, there is almost no feedback from the readers on publications. When it is available—mostly in the form of ‘courtesy’ letters—it is often not from the people who have the power to follow up or implement the ideas offered in these publications—politicians, decision-makers, bureaucrats. Even the feedback from academia is not as forthcoming as one would expect.

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<sup>285</sup> Interview; September 2011.

<sup>286</sup> Interviews; September 2011.

<sup>287</sup> “We believe we contributed to this change, in a small way, but we can never prove this” said one senior civil society official. Interview; September 2011.

<sup>288</sup> For example, two important TESEV reports on the Judiciary—published in 2011—were sent to 7000 e-mail addressees, posted on their web-site and sent to certain offices in bureaucracy by post. See; TESEV Board of Trustees 2012 meeting; 2011 Report, 2012 Programme and Budget, p. 6. 17 July 2012.

[http://www.tesev.org.tr/Upload/Editor/2011\\_Faaliyet\\_Raporu.pdf](http://www.tesev.org.tr/Upload/Editor/2011_Faaliyet_Raporu.pdf).

On the other hand, Turkish media also has problems of its own with negative effects on civil society. There is an intense competition. Addressing to the needs and expectations of a mass reader with an average of 6.5-year schooling while maintaining certain levels of circulation is a matter of survival and not easy. Civil society's civic programmes—particularly when they are not worth reporting in a 'dramatic' style—are not too attractive in this respect. Journalists—and editorial staffs, more—simply cater to the demands of their readers.<sup>289</sup>

Finally, there is a sense of 'detest' connected to civil society that can be called 'untouchables' syndrome.<sup>290</sup> There is a complete air of secrecy when a civil society organisation attempts to reach a particular piece of information, however ordinary this information is—and even readily available otherwise. Whatever access is possible, it is limited, restricted and whatever information is made available, it is sporadic and inconsistent. This tendency which has been the routine and firmly practised behaviour in the Turkish army<sup>291</sup> has now become common throughout the state bureaucracy and the Government, to include even the 'autonomous' institutions such as

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<sup>289</sup> A senior official in an international civil society think-tank complained, in desperation: "But journalists are lazy, they want reports from us about Prime Minister's remarks, we direct them to the Ministry of Interior, but they insist in getting something from us. One journalist asked me if the allegations were true. I said, '*Kardesim*, you very well know what we are doing, why don't you just write what you already know?'" Interview; Oct 2011.

<sup>290</sup> 'Untouchables' (also Dalit or Scheduled Cast) are the lowest cast in Indian society—traditionally despised and looked upon—practically, with NO chance of social-mobility.. Until recently, they were subjected to many social restrictions. They were segregated in hamlets outside the town or village boundary; forbidden entry to many temples, to most schools, and to wells from which higher castes drew water. President of India, Narayanan who served from 1997 to 2002 was from the Scheduled Cast. He became President, but remained a member of the Scheduled Cast, an untouchable.

<sup>291</sup> "I have been a member of the European Parliament for the last 11 years. There have been instances when I attempted to talk to a general or to a member of the army who has had a say in important decisions, but myself and my colleagues have been refused, each time. The army, this way, imprison itself into a monolithic structure [and culture] which constantly resists change" (Legendijk 2010: 89).

the Justice Academy—an ‘academic’ institution.<sup>292</sup> Accordingly, there is no ‘demand’ for civil society input to any initiative, particularly ‘political’ ones. One senior staff in an international civil society think-tank gives an interesting example based on a unique observation in Turkey: “Letters of interest are required by the funding institutions. Such letters rarely come from government authorities, but from universities, civil society institutions, influential but private elite. There is an interest, there is favourable reception, but demand, NO..”<sup>293</sup>

Several initiatives by civil society to engage officials and Government departments as well as the Parliament, have not gone beyond courtesy calls to office-holders. Civil society representatives have been politely offered tea or coffee, their views have been ‘attentively’ listened to, however there has been very little follow-on cooperation. The great difficulty to take any document, even a single-page memorandum—if it is more than one copy—into the Parliament, speaks volumes.<sup>294</sup>

On the positive side, for international/foreign civil society, neither the Government nor executive offices have ever tried to stop their activities. They have received some unfriendly comments here and there—as exemplified in this paper—but nobody has attempted to stop or silence them. (This can hardly be said for the domestic civil society.) Today, the general environment is more permissive for their work than was the case ten years ago. They know Turkey much better and make less mistakes now.

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<sup>292</sup> Not only civil society, but also media, academia and even the Parliament, in this sense, is in the dark.

<sup>293</sup> Interview; September 2011.

<sup>294</sup> Entering into the Parliament, each and every visitor, going through x-ray, is routinely searched at least twice, in most cases three times, last one done physically by hand. Then each document, files, hand-written notes, note-books, brief-cases are subject to detailed check and ‘reading’ to make sure that whatever is looked for—which is not explained to the visitor—is not allowed into the Parliament. Once inside the Parliament complex, even then, at the entrance to each separate building, a similar check and control is repeated—this time, visitor’s name, the office and the individual he/she is visiting, time of entrance etc are also recorded by the ‘police’.

Still, it is difficult to operate in Turkey because—as *foreigners*—things are hard for them to understand and they don't always know how best to approach certain people and authorities.

In terms of participation, there is a continuous fluctuation, in line with the endless waves of change in Turkish domestic politics. Recently, as reflected in EU reports and as voiced in interviews, the environment is not developing in a more positive and more permissive direction. Accordingly, civil society in Turkey, in line with the change in the tone and substance of EU reports, seems to have adopted a more assertive and more outspoken stance.<sup>295</sup> Whether this is happening as part of a coordinated change in their overall strategy—provided that there is such a strategy—remains to be seen.

Under such circumstances, talking about civil society 'participation' sounds like an overstatement.

### **3.9. Participation: Turkish Economic and Social Studies Foundation**

The Turkish Economic and Social Studies Foundation (TESEV)<sup>296</sup>, founded in 1994, is based in Istanbul. It is an independent, non-governmental think-tank, analyzing social, political and economic policy issues. TESEV aims “to serve as a bridge between academic research and policy-making process in Turkey” with the main purpose of “promoting the role of civil society in the democratic process” by “opening new channels for policy-oriented dialogue and research”. TESEV describes its mission as

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<sup>295</sup> TESEV publications have become more critical of what can be described as 'selective democratisation' and—while much is being achieved in certain areas of democratisation—counterproductive developments in some areas. Heinrich Boell started publishing a three-monthly magazine, *Parameters*—a major change in terms of publicity—since late 2012 and become more critical of 'selective' liberalisation and reverse trends. A similar—more balanced—stance can be seen in CESS publications as early as 2011 in *Security Matters* 24 (see; <http://www.cess.org/publications/security-matters>, 6 March 2013) and most recently in the book on the current state of affairs in the security sector reform (CESS 2013) as well. The fourth organisation studied here—TÜSIAD—can be said of having maintained a rather regular attitude in this respect.

<sup>296</sup> TESEV website. 15 July 2012. <http://www.tesev.org.tr/en/en/program/democratization-program>.

“to bridge the gap between academic research and policy decisions, with a view to suggesting valid policy recommendations for the problematic issues in Turkey”. TESEV Chairman Can Paker, during an interview<sup>297</sup>, in 2011, described their mission: “My (our) cause is increased transparency, civilianisation in Turkey. [...] Indeed, we do work for having an influence inside—with only partial success”.

Its three areas of focus are *democratisation*, *good governance* and *foreign policy*, with both a short-term and a long-term perspective on domestic and global developments. It is a ‘civil’ organisation in the sense that they do not employ or *work with* retired ‘bureaucrats’ or ‘politicians’ and maintains some distance from them. Also, their focus is mainly on ‘democratisation’, in the widest sense.

However, TESEV does have a *network* of experts of all walks of social, bureaucratic, and political life, including media and academia. TESEV is not a think-tank where many full-time experts work all the time; there are only a few of them. However TESEV relies on a wide network of academics and experts, bringing local, national and international actors together. This—being highly inclusive—is “where (they) create a difference and which sets (them) apart from other think-tanks” in that respect.

TESEV, while being fully aware of the limitations and obstacles involved, aims to change the public/mass culture—what they describe as the *mentality* in Turkey—with the purposes of contributing to Turkey’s democratisation process. It aims to get involved in all phases of policy-making: issue articulation, policy formulation—and legislation, and implementation. However its main focus, primarily but not exclusively, appears to be on *issue articulation*. However, they are gradually adopting a more *policy-formulation* oriented posture and this change is already visible in more recent publications.

Towards these ends, TESEV organises regular seminars, conferences, roundtable discussions, and supports research. Research is directed to

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<sup>297</sup> “Kilicdaroglu: TESEV’den istifa edemez!”. 27 November 2011. Haber7. 21 July 2012. <http://www.haber7.com/haber/20111127/Kilicdaroglu-TESEVden-istifa-edemez.php>.

selected “problematic” areas—“obstacles blocking democratisation”—so that “they can be discussed freely in Turkey”. It is TESEV policy that their publications reflect the views of respective authors. However TESEV strives for academic *objectivity* and *quality* in ‘their’ publications. Increasingly in recent years, they complement such research and publication with concrete policy proposals of TESEV.

Such activities bring together specialists and policymakers from Turkey and abroad. It considers “the widest possible dissemination of viable policy alternatives” an “integral part of TESEV’s mission” and targets “the widest possible audience”. TESEV releases project reports, books, pamphlets, policy watch briefings and seminar proceedings aimed at both the general readership and policy-making community. Therefore, potentially, it has both a direct and indirect role in the policy-making, and influence on policymakers.

As early as 2002, TESEV’s *2001 Constitutional Changes and Political Reform Proposals* report (Özbudun 2002) evaluated the constitutional amendments<sup>298</sup> which went into effect in 2001 and discussed further proposals for reforms. Throughout, TESEV worked on defining the *role of civil society*. It published—as part of the ‘Building Civil Capacity in Areas of Security and Human Rights and Improving Democratic Consciousness’ Project—*Media and Security Sector Oversight: Limits and Opportunities* (Aytar & Cavdar 2009) and *NGOs and Security Sector Oversight: Limits and Opportunities* (Aytar & Ensaroğlu 2009), for the purposes of strengthening civil memory and motivating civic potential.

*NGOs and Security Sector Oversight* discussed TESEV’s perspective on the *role of civil society* in supporting democratic transition. This booklet provided a self-evaluation of the civil society—in the context of *security*

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<sup>298</sup> The 1982 Constitution was amended in 1987, 1993, 1995 and 1999—twice, before 2001. The amendment package, which was adopted in October 2001, was the most comprehensive amendment package of all, in 33 articles and dedication/preface—including Art. 118 on the National Security Council—with a broad-based consensus. Adoption of the National Programme—for EU—by the Parliament, in March 2001, was the main incentive for this initiative.

*sector*—and offered a kind of *road map* and *an agenda*, as well as an *emergency action plan*, for Turkish NGOs. Its sober observation of the current role and effectiveness of civil society democratisation programmes was not too promising for the future: “It seems rather difficult to argue today in Turkey, that the concept of civil and democratic oversight of the security sector has been completely understood and internalised by Turkish NGOs”. TESEV suggested going beyond ‘complaining’ only and becoming part of the solution, by making suggestions, policy proposals. Being independent from the state did not necessarily mean being in conflict with the state or governments. TESEV offered the ‘state’ some specific targets to support *common efforts* with civil society, such as provision of basic information about security and security sector to NGOs, improving the understanding of civil society oversight of the security sector, adopting a common language and sensitivity about it, encouraging civil society organisations to think about how to operationalise such oversight and examination, establishing networks of monitoring and coordination.

Finally, apart from their expectations from the state for common action, TESEV, shared an ambitious ‘game plan’ for common action by the NGO community as well—for the main purposes of *increasing the capacity of civil society, intra-civil society coordination* and *coordination with other ‘civil’ actors*. This included; training and education, targeting specific state organisations and activities, creating a common pool of information with the aim of turning it into a common NGO platform, establishing networks of monitoring and coordination, to formulate a communication strategy in order to make more effective use of the media, overcoming the lack of trust on politics and political parties and launch an effective and sustained lobbying effort, improving TGNA-civil society relations, making best use of the opportunities offered by the Freedom of Information Law, to aggressively pursue the establishment of an independent gendarmerie/police complaints commission, and as a minimum, to monitor and report on to what degree security sector is able to provide security and how respectful it

is, of human rights, rule of law and international legal documents to which Turkey is a party. (Aytar & Ensaroglu 2009: 21-24)

When early *security sector* reform efforts related to the National Security Council started in 2001, TESEV was still a newly flourishing civil society think-tank with limited resources. Its main focus was on social and economic issues, foreign policy—such as EU process, Turkish-Armenian relations, Cyprus—and hitherto had little interest in the *security sector* or *judicial* reforms. Then gradually it gave priority to areas such as minority rights, Kurdish question, state and religion, good governance. In 2009, when ‘judicial reform’ came to dominate the political agenda in Turkey, TESEV, with an experience of 15 years behind, not only had an excellent understanding of the role and mission of civil society, but also had a vision for future cooperation with other actors, based on a true understanding of the needs, requirements and limitations, in perspective. However, as far as the, once popular ‘security sector’ reform was concerned, most of the envisaged reforms, by 2009, had already been realised, either by amending the legal framework or through practical but effective changes in civil-military relations in the country. The *gigantic* task of ‘integrated General Staff and Ministry of Defence’, along with an overall reorganisation of the Turkish Armed Forces had never really come to discussion nor to political agenda and the whole subject had been reduced to a simple protocol decision—order of precedence, involving the Minister and the Army Chief.

### **3.9.1. TESEV’s work on ‘reforms’**

It is TESEV’s contention that, *security sector reform* and its civil-democratic monitoring and inspection requires the ‘description’ of actors who would do that, and also supporting and ‘empowering’ them. Naturally in addition to those actors who come to power through elections, i.e. Parliament and the Cabinet, there are judicial bodies tasked by relevant laws and authorized for judicial action. However, strengthening the state institutions for their oversight functions, alone, no matter they are ‘elected’ or not, would not be enough to render security institutions really accountable. This may make the oversight look ‘civil’, but is not really

enough to make it ‘civil’ and ‘democratic’, TESEV argues. For TESEV, the monitoring of ‘vertical’ hierarchy of oversight by those civil actors on horizontal platforms is of vital importance. Two of these actors are the *media* and the *civil society* that would establish a more indirect monitoring of the security sector along with those tasked by laws such as the *Parliament*, the *Cabinet*—Council of Ministers, and the *judiciary*, affecting a *direct* role. (Aytar & Cavdar 2009; Aytar & Ensaroglu 2009)

TESEV’s first publication towards a security sector ‘reform’ was *Defence Expenditures and Their Economic Impacts in Turkey, 1980-2001* (Senesen 2003), in 2003. This ground-breaking work was followed, in 2004, by the Turkish translation of Democratic Control of Armed Forces (DCAF)-Inter-Parliamentary Union (IPU) *Handbook for Parliamentarians: Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices* (Born *et al* 2003). In 2006, in a bulletin series initiated by TESEV, the issues related to security sector reform, among others, were shortly discussed in the context of, then, the newly introduced Anti-Terror Law (Aytar 2006). Later, that year, *Almanac Turkey 2005: Security Sector and Democratic Oversight* (Cizre 2006), the first-ever reference book on the security sector reform in Turkey was published. *Democratic Oversight of the Security Sector: Turkey and the World* (Aytar 2006), also published in 2006, was the first in ‘Series in Security Sector Studies’ initiated by DCAF and TESEV. It includes, in addition to the preface by Ümit Cizre and a paper by Philipp Fluri—DCAF Deputy Director, the speeches delivered by Can Paker, Willem F. Van Eekelen (of *CESS*), Mehmet Dülger, Alain Faupin, Serif Sayin, Pal Dunay and Ümit Cizre during the May 2004 book-launching event for the Turkish translation of DCAF-IPU *Handbook for Parliamentarians*. These speeches would provoke the Army and soon bring counter arguments and strong criticism from the Chief of the General Staff.

In 2008, TESEV convened a conference—Democratic Horizons in the Security Sector: Turkey and Europe Security Sector Governance—and published the results in book form, *Security Sector Governance: Turkey and Europe* (Cizre & Cerrah 2008). In 2009, TESEV published *Almanac Turkey*

2006-2008: *Security Sector and Democratic Oversight* (Bayramoglu & Insel 2009) and the first of its security sector policy reports, *The Security Sector in Turkey, Questions, Problems and Solutions* (Akay 2009). These were followed, in 2010, by Security Sector Policy Report 2, *Military-Economic Structure in Turkey, Present Situation, Problems and Solutions* (Akca 2010).

Security Sector Policy Report 1, was a follow-up to the two previously published Almanacs, summarizing their findings and recent developments. It focused on the military only and also included a section dedicated to the reform in the National Security Council, summarising 2001 and 2003 amendments, first to the Constitution—Art. 118, and later to Law No 2945 and the implementation process. It did make some minor suggestions though, related to NSC, based on the findings of the report that “structural change in the NSC did not dramatically alter the role it had been playing for the past 20 years” (Akay 2010: 25), however the report failed to substantiate such allegations.

TESEV, formed a working group of ‘experts’<sup>299</sup> in November 2004, composed of “political scientists, lawyers, members of police academy, retired military”. The aim was to “monitor ‘civilianisation’ in Turkey and also developments and policies related to security sector in the international arena” and to prepare two reports. The publication of the first report took about five years and had some substantial shortfalls in terms of ‘steering’ the debate on the subject, as originally intended. TESEV, in 2009, formed yet another “working group<sup>300</sup>, composed of leading academics and practitioners in the area of security sector reform” for the preparation of the second policy report. Probably this was due to a felt need—because of the shortfalls of the first report—to include experts who were really familiar

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<sup>299</sup> TESEV Annual Report 2004, February 2005, p.10. 17 July 2012.

[http://www.tesev.org.tr/Content/pdf/Tesev\\_2004.pdf](http://www.tesev.org.tr/Content/pdf/Tesev_2004.pdf).

<sup>300</sup> TESEV 2009 Annual Report and 2010 Activity Programme and Budget, p.24. 17 July 2012. [http://www.tesev.org.tr/Content/pdf/Tesev\\_2009.pdf](http://www.tesev.org.tr/Content/pdf/Tesev_2009.pdf).

with military organisation, operational planning methodology and political-military interface and who had practical experience.

At the beginning of 2010, some fundamental changes, not only in the ‘understanding’ and ‘perception’, but also in the nature of civil-military relations in Turkey had already taken place. Yet, the Democratisation Programme Conference<sup>301</sup>, in June 2010, described the ‘question of the military’ as “what (lies) behind Turkey’s deep-seated political and social problems” and argued that “Turkey’s troublesome adventure with democratisation since the 1950’s (was) often regarded as the struggle of civil politics to end the military tutelage over state institutions”. However, as TESEV decided to focus more on ‘policy formulation’ rather than research<sup>302</sup>, in the light of changing power relations and emerging new concerns, its focus shifted to the area of *judiciary reform*. Besides, first time, in June 2010, it organised a workshop<sup>303</sup> on ‘Police’, focusing on human rights violations under custody, legal representation, advocacy and the way police investigations were conducted. TESEV’s 2011 programme, again first time, did not include *security sector reform* as an area of primary focus, but added *media-democracy relations* “because, in terms of finding solutions to problem areas media (could) become both an obstacle and an opportunity”, it read.<sup>304</sup>

TESEV’s decision, from 2010 on, to develop *policy proposals* on judiciary—and other—reforms marked a major change in TESEV’s strategy

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<sup>301</sup> TESEV Democratisation Programme Conference. 24-25 June 2010, Istanbul. Panel; “Turkey’s Military Question: While Politics is Pushing the Boundaries (*tr.* Türkiye’nin Asker Sorunu: Siyaset Sinirlari Zorlarken)”. 11 January 2012.

[http://www.tesev.org.tr/UD\\_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/program-tr.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/program-tr.pdf)

<sup>302</sup> TESEV Board of Trustees 2011 meeting; 2010 Report, 2011 Programme and Budget. 11 January 2012.

[http://www.tesev.org.tr/UD\\_OBJS/PDF/Genel/TESEV%202010%20Faaliyet%20Raporu.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/Genel/TESEV%202010%20Faaliyet%20Raporu.pdf)

<sup>303</sup> TESEV Democratisation Programme Workshop. 11 June 2010, Ankara.

<sup>304</sup> TESEV 2010 Report, 2011 Programme and Budget, p. 3.

as a civil society think-tank. This change coincided with the launching of the 2010 constitutional amendments campaign by the AKP Government.

TESEV's major publications on the judiciary and the judicial reform in Turkey, include three 'Policy Reports', two monographs and a separate publication which is actually a compilation of the first report and two monographs. Both monographs, *Justice Can be Bypassed Sometimes: Judges and Prosecutors in the Democratisation Process* (Sancar & Atilgan 2009) and *Just at Times, Unjust in Others: People's Perception of the Judiciary in the Democratisation Process* (Sancar & Aydin 2009) were published in 2009. These were followed by the *Judiciary Reform Policy Report 1: A Judicial Conundrum: Opinions and Recommendations on Constitutional Reform in Turkey* (Yazici 2010) and *Judiciary Reform Policy Report 2: Access to Justice in Turkey: Indicators and Recommendations* (Berk 2011). *Just Expectations: Compilation of TESEV Research Studies on the Judiciary in Turkey* (Aydin et al 2011), as its name implies, was a compilation of the previous studies, plus media's perception of the judiciary was discussed in the context of democratisation. Towards the end of 2011, TESEV published yet a third policy report on the judiciary; *Mills that Grind Defendants: Criminal Justice System in Turkey* (tr. Sanik Ogüten Carklar: İnsan Hakları Acısından Türkiye'de Ceza Adalet Sistemi) (Dogru 2011).

Findings of these reports were shared with the public and the media through press conferences, sometimes in the form of panels open to general public. The Judiciary Reform Policy Report 1, for example, was discussed by such a panel<sup>305</sup> in May 2010 in Istanbul. Besides, TESEV democratisation programme convened two conferences<sup>306</sup> in Istanbul in

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<sup>305</sup> Press Conference and Panel. 6 May 2010, Istanbul. *A Judicial Conundrum: Opinions and Recommendations on Constitutional Reform in Turkey*. 30 January 2012.

[http://www.tesev.org.tr/UD\\_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/bulletin%20judiciary%20policy%20report%201.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/bulletin%20judiciary%20policy%20report%201.pdf).

<sup>306</sup> TESEV Democratisation Programme Conference. 24-25 June 2010, Istanbul. "Politics, Institutions and Citizenship in a Changing Turkey: Is it Possible to Live Together?".

[http://www.tesev.org.tr/UD\\_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/program-eng.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/program-eng.pdf). 30 January 2012.

2010 and 2011 respectively, focusing on the judiciary, judiciary reform and the role of the media, among others. An international conference on reform of the judiciary was convened in Ankara, again, in 2011.<sup>307</sup>

The first conference in Istanbul—Politics, Institutions and Citizenship in a Changing Turkey: Is it Possible to Live Together?—discussed the urgent need for a judicial reform and the challenge posed by “the entire judicial tradition, entrenched judiciary-state relations, and the perception and attitude of the media towards the judiciary”. Ankara conference, in April 2011, discussed judicial reform in Turkey. In addition to addressing the challenges to constitutional reform in Turkey and to achieving justice and establishing truth in societies going through a transition from an authoritarian rule, deliberations during the conference also covered “political, legal and social measures needed to be taken to ensure that the national legal framework, the legal culture and the judiciary adapt to the new political order”, “obstacles to judicial reform”, how to “address these issues” and “the relationship between constitution-making and judicial reform”. Next conference in June, dealt with the subject of “access to justice and the right to a fair trial” from the perspective of actors—*government, political parties, the judicial bureaucracy and civil society*. It addressed the role and responsibilities of these actors “to generate more ideas and policies on the subject of judicial reform” and questioned if “current judicial reform initiatives (were) capable of satisfying society’s expectations”.

Such conferences were supplemented by various workshops involving various actors who were either taking part or playing a direct or indirect role

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TESEV’s Democratisation Programme Conference. 24-25 June 2011, Istanbul. “Turkey in Transition: Society, Politics, the Judiciary and the Media”. 11 January 2012.

[http://www.tesev.org.tr/UD\\_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/TESEV%20Demokratiklesme%20Programi.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/TESEV%20Demokratiklesme%20Programi.pdf)

<sup>307</sup> TESEV International Conference on the Judiciary. 15-16 April 2011, Ankara. “Justice at Times of Democratic Transition: Constitution Making, Judicial Reform and Confronting the Past”. 29 January 2012.

[http://www.tesev.org.tr/default.asp?PG=DMKETKDEN&MMM00\\_ITEM\\_CODE=DEM-YRG-ANK-TR&MMH00\\_CODE=010705&MMM20\\_CODE=&MMM21\\_CODE=.](http://www.tesev.org.tr/default.asp?PG=DMKETKDEN&MMM00_ITEM_CODE=DEM-YRG-ANK-TR&MMH00_CODE=010705&MMM20_CODE=&MMM21_CODE=)

in *policy-making* and *legislative* processes. A *closed* workshop in Ankara on 14 May 2010, two days after President Gül signed the Parliamentary decision on a constitutional amendment package of 27 articles into referendum, brought together a diverse set of actors: Ministry of Justice— Inspection Board, General Directorate of Criminal Affairs, Department of Strategy Development, General Directorate of Laws, General Directorate for EU Affairs; Justice Academy of Turkey; a judge and a *rapporteur* from the Constitutional Court; Union of Turkish Bar Associations, Bar of Ankara, *Demokrat Yargi*<sup>308</sup> (the only civil society organisation participating in this workshop), one advisor from the opposition MHP. Yet another workshop on 11 June 2010, this time, brought together TESEV and YARSAV.<sup>309</sup>

TESEV's Judicial Policy Report 1—*A Judicial Conundrum* (Yazici 2010), analyzed the Judicial Reform Strategy released by the Ministry of Justice in August 2009 and discussed the *mandate of the Constitutional Court* and the *restructuring of the High Council of Judges and Prosecutors*, among others. A brief analysis on the constitutional amendment package of 2010—which was not publicly known when the contributors first started working on the report—introduced by the government in March 2010, was also included in the report. This is the key document in terms of reflecting TESEV's 'point of view' related to the reform in the Constitutional Court and the High Council of Judges and Prosecutors.

Etyen Mahcupyan (former Director) of TESEV democratisation programme, in the preface to the report, summarized how TESEV saw the critical role of the judicial reform for democratisation. He said:

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<sup>308</sup> *Demokrat Yargi* is a civil society organisation of a group of judges and prosecutors which rivaled YARSAV over differences of opinion about the nature of required changes in the legal framework related to the judiciary and the way such changes should be enacted. They supported the government line until after the referendum of September 2010, but opposed the way changes were implemented afterwards. The two separate workshops on the same subject were probably necessitated by the rivalry between *Demokrat Yargi* and YARSAV which launched a bitter campaign against the package. See; (Ertekin 2011).

<sup>309</sup> **YARSAV**: Association of Judges and Prosecutors. 13 January 2013. <http://www.yarsav.org.tr/index.php?lang=en>.

[...] one of the critical steps that has to be taken to establish democracy is to reform the judiciary. [...] the judicial system needs to have a policy of 'reform' and to share this policy with the society. [...] this reform has two aspects. One of them is to review the issues of independence', 'impartiality' and 'legitimacy' in terms of the whole system and the position of the judiciary, and secondly to ensure that international norms are applied to these concepts. (Yazici 2010: 5)

Four subjects were considered of major importance: the relationship between the executive branch and the judiciary—in terms of issues of *independence* and *impartiality*; the position of the judiciary vis-a-vis the *universal law*—as opposed to *so-called* 'official' ideology of the Turkish state; the election system of higher judicial bodies—prominently—of the Constitutional Court and the High Council of Judges and Prosecutors; fundamental restructuring of these bodies. Erözden, in his contribution, discussed the need for “a new perception of law that holds human rights and other universal democratic standards as supreme values” and suggested “measures that will ensure the subjective impartiality of the members of the judiciary” (2010: 11). Özbudun, discussing 'constitutionalism' and 'democracy', pointed to the tension between the two, because of the prevalence of constitutional judiciary in our time. He explained:

The unique character of the constitutional judiciary and the political nature of the majority of cases referred to the constitutional courts require the adoption of very different methods in the selection of members of these courts compared to general courts. [...] the common practice in Western democracies is the selection of all or the majority of members of the constitutional courts by political bodies. The intention is not to make constitutional courts servants of the governing party [...]. On the contrary, the intention is to strengthen the democratic legitimacy of these courts vested with extraordinary powers such as the authority to annul laws. [...] Thus there is no Western democracy, except for Turkey, where the power to elect judges of the Constitutional Court is completely

detached from Parliament. (2010: 13)

Özbudun also made recommendations regarding the judicial review of constitutional amendments as to their *substance* and *the rules of procedure* of the Parliament.<sup>310</sup> There was also a hardly hidden general warning accompanying his views on specific issues: “All these needed reforms can be realised by enacting a totally new liberal constitution meeting universal democratic norms rather than making partial constitutional amendments” (Özbudun 2010: 15).

### 3.9.2. Cooperation and networking

TESEV represents an excellent—and successful—example of networking and international cooperation with an extensive range of multilateral and overlapping partnerships.

TESEV publication of the Turkish translation of *Handbook for Parliamentarians* (Born *et al* 2003), involved not only DCAF and IPU but also Willem F. Van Eekelen, former Minister of Defence of the Netherlands—later chairman of the CESS Task Force of the Project on ‘Governance and the Military’. Aytar’s 2006 article on the new Anti-Terror Law was based on a report prepared earlier by TESEV in collaboration with the Centre for European Policy Studies in Brussels. *Almanac Turkey 2005: Security Sector and Democratic Oversight* (Cizre 2006) was also a product of the cooperation and collaboration with DCAF and was published as part of the DCAF-TESEV Book Series.

Members of various European think-tanks—Centre for European Policy Studies in Brussels (Emerson 2006; Tocci 2006); Centre for European Reform in London (Barysch & Grant 2006)—contributed to TESEV’s EU

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<sup>310</sup> Ozbudun (2010) argued that “the reform must also explicitly prevent the Constitutional Court from reviewing constitutional amendments as to their substance”—a competence neither the 1961 constitution nor the 1982 Constitution gave to the Constitutional Court—and limit judicial review “solely to certain specific procedural defects”. As for the constitutional review of the *rules of procedure* of the Parliament, he advised “to either abolish this review or restrict it to an *a priori* review” (14-15).

Watches. Foreign Policy Bulletins also included a wide range of contributors from FRIDE in Madrid (Youngs 2007) to German Institute for International and Security Affairs in Berlin (Kramer 2007), The German Marshall Fund in Brussels (Asmus 2007), Centre d'Études de Relations Internationales (CERI) (Bafoil 2007), European Regional Academy in Yerevan (Mkrtchyan 2007) and the Palestinian Centre for Democracy and Conflict Resolution (Nasser 2007).

Funding sources for both research projects and publications and also for other activities are regularly and explicitly expressed and/or made public by TESEV. These include a diverse set of institutions including civil society organisations and think-tanks reflecting an interlocking web of national and international organisations such as Open Society Foundation-Turkey, Friedrich Ebert Stiftung, Swedish International Development Cooperation Agency (Sida), Chrest Foundation of the United States, Geneva Centre for the Democratic Control of Armed Forces, Global Dialogue, to name some of them.

Those provided by the European Commission and other EU-related funds also stand out in TESEV's financial resources. TESEV conference in June 2009, in Ankara<sup>311</sup>, 'Security Sector Oversight and Civil Actors', open to public and the media, was the closing conference of a Commission-supported Project, 'Civilian Capacity Building and Raising Democratic Consciousness in Security and Human Rights'. The conference had three panels focusing on *the democratic oversight in general, the role of the NGOs, and the relations between the media and the security sector* respectively and involved journalists, politicians, bureaucrats and members of civil society, Turkish as well as international. During this conference, three products of the Project were also presented, "Almanac Turkey 2006-

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<sup>311</sup> Conference. "Security Sector Oversight and Civil Actors". 11 June 2009, Ankara.

TESEV press release. 05 January 2012.

[http://www.tesev.org.tr/UD\\_OBJS/PDF/DEMP/Security%20Sector%20Conference%20EN%20press%20release.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/DEMP/Security%20Sector%20Conference%20EN%20press%20release.pdf).

2008” (Bayramoglu & Insel 2009) (Bayramoglu & Insel 2010)<sup>312</sup>, “Media and Security Sector Oversight: Limits and Opportunities” (Aytar & Cavdar 2009)<sup>313</sup>, “NGOs and Security Sector Oversight: Limits and Opportunities” (Aytar & Ensaroglu 2009)<sup>314</sup>. Mid-2011, an international conference on the judiciary discussed “Justice in Times of Democratic Transition”<sup>315</sup>. EU Commission Turkey Progress Report in 2005, quoted and lauded both DCAF-TESEV and CESS-IPC work.<sup>316</sup>

Although funding sources of CSOs—not only for TESEV but also for many others—have always become a subject of controversial debate, it is a fact of life that the only funding available in Turkey comes from (some of) the members of TESEV’s High Advisory Board.

TESEV did try to involve other CSOs which were active and outspoken in the area of judicial reform, especially in 2010, during the period leading to the referendum of September 2010, but the overall polarisation of the Turkish society and its reflection on civil society, along with the longstanding preoccupation with seeing ‘things’ from a confrontational

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<sup>312</sup> *Almanac Turkey 2006-2008*. Published in Turkish in 2009 and in English in 2010. The English version does not include the chapter on “Media, Civil Society and Education” of the Turkish version, also are missing some articles from 2009 edition, such as those on NATO and MIT.

<sup>313</sup> Published in Turkish. *Medya ve Güvenlik Sektörü Gözetimi: Sınırlar ve İmkanlar* (Media and Security Sector Oversight: Limits and Opportunities) (Aytar & Cavdar 2009).

<sup>314</sup> Published in Turkish. *Sivil Toplum ve Güvenlik Sektörü Gözetimi: Sınırlar ve İmkanlar* (NGOs and Security Sector Oversight: Limits and Opportunities) (Aytar & Ensaroglu 2009).

<sup>315</sup> International Conference on the Judiciary. 15-16 April 2011, Ankara. “Justice at Times of Democratic Transition: Constitution Making, Judicial Reform, Confronting the Past”. TESEV press release. 17 July 2012

<http://www.tesev.org.tr/tr/etkinlik/uluslararasi-yargi-konferansi-demokratik-gecis-done>.

<sup>316</sup> “Initiatives such as the Task Force on Governance and the Military, jointly sponsored by the Center of European Security Studies and the Istanbul Policy Center, or the project on Democratic Oversight of the Security Sector promoted by TESEV and the Geneva Center for the Democratic Control of Armed Forces (DCAF) could make an important contribution. It is also important to promote better public understanding of reforms in civil-military relations, both at home and abroad”. (EC 2005: 15).

perspective—and to take sides—did not allow to sustain this initiative and get meaningful results.

The media was invited to the book-launching event of TESEV's *Handbook for Parliamentarians* (Born *et al* 2003), in 2004; and the conference where *Almanac Turkey 2005: Security Sector and Democratic Oversight* (Cizre 2006) was presented, in September 2006, was open to the public and the media.<sup>317</sup>

David Judson, Editor in Chief, Turkish Daily News, contributed to TESEV Foreign Policy Bulletins (Judson 2007). Irfan Bozan, a journalist and producer in NTV, until recently, was closely associated with TESEV. Bozan not only contributed to TESEV Foreign Policy Bulletins (Bozan 2007) but was also author or co-author of three TESEV books on religion and political Islam (Bozan *et al* 2004), (Cakir & Bozan 2005), (Bozan 2007). So were journalists such as Rusen Cakir (Cakir & Bozan 2005), Ali Bayramoglu (Bayramoglu & Insel 2009) (Bayramoglu & Insel 2010), Alper Gormüs, Cengiz Candar, Umur Talu, Hasan Cemal, Derya Sazak to name some of them.

Apart from such exposure, general openness to and cooperation with the 'media', TESEV published books focusing on the role of the media in overall democratisation process. *Media and Security Sector Oversight: Limits and Opportunities* (Aytar & Cavdar 2009) discussed the role and limitations of the media in affecting democratic transition from *security sector* perspective. Two recent publications, on the other hand, as part of the 'Media and Democracy' study initiated by TESEV in 2010<sup>318</sup>, examined judiciary-media relations, (mis)perceptions of the media, media's

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<sup>317</sup> For repercussions of this event in 2004—and of the publication—later in 2006, see below 'Uphill Battle for civil society'.

<sup>318</sup> *Herkesin Yargisi Kendine: Demokratikleşme Sürecinde Basının Yargı Algisi* (Erdal 2010); *Communicating Democracy—Democratising Communication: Media in Turkey, Legislation, Policies, Actors* (Elmas & Kurban 2011). The two publications examine the legal basis, regulations, actors, and the guiding policies of media in Turkey and offers a political-economic perspective.

relationship with various state institutions, governments, and the economic structure.

‘Media in Transition’ panel, in Istanbul conference, debated ‘The Media-Democracy Relationship and the Economy-Politics of Media’. “The press and tools of mass communication have a crucial role in the consolidation of deliberative and participatory democracy and the transformation of social and political mentalities”, argued the invitation letter to the conference.<sup>319</sup>

But, despite all these efforts, “while TESEV’s visibility is much higher than others in the media”, as stated by one of its senior officers, “media’s interest in TESEV work, is mainly restricted to (certain) columnists, rather than editorial staffs”.<sup>320</sup>

### **3.9.3. TESEV’s position on reforms**

One senior member of TESEV staff, first indicating that “influencing policy-making processes was not their aim to measure success against”, nevertheless boasted that “their research was recognized by the media and taken seriously by the Government and the Parliament, their publications were read and sought after and they managed creating a political agenda in the public”.<sup>321</sup> Besides, “their work was supported by the Government, the Parliament and the public, civil society, academia etc., including security studies (of universities)”. She concluded that, they “without doubt had a power and influence”. Similar evaluations were also included in successive annual reports prepared for the members of the Board of Trustees.<sup>322</sup> These

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<sup>319</sup> TESEV’s Democratisation Programme Conference: 24-25 June 2011, Istanbul. “Turkey in Transition: Society, Politics, the Judiciary and the Media”. 11 January 2012. [http://www.tesev.org.tr/UD\\_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/TESEV%20Demokratiklesme%20Programi.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/DEMP/ETKINLIK%20DOSYALARI/TESEV%20Demokratiklesme%20Programi.pdf).

<sup>320</sup> Interview, September 2011.

<sup>321</sup> Ibid.

<sup>322</sup> TESEV Board of Trustees 2011 meeting; 2010 Report. 11 January 2012. [http://www.tesev.org.tr/UD\\_OBJS/PDF/Genel/TESEV%202010%20Faaliyet%20Raporu.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/Genel/TESEV%202010%20Faaliyet%20Raporu.pdf); also, TESEV Board of Trustees 2012 meeting; 2011 Report. 17 July 2012. [http://www.tesev.org.tr/Upload/Editor/2011\\_Faaliyet\\_Raporu.pdf](http://www.tesev.org.tr/Upload/Editor/2011_Faaliyet_Raporu.pdf).

reports also refer to a “communication strategy—planned in detail—in order to share the outcome of such studies with the public”. These are rather impressive and, at the same time, ambitious and pretentious statements which this thesis aims to evaluate.

As already covered above, TESEV basically advocated that the security sector was to be under—direct and indirect—oversight of the Parliament and the civil society, through legal measures, transparency and accountability, and the judiciary must be independent, impartial, cognizant and respectful of universal legal norms, and efficient. These were what was communicated by TESEV to general public and to political decisionmakers. TESEV recognized the interconnection between various dimensions of the democratic ‘reform’ process in seemingly separate areas, *security sector* and the *judiciary* being prominent. The period of mid-2009 through mid-2011 was important in terms of the timing and concentration of effort for TESEV’s participation in the debate related to the overall reform process.

The conference in June 2010, organized by TESEV Democratisation Programme in Istanbul<sup>323</sup> had, as its major theme “Is it possible to live together?”. The titles of panels in the conference reflected five main areas of work of the democratisation programme: religion, state and society relations; Kurdish question; military question; judiciary, media and tutelage; minority rights. The conference was based on the argument that “Turkey faced a multi-layered problem of ‘living together’” and “the system of military and judicial tutelage”, both “preserved the structure—which created this situation” and “solidified the sphere of politics around official ideology”. Adopting a holistic approach, it aimed to reveal the interconnection between Turkey’s main problems in the process of democratisation. The Second Policy Report on the Security Sector was released immediately after this conference, in July 2010. The First Policy Report—on the security sector, had already been published in November

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<sup>323</sup> TESEV Conference, “Politics, Institutions and Citizenship in a Changing Turkey: Is it possible to live together?”. 24-25 June 2010, Istanbul. 16 July 2012. <http://www.tesev.org.tr/Upload/Editor/program-eng.pdf>.

2009. Together, they provided clear-cut policy suggestions of TESEV on the *security sector reform*.

On the *judicial reform*, the First Policy Report had been published in May 2010. As a result, in the course of about six months, TESEV provided a comprehensive and detailed set of inputs for the constitutional amendment package—already published in mid-May 2010 in the Official Gazette and put to referendum due in September—for the articles related particularly to the judiciary, in a timely manner.

As for the *security sector reform*, TESEV put forward some recommendations detailed and substantiated in Security Sector Policy Report 1. These were necessarily limited in scope because as already discussed, at the time of the release of this report, both most of the foreseen changes, particularly those related to the NSC, had already been actioned and the priority of reforms had shifted to the judiciary:

The often-mentioned Article 2 of the NSC Law and Article 35 of TAF's Internal Service Law need to be changed as the first, most significant and macro-level step towards pulling the TAF back into its natural area of jurisdiction. In the executive branch, the relationship of responsibility and authority between the MoD and the Chief of Staff needs to be reformulated so that the former, not the latter, is the first among equals and has broader control and oversight powers. (Akay 2010: 29-31)

The report's one prominent observation, based on the 2008 National Programme was that; "the pledges made in civil-military relations (were) limited in scope", moreover, the Programme did "not envision [*sic*] a fundamental shift in the structure of law enforcement units", and it did not "promise a real change in the security model in Turkey" which was "a sign of the lack of political will in this area" (Akay 2010: 30-31).

The Judicial Sector Policy Report 1 was certainly more timely and included substantial recommendations related to the restructuring of both the Constitutional Court and the High Council of Judges and Prosecutors.

The main recommendation on the Court was that, “The composition of the Constitutional Court must be amended and a significant role must be given to Parliament in the selection of its members. The term of duty of members must be limited to a certain period” (Özbudun 2010: 15).

TESEV report made reference to the text—and its certain articles—drafted in 2007 by a group of experts.<sup>324</sup> Its propositions aimed at

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<sup>324</sup> This draft ‘civilian constitution’ was prepared, in 2007, by a group of six, chaired also by Prof. Ergun Özbudun in response to a request by Prime Minister Erdogan. Others were Prof. Zühtü Arslan, Prof. Yavuz Atar, Prof. Fazıl Hüsnü Erdem, Prof. Levent Köker and Assc. Prof. Dr. Serap Yazici. “**Composition of the Constitutional Court** Article 112 - (1) The Constitutional Court is composed of seventeen members. (2) The Turkish National Assembly elects eight members with the three-fifths majority of its full membership and at least three of these members have to be elected from among professors specialised in constitutional law, public law or political sciences. Four members are elected by the Plenary Assembly of the Court of Cassation, four by the Plenary Assembly of the Council of State, and one by the Plenary Assembly of the Court of Accounts from among their own presidents and members by the absolute majority of the members and by secret ballot. (3) To qualify for selection as members of the Constitutional Court, members of the teaching staff of institutions of higher education, senior administrative officers and lawyers are required to be over the age of forty and to have completed their higher education in law, political sciences, economy and administrative sciences and to have served at least fifteen years as a member of the teaching staff of institutions of higher education or to have actually worked at least fifteen years in public service or to have practiced as a lawyer for at least fifteen years. (4) The Constitutional Court elects a president and deputy president from among its members for a term of four years by secret ballot and by an absolute majority of the total number of members. The president and deputy president may be elected for maximum two terms. (5) The members of the Constitutional Court may not assume other official and private functions, apart from their main functions. (6) The principles and procedures of the election to be made by the legislature shall be regulated by a law. **Term and termination of duty** Article 113 - (1) Members of the Constitutional Court are elected for a single nine-year term. Members of the Constitutional Court shall retire when they are sixty-five years old. (2) Membership in the Constitutional Court terminates automatically if a member is convicted of an offence requiring his dismissal from judicial profession; it terminates by a decision of an absolute majority of the total number of members of the Constitutional Court if it is definitely established that he is unable to perform his duties on account of ill-health.” For the Turkish text. 18 July 2012.

“strengthening the democratic legitimacy of the Constitutional Court by giving the Parliament an important role”, ensuring that the majority of the members of the court “be elected by judicial authorities”, eliminating the crucial role played by the President of the Republic alone. The key to giving the Parliament an important role was the quorum—determined as the three-fifths of the total number of members—in the election of the Court members. This would prevent excessive influence of the majority. Limiting the term of membership to nine years would ensure that “changes in public opinion would be reflected on the composition of the Constitutional Court”. As for the ‘competence’ of the Court<sup>325</sup>, it maintained the principle that “constitutional amendments could be reviewed only with respect to their form and such review should be restricted to consideration of whether the required majorities were obtained for the proposal and adoption and whether the procedure requiring two rounds of debates was complied with” (Özbudun 2010: 16).

TESEV report criticised most provisions of the constitutional amendment package—as it related to the Court—already forwarded to the Parliament, on following points: granting the National Assembly the power to elect only three out of seventeen members was a positive but insufficient improvement; however, the major reservation was about the election by *simple majority* in the third round. The dominant role of the President was also maintained. Tenure of twelve years—with no re-election was an improvement, however, this limitation should also have applied to the current members. (Yazici 2010: 33)

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[http://www.siviltoplumakademisi.org.tr/index.php?option=com\\_content&view=article&id=387:ergun-ozbudun&catid=52:anayasa-taslaklari&Itemid=130](http://www.siviltoplumakademisi.org.tr/index.php?option=com_content&view=article&id=387:ergun-ozbudun&catid=52:anayasa-taslaklari&Itemid=130).

<sup>325</sup> ‘Özbudun’ draft of 2007; “Art. 118 - (3) If the Constitutional Court is in the opinion that the implementation of the provision subject to an annulment action will cause irreparable damages and that the said provision clearly appears to be unconstitutional, it may, upon request, stay its execution by a reasoned decision taken by a two-thirds majority of the present members. The Constitutional Court’s final decision on the merits of the case shall be published in, at the latest, sixty days in the Official Gazette. Otherwise, the stay order shall become ineffective.”

Policy Report also discussed items related to the restructuring of the High Council of Judges and Prosecutors, particularly increasing the number of the members of the HCJP to include first-degree judges and prosecutors, allowing the TGNA to elect some of the members and election methods. Based on the reports of the Venice Commission and of the Consultative Council of European Judges (CCEJ), it found the ‘present’ composition and working methods of the HCJP as conflicting with European practice and incompatible with the principles of the independence and impartiality of the judiciary. It suggested “a mixed composition of judges and non-judges”; selection methods, composition and security of tenure to ensure “autonomy”; selection of non-judge members by the Parliament—which “has to be exercised by qualified majorities”. The presence of the Minister of Justice in the Council, report found unproblematic, provided that he/she “should not have the right to vote in disciplinary matters”. (YAZICI 2010: 17-20) Also for recommendations regarding the restructuring of the HCJP, it adopted ‘Özbudun’ draft of 2007.<sup>326</sup>

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<sup>326</sup> ‘Özbudun’ draft of 2007, Art. 109 - (1) The High Council of Judges and Prosecutors is composed of seventeen regular and four substitute members. The Undersecretary of the Minister of Justice is an *ex officio* member of the Council. Parliament elects five regular and one substitute members from among first-degree judges and prosecutors with the absolute majority of the total number of its members and by secret ballot. One substitute and three regular members are elected by the Plenary Assembly of the Supreme Court of Appeals and one substitute and two regular members by the Plenary Session of the Council of State; one substitute and four regular members by the first-degree judges and prosecutors in courts of justice from among their peers, and two regular members by the first-degree judges and prosecutors in administrative courts from among their peers. [...] Members to be elected by the Plenary Assemblies of the Supreme Court of Appeals and Council of State must have reached the age of sixty. [...] (2) The Council convenes with seventeen members and decides with the absolute majority of its members. [...] (3) Elected regular and substitute members of the Council cannot assume another function as long as they hold their posts. (4) The High Council of Judges and Prosecutors recruits, appoints and relocates [...] judges and prosecutors [...]. It decides on proposals of the Ministry of Justice for abolishing the post of a court or a judge or a prosecutor, or changing the jurisdiction of a court. [...] (5) The Minister of Justice is authorized to appoint judges and prosecutors to work temporarily or permanently at the central organisation of the Ministry of Justice [...].

Regarding the provisions—related to HCJP—included in the constitutional amendment package, the report found the “increase in the number of the HCJP members” and “allowing the election of first-degree judges” *commendable*. The most important shortcoming was “its failure to give a role to the Parliament in the selection”. Also, the proposal strengthened an “already powerful authority” of the President of the Republic. Abolishing the President’s “power to select members from among the nominees of the Supreme Court of Appeals and the Council of State”, on the other hand was commended. (Yazici 2010: 36)

To summarize; TESEV aimed the security sector be under direct control of the Government, and indirect control of the Parliament—through Parliamentary oversight of the Government—and civil society, media, people (general public). The judiciary, must be independent, impartial—cognizant and respectful of universal legal norms—and efficient. It advocated legal measures, transparency and accountability, towards these ends. Among them, those related to the NSC, MOD and the TGS, the Constitutional Court and the HCJP, were prominent.

Specifically, TESEV wanted: the Law on the NSC—Art. 2, ‘concept of national security’, and TAF’s Internal Service Law—Art. 35, ‘mission of the armed forces’ be amended; the relationship between the MoD and the Chief of Staff be reformulated; restructuring of both the Constitutional Court and the High Council of Judges and Prosecutors; a significant role in the selection of the Constitutional Court judges and the members of the HCJP be given to the Parliament—while reducing the powerful authority of the President in the selection of judges; the term of duty of the Court judges be limited to a certain period.

A change in the security ‘model’, rather than selective and partial amendments was sought and “the lack of political will” in the area of

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(6) The Minister of Justice may assign judges and prosecutors temporarily to avoid any interruption in the service [...]. (7) Principles governing the fulfillment of the duties of the Council, procedures related to the election of its members and activities [...] shall be regulated by law.

democratisation was consistently stressed. Adopting a holistic approach, TESEV recognized the intimate interconnection between Turkey's main areas of democratisation.

### **3.10. Participation: Turkish Industry & Business Association<sup>327</sup>**

The Turkish Industry & Business Association (TÜSIAD) was established in 1971 in order to articulate and advocate a new development strategy for Turkey—based on ‘free market’ economy and open to international competition—which was eventually adopted and vigorously followed by the government of the time, from 1983 on. TÜSIAD is an organisation of the private sector with about 600 members that produce 60-65% of the Turkish GDP. Its membership is voluntary. It employs a professional staff of approximately sixty, to include Representative Offices world-wide, and University Partnership Forums.

TÜSIAD's work is essentially carried out through committees<sup>328</sup>, chaired by members of the TÜSIAD Board of Directors. Committees are composed of academics and TÜSIAD members with special interests, expertise and education. Working Groups—associated with the Committees—support them; they work in conjunction with the Secretariat General and TÜSIAD University Partnership Forums, for developing TÜSIAD's views and positions. Committees meet regularly and serve as a bridge to the TÜSIAD Board of Directors. TÜSIAD International, established as a separate unit, carries out activities in the field of *strategic business development*. TÜSIAD also has offices in Brussels, Berlin, Paris and Washington D.C. These offices contribute to the process of developing the EU *acquis*, assist in the smooth progress of the EU harmonisation process, by establishing relations with academics, international bodies and governments. Representative

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<sup>327</sup> Formerly the name was The Turkish Industrialists' and Businessmen's Association. The name in English was changed to 'Turkish Industry & Business Association' in 2009. See; TÜSIAD Charter, <http://www.tusiad.org/tusiad/charter/>. 19 July 2012.

<sup>328</sup> For TÜSIAD committees, see; <http://www.tusiad.org/committees>. 31 March 2012.

offices publish monthly bulletins to keep TÜSIAD members and experts informed about important issues.

The Parliamentary Affairs Committee<sup>329</sup>, chaired by one of the vice chairmen of TÜSIAD's Board of Directors, formulates TÜSIAD's views on issues related to political reforms and judicial reform, among others. In addition to its own members, the Committee benefits from academic input in the process of forming its views and position papers. It monitors legislative texts in the parliamentary agenda, through 'constructive' exchange of views between the Parliament and TÜSIAD and it promotes participation of the private sector in the legislative process. The Political Reforms Department within the TÜSIAD's Secretariat General supports the committee's work.

TÜSIAD, clearly, aims for a substantial role in the political decision-making and legislative processes and has got organized accordingly. This includes policy decisions—and legislation—related to 'democratisation' as a matter of priority, because "There is an intimate connection between economic development and democratic consolidation" explains one senior staffer: "We want to see a Turkey consolidated its democracy, developed its economy—becoming a respected country in the world. We aim to support this process with TÜSIAD's views, proposals so that it moves forward faster and in a sounder way".<sup>330</sup>

TÜSIAD Ankara Permanent Representative Office<sup>331</sup> performs critical functions in this respect. It keeps track of the executive and legislative developments, helps to facilitate TÜSIAD's participation in the *decision-making* process and, regarding the *legislative* process, arranges TÜSIAD's relations with the Parliament, through political and legislative consultation

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<sup>329</sup> For TÜSIAD Parliamentary Affairs Committee, see; <http://www.tusiad.org.tr/committees/parliamentary-affairs-committee/?f%5Byear%5D=2011&f%5Bmonth%5D=7>. 19 July 2012.

<sup>330</sup> Interview, December 2011.

<sup>331</sup> For TÜSIAD Ankara Permanent Representative Office, see; <http://www.tusiad.org/tusiad/representative-offices/tusiad-ankara-permanent-representative-office/>. 19 July 2012.

mechanisms and personal contacts. Ankara Office represents TÜSIAD vis-a-vis the Government, Parliament, private and public sector entities and institutions, civil society organisations, international missions and individuals, in order to secure TÜSIAD's contribution to the economic, social and political decision-making processes. It provides up-to-date information to TÜSIAD's members and professionals by preparing regular publications on the legislative process, Ankara's agenda, the EU accession process and harmonisation. Ankara Office's two publications—Ankara Bulletin<sup>332</sup> and Ankara Bulletin Legislative Process<sup>333</sup>—are important tools, in this respect.

TÜSIAD, a voluntary organisation of businessmen and industrialists, has consistently been active in tackling economic, social and political problems of Turkey with a long-term perspective, divorced from popular—daily—politics, made clear-cut policy proposals and has been a candid advocate of 'democracy' and democratisation. To these ends, TÜSIAD, directly and indirectly, makes its views known to the Parliament, the Government, foreign governments, international organisations and the general public. It is TÜSIAD's position that they have been "contributing to the establishment and development of the notion of 'civil society' in Turkey".

### **3.10.1. TÜSIAD's work on 'reforms'**

Since "policy advocacy is essential for any civil society", TÜSIAD's work on *democratisation* started about 20 years ago, in mid-1990s with a report on the Election System (Gürsel 1996) and continued to this day. In terms of institutional views of TÜSIAD, against a background of more diverse views expressed and/or reflected in various publications, two aspects need clarification. On the one hand TÜSIAD maintains working groups and committees, providing inputs to Board of Directors, and

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<sup>332</sup> Ankara Bulletin, 2013-1. 13 January 2013.

[http://www.tusiad.org/\\_\\_rsc/shared/file/TADT-AnkaraBulteni-Ocak2013.pdf](http://www.tusiad.org/__rsc/shared/file/TADT-AnkaraBulteni-Ocak2013.pdf).

<sup>333</sup> Ankara Bulletin Legislative Process, 2012-12-A. 13 January 2013.

[http://www.tusiad.org/\\_\\_rsc/shared/file/TADTAnkaraYasamaBulteni-Aralik2012.pdf](http://www.tusiad.org/__rsc/shared/file/TADTAnkaraYasamaBulteni-Aralik2012.pdf).

formulates its institutional views as expressed explicitly as ‘TÜSIAD views’. On the other hand, TÜSIAD outsources reports on various subjects including those related to democratisation, or support studies reflecting ‘differing views’ on certain issues, but not necessarily reflecting TÜSIAD’s institutional views. Otherwise, “TÜSIAD essentially maintains a democratic attitude and behaviour, careful in displaying this stance at all times; despite some disagreements among TÜSIAD members on details, there is a consensus on a *common* democratic ground”.<sup>334</sup> As a result, like many other civil society organisations, TÜSIAD has often been subjected to unjustified criticism by either the governments or opposition parties, sometimes by both.

So-called ‘Tanör Report’ (1997), in that sense, established a ‘tradition’ for the perception of TÜSIAD, its views and its publications by the general public. This perception is mixed—and sometimes distorted—when deemed fit to intended political, sometimes ideological ends, and, as a result, has largely contributed to some serious *problems of communication* as exemplified below. Tanör Report, much beyond its time and certainly out of the *spirit of the time*, outlined a series of major political reforms—for better governance as well as for the promotion of civil and human rights. Despite some up and downs due to changing domestic and international circumstances, TÜSIAD’s focus on democratic reforms has been stable since then.

Some commentators, scholars, Önis for example, among others, have pointed to the “instrumental nature of TÜSIAD’s commitment to democratisation agenda”, arguing that “significant components of the business community embraced democratic reforms for their intrinsic benefit” (Önis 2003: 19). This is perhaps true and probably valid for the private sector not only in Turkey but in any other country in the world, by the very nature of this sector. Nevertheless, that does not and probably cannot rule out the ideological and moral (i.e. cultural) commitment of individuals within the business community to ‘democracy’ for its own sake. We can also see that there is an ambiguity in terms of TÜSIAD’s role—

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<sup>334</sup> Interview, December 2011.

trying to *influence* policy-making from outside or trying to become an *actor*. Probably, in reality, it is the latter rather than the former.

The Perspectives on Democratisation (Tanör 1997) was prepared—under the responsibility of TÜSIAD Board member Can Paker—to identify the obstacles to democratic consolidation in Turkey and to make *policy proposals* based on the best examples in Western democracies. This report had a preface by the Board of Directors indicating that it did not necessarily represent TÜSIAD’s views. But this report, which raised proposals well beyond the democratic expectations—and political as well as *mental* limitations—of the time, caused much discussion also among TÜSIAD members. As a result, the ‘Halis Komili’ Board of Directors was not absolved and had to leave office. It included more than 100 proposals both in the Constitution and in various laws, ranging from judicial system, to government, to human rights, reflecting a wide perspective. In two years time, another report by Bülent Tanör (1999), reviewed the current debates on democratisation in Turkey. Two years later TÜSIAD published an updated version of the 1997 report by the same author (Tanör 2001), re-examining the debate that took place and the changes/improvements already occurred and implemented in Turkey. This was followed by the EU process, and successive governments started launching EU harmonisation packages. And TÜSIAD, this time, started publishing smaller, thematic reports on critical subjects, like the one on *political parties* (Batum 2001) for example. These were also supplemented by seminars whose proceedings were also published.

The most controversial parts of the pioneering ‘Tanör Report’ in 1997, were on ‘civilianisation’ and ‘cultural rights’, with no major proposals on the ‘judiciary’. *Civilianisation* essentially included suggested changes in the structure of the National Security Council (NSC). It proposed that the “National Security Council (NSC) be eliminated as a constitutional body and its sphere of activity be restricted to national defence (as it was prior to 1960), parallel to the practice in all democratic countries” (Tanör 2001: 17). During the 1997 General Assembly of TÜSIAD, some members not only

objected to parts of the report but also suggested alternative texts/proposals, some even brought studies made by some other academics, as well as those who supported the study in its entirety. The reasons for objections were diverse; but some of those who objected initially, perhaps reflexively—because some proposals sounded so ‘unusual’—then, later changed their positions. In a few years, some of these proposals had already been enacted—the law on the structure of the NSC was amended and also its General Secretariat was reorganised.

On the tenth anniversary of the first ‘Tanör Report’, in 2007, this time another author, Zafer Üskül prepared a ten-year update report.<sup>335</sup> This report, reiterated Tanör’s proposals for reforms in the judiciary—reorganisation of the Constitutional Court and HCJP, and in the security sector—elimination of the NSC from the Constitution as a constitutional body and integration of the General Staff with MoD.

### **3.10.2. Cooperation and networking**

“We are not in a position of ‘We’ve done our best, we offered proposals, if they don’t like them, we ignore them and remain indifferent, this is their problem’, this is NOT the case” explains one TÜSIAD official.<sup>336</sup> But the way of becoming ‘active’, changes depending on the time, context, the subjects and the processes involved.

Each time TÜSIAD publishes something, it is subject to the widest possible distribution—to the Parliament, politicians, decisionmakers.<sup>337</sup> Many of the addressees are also invited to TÜSIAD conferences/seminars. Trying to reach the target audience and having an influence is a long process, effects of which gradually building up, throughout. Sometimes TÜSIAD is invited to share institutional views with those who take part in

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<sup>335</sup> For a summary of the report see; (Üskül 2007).

<sup>336</sup> Interview, December 2011.

<sup>337</sup> For example, a full package of TÜSIAD studies and publications related to the work of drafting a new constitution—since 1992—was provided to the Speaker of the Parliament when the Conciliation Committee on Constitution was established and started work in October 2011.

the decision-making and legislative processes. In response to an invitation, for example, a TÜSIAD Board member, Volkan Vural, briefed the subcommittee of the Conciliation Committee on Constitution—Drafting Committee on Civil Society—about TÜSIAD’s views, along with others, such as TESEV.

Parliamentary Affairs Committee of TÜSIAD, each year, visits Vice-Chairmen of the political party *caucuses* represented in the Parliament. They also visit the Justice Committee and the Committee on the Constitution. They discuss draft bills or law proposals in the agendas of these committees. At politically critical junctures, TÜSIAD Board of Directors and/or the President—and other members individually—involves directly; they visit political parties, deliver speeches, issue press statements, give interviews and make TÜSIAD views, concerns known. However, it appears that TÜSIAD mainly focuses on the Government to have a direct access to the process and, if possible, influence on the policy outcomes. *Secondary* audiences seem to be Parliamentary committees and, to a lesser extent, political parties. As already pointed out, efforts on political parties other than the governing party are based on a sense of democratic ‘politeness’ rather than practical expectations for support to current legislation and/or political decisions.

European Union institutions are another venue for cooperation for the purposes of democratisation. Several EU officials in the course of 2010 visited TÜSIAD—for example Stefan Füle, Commissioner for Enlargement and European Neighbourhood Policy, in March, and Head of the EU Delegation to Turkey, in April. TÜSIAD also visited Spain—holding EU Presidency—in April and also Commissioner Füle, among others, in Brussels in June. During such contacts constitutional amendment package must have been included in the agenda.

Regarding cooperation—and networking—with other civil society organisations, the situation is not too different from others. However, as discussed before, although lack of serious cooperation with TESEV is noticeable, there may be more cooperation between these two organisations

than it is observed from outside. Nevertheless, cooperation with any other civil society organisation—for the purposes of democratisation—is negligible.

According to TÜSIAD officials, they “pay great attention to how its work and position is perceived and reflected by the media”.<sup>338</sup> On a daily basis, comprehensive reports on anything published having the word ‘TÜSIAD’ in it, including the local press in Anatolia, is received and reviewed, particularly with a view to understand if publications, press statements etc. are correctly perceived. As is often the case in Turkish media, sometimes columnists may write based on so-called secondary sources—the way TÜSIAD reports are reflected in the media—rather than reading the actual reports themselves. Then, a letter signed by the President or the Secretary General himself, is sent to correct the miscommunication and a copy of the actual report is also provided. If there is a more general *misperception*, then the President goes on TVs or gives press statements, interviews to correct it.

TÜSIAD appreciates the fact that “the media is the only way (they) can possibly reach the people in the street”, however, they do not have an aggressive policy to ‘reach’ people. Perhaps this is a sign of either the low priority or importance—or both—TÜSIAD attaches to reaching people. If media is properly employed for purposes other than *reaching the people*, is yet another valid question. However, ‘TÜSIAD’ appears to be believing in the ready availability of the media; “TÜSIAD is always attractive for the media. We don’t need to spend special effort. Especially when our studies or other activities are on democratisation, there is much interest”.<sup>339</sup> This conclusion, based on practical observation, may well be true, however, the subject of the role of media in support of civil society programmes, such as TÜSIAD’s, probably requires a much more sophisticated approach and systematic planning—beyond simply following the reporting in the media—for success.

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<sup>338</sup> Interview, December 2011.

<sup>339</sup> Ibid.

### 3.10.3. TÜSIAD's position on reforms

“TÜSIAD participates in legislative work starting from the initial stage of drafting bills in ministries by providing inputs, views, participating in debates, issuing reports, visiting political decisionmakers. We are happy to see that many of the suggestions/proposals we made, have already been materialized” says, one senior TÜSIAD staffer.<sup>340</sup>

Regarding the *security sector* reform and particularly the restructuring of the National Security Council, TÜSIAD has both initiated and led the effort. In this sense, as a civil society organisation, its functions typically range from *issue articulation to policy formulation, legislation and evaluation*. The Perspectives on Democratisation (Tanör 1997), identified the present structure, role and status of NSC as an obstacle to democratic consolidation in Turkey. The *policy proposals* it formulated for reforming the institution were based on the best examples in the West. Tanör's next two reports, first in 1999, and the updated version of the 1997 report in 2001, reviewed the developments and evaluated the policy outcomes in the light of TÜSIAD proposals which were made in the course of four years.

The 1997 report, proposed that the “National Security Council (NSC) be eliminated as a constitutional body and its sphere of activity be restricted to national defence” and the General Staff—actually the ‘Chief’—it stated “be subordinated to the Minister of Defence” (Tanör 2001: 17). An integrated MoD and the General Staff was never really discussed and is still missing from the political agenda, since the issue has always been limited to a matter of *precedence* between two ‘individuals’. Nevertheless, in a few years, with the comprehensive amendments in the Constitution in 2001, most of TÜSIAD proposals—on NSC and its General Secretariat had already been enacted. Yet, 2001 March Tanör Report found the intended improvements ‘unsatisfactory’ and, with reference to EU process then, reiterated the original proposal. It accused the Government of not aiming for “a radical solution”. The amendment package adopted by the Parliament in October—more than six months later—did not give heed to TÜSIAD views. TÜSIAD,

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<sup>340</sup> Ibid.

adopted a very active stance in this process during the heated debate over the *revolutionary* amendments in the constitution, which would come to haunt it years later—in 2010.<sup>341</sup>

Üskül Report of 2007, as NSC and General Secretariat already fully restructured after 2003 amendments, maintained the original ‘Tanör proposals’—elimination of NSC from the Constitution as a constitutional body, and subordination of the General Staff to MoD. This has not happened to this day and 2010 changes did not include any article related to the NSC and, although radical changes have been enacted, it is still a Constitutional institute with a broad area of interest.

In 2010, TÜSIAD closely followed the process of constitutional amendments—related to judicial reform—from the beginning and directly involved in the whole process. In February, newly elected TÜSIAD Board of Directors, headed by President Boyner, visited Prime Minister—on 18th—and other political leaders to include the President, Speaker of the Parliament, some of the cabinet ministers and political parties—on 24th and 25th—in Ankara and shared their views on the constitutional amendment package. This was immediately after the TÜSIAD General Assembly on 21 January and the press conference—for sharing 2010 programme with the public—on 15 February. (The next meeting with Prime Minister would take place on 14 July 2010, shortly before the exchange of harsh words between the TÜSIAD President Boyner and Prime Minister Erdogan over ‘taking sides’ on the issue of constitutional referendum package.) In these meetings and visits, TÜSIAD stressed the need for “a democratisation package, to include a new constitution, political parties law, election law—that would

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<sup>341</sup> Nine civil society organisations and platforms, including TÜSIAD, published a paid advertisement to major national daily newspapers and openly supported a ‘Yes’ campaign for constitutional amendment package of 2001. The advertisement was published on 24 September 2001, twenty days before the package was adopted in the Parliament. Although there was a general consensus on the package, one single controversial article increasing salaries of the deputies had caused much public debate and created the risk of being put to referendum by the President of the Republic, Necdet Sezer. The issue was soon resolved by the Parliament and the need for a referendum was thwarted.

put the individual at the centre of the political system—and separation of powers” as “indispensable principles of democratisation” for TÜSIAD.<sup>342</sup> The government revealed the constitutional amendment package of 26 articles on March, 22nd.

Before, on 19 February<sup>343</sup>, MHP Chairman and some senior members of the party leadership came together with TÜSIAD over a dinner and discussed current political developments. On 25 March—three days after the package was made known to the public—this time three cabinet ministers<sup>344</sup>, would visit TÜSIAD in Istanbul to discuss the draft package. These and similar visits clearly indicated that TÜSIAD was accepted as a *legitimate actor* in the decision-making and legislative processes.<sup>345</sup>

Following the visit of the AKP leadership, on 25 March, TÜSIAD’s views on the new package, in the form of a report<sup>346</sup>, were made public in a press conference. A copy of the report had already been given to the visiting ministers. TÜSIAD pointed to the fact that the package, as it was, would “not facilitate further work on a new constitution because it did not stand on a consensus or compromise in the Parliament” and “it was far from being democratic”.

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<sup>342</sup> Interview, December 2011.

<sup>343</sup> The dinner, on 19 February 2010, was in Rahmi Koc Museum in Istanbul and was closed to media. TÜSIAD team of Ümit Boyner, Ali Kibar, Rifat Hisarciklioğlu (TOBB), Murat Yalcintas, Asim Kocabiyik, Feyyaz Berker, Hüsamettin Kavi, Erkut Yüceoğlu hosted MHP Chairman Devlet Bahçeli, Meral Aksener, Münir Kutluata, Cihan Pacaci and Dogan Cansizlar. The working dinner lasted two-and-a-half hours. 10 March 2012. [http://www.internethaber.com/news\\_detail.php?id=232382](http://www.internethaber.com/news_detail.php?id=232382).

<sup>344</sup> They were Dpty. Prime Minister Cemil Çiçek—later Speaker of the Parliament, Justice Minister Sadullah Ergin and Vice-President of the AKP Parliamentary Caucus Bekir Bozdağ.

<sup>345</sup> BDP leadership also visited TÜSIAD, after the referendum of 12 September, in October 2010. “BDP TÜSIAD’i ziyaret etti.” 27 October 2010. *Hürriyet*. 22 July 2012. <http://www.hurriyet.com.tr/ekonomi/16145866.asp>.

<sup>346</sup> See, *Internet Haber*, 25 March 2010. 14 January 2013. <http://www.internethaber.com/tusiaddan-yeni-anayasa-cagrasi-239869h.htm>.

In this report, out of 26 articles, TÜSIAD opposed to those related to the judiciary, i.e. the Constitutional Court and HCJP only, and explained why, and how they should be reformulated. This press conference and the report was the first sign of an open confrontation with the Government which would continue and—despite efforts to contain, on both sides—escalate for a long time to come. On 30 March, the Government—technically, governing party—forwarded the package of, now 28 articles, as a *draft law* rather than a *government bill*, to the Parliament. In April, TÜSIAD report was further developed and Parliamentary Affairs Committee paid another visit to the Parliament, to political parties represented there and explained TÜSIAD’s views, once again.<sup>347</sup>

TÜSIAD views on the relevant parts of the amendment package were clearly reflected in the report of 25 March, in the paper presented to the Chairmen of relevant committees in the Parliament by the Parliamentary Affairs Committee, during visits in April 2010, and were repeated in the March 2011 Press Statement<sup>348</sup> before the general elections.

In summary, TÜSIAD—similar to TESEV—also recognised the intimate connection between economic development and democratic consolidation. They stressed the need for a democratisation ‘package’, to include a new constitution, political parties law and election law—as a minimum—rather than a piece-meal approach, based on *individualism*—versus *collectivism*—and separation of powers; advised consensus and compromise in the Parliament. TÜSIAD proposed that; the NSC be eliminated as a constitutional body and its sphere of activity be restricted to national defence; the General Staff be integrated with the MoD, and the Constitutional Court and HCJP be reorganized.

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<sup>347</sup> On 13 April 2010, Parliamentary Affairs Committee visited Chairmen of the Committee on the Constitution and the Justice Committee, and Vice-Chairmen of respective political party groups in the Parliament.

<sup>348</sup> Press Release, 27 March 2011, TÜSIAD. 14 January 2013. <http://www.tusiad.org/bilgi-merkezi/basin-odasi/basin-bultenleri/tusiad-basin-bulteni---27-mart-2011/>.

### 3.11. Participation: Heinrich Böll Stiftung Turkey

Heinrich Böll Stiftung-Turkey has been active in Turkey since 1995— from 2005 on, as an association registered with the Ministry of Internal Affairs.<sup>349</sup> Heinrich Böll Stiftung—located in Berlin—is close to the German Green Party and operates in 27 countries in addition to Turkey. “Democratisation is a chief tenet of green politics” states Heinrich Böll-Germany web-site<sup>350</sup>, still “it is often far from clear how to translate the general notion of democratisation into concrete projects, campaigns, or educational programmes”. Civil society is considered one important and versatile tool in this respect. To these ends, Heinrich Böll aims primarily, directly working on the “legitimacy of policymakers and decision-making processes” and indirectly through the “application of democratic principles in other areas, such as climate and gender policy”.

Heinrich Böll’s work for ‘democracy promotion’ takes the specific context and needs of each country into account. Accordingly, planning for the scope of actions matches the former, in cooperation with various partners. In Turkey, their aims are to support the steps taken by Turkey for democratisation, to help civil society to develop, to bring ‘civil’ experience from abroad and to help exchange of views between Turkey and the EU. However, in Turkey, partners are mainly from the civil society, rather than the state; this sets Heinrich Böll apart from many other associations.

The areas selected by Heinrich Böll to focus on are; minority (non-Muslims’) rights, human rights in general, Kurdish question, religion and democracy, sustainable development, ecology, and civil-military relations. This list excludes work on ‘judiciary’ and the judicial reform process. Heinrich Böll prefers to talk about the relationship between democracy— democratisation—and religion(s), rather than inter-faith dialogue—between ‘religions’.

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<sup>349</sup> Visit Heinrich Böll Stiftung Turkey web-site. 23 July 2012. <http://www.tr.boell.org/>.

<sup>350</sup> See; ‘Democracy: Introduction’. 23 July 2012. <http://www.boell.de/democracy/democracy.html>.

Primary audience for Heinrich Böll would change from one subject to another; elites, journalists, civil society, academics—and over them—the mass public. Heinrich Böll adopts a phased approach—and strategy—as dictated by the circumstances. They may ‘lead’ the effort or, as other civil society organisations in a particular area of interest gain experience, self-confidence and initiative, then, shift their priorities.<sup>351</sup> “We are not powerful enough to reach the people in mass to transform the overall political culture as a whole, to make it more democratic” admitted one senior member from Heinrich Böll.<sup>352</sup>

Heinrich Böll, is more of an ‘advocacy’ group vis-a-vis an epistemic community.<sup>353</sup> However, scientific work/methods are essential to their work, as long as they remain ‘objective’. “It is often possible to tell—by simply looking at the name of an ‘academic’ organisation—which political party they associate with or close to” says the same senior member. “There is a gray area in Turkey between the academic work and politics. In a sense, science is used as a political tool”.<sup>354</sup> Heinrich Böll brings journalists, academics and civil society together, because otherwise, “each group is stuck within themselves, like a separate social club..”. Some reports are produced by Heinrich Böll, but some others are outsourced in the form of support provided to researchers.

They do not offer policy proposals, but just help/support others—civil society—to substantiate their views and proposals. Most of the time, their

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<sup>351</sup> For example; in the area of *Tarihle Yüzleşmek* (‘Facing the History’); Heinrich Böll organised an international conference first and then seminars for training of civil society. Once there were enough number of civil society institutions active in this particular area, they stepped back, but continued supporting them. See; <http://www.tr.boell.org/web/103-1217.html>. 23 July 2012.

<sup>352</sup> Interview, October 2011.

<sup>353</sup> “Ulrike Dufner: AKP, AB reform sürecini devam ettirmek istiyorsa, bizi ve Türkiye’deki sivil toplumu desteklemek zorunda.” Ümit Sahin. 23 February 2012. *Yesil Gazete*. 23 July 2012. <http://www.yesilgazete.org/blog/2012/02/23/ulrike-dufner-akp-ab-reform-surecini-devam-ettirmek-istiyorsa-bizi-ve-turkiye%e2%80%99deki-sivil-toplumu-desteklemek-zorunda/>.

<sup>354</sup> *Ibid.*

focus is on the first phase of policy development—articulation; sometimes the second phase—policy formulation, but still in the *facilitator* role, because, as a ‘foreign’ institution, there is always the risk of being (mis)perceived as one interfering in *domestic politics*. For example, in 2007, once AKP declared its intention for a new constitution, Heinrich Böll invited academics and other experts to talk and debate on specific proposals. Initiative had already come from within the political system itself and constitutional amendments had been raised as a subject in the political agenda, i.e. articulated; they just wanted to contribute to the debate in order to make it more inclusive through wider participation of diverse views.

### **3.11.1. Heinrich Böll Stiftung’s work on ‘reforms’**

Democratic reforms in the *security sector* and the *judiciary* are not priority areas for Heinrich Böll-Turkey. Nevertheless they do contribute to civil society activities in these areas because of the interconnection between various dimensions of democratisation. In this context, they are rather active on *civil-military* relations.

In 2007, Heinrich Böll gathered two meetings in Van and Diyarbakir to contribute to, then, the ongoing debate on a new constitution.<sup>355</sup> The subjects discussed included human rights and the notions of ‘sovereignty’, how to reformulate human rights and fundamental freedoms, multi-lingualism and local administrations, multi-culturalism, democratic legitimacy, rule of law. They organised another conference on ‘Human Dignity and Human Rights’ in May 2008, in cooperation with Goethe Institute and Turkish-German Cultural Affairs Board, in Istanbul Bilgi University and published the proceedings (Dufner 2008). Presentations included ‘Human Dignity Principle in the High Courts: Legal Status in

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<sup>355</sup> See; STGM web-site. 25 July 2012. <http://www.bizsizanayasaolmaz.org/tag/heinrich-boll/>.

Germany’ (Limbach 2008) and ‘The Tension Between Freedom and Security’ (Starck 2008).<sup>356</sup>

Heinrich Böll published, in 2010, *The Role of the Army in Turkish Politics* (Boztekin 2010). This was the compilation of the proceedings and results of the two-day conference held in Istanbul in November 2009. During the opening speech of the conference, Head of Heinrich Böll-Turkey, Ms. Dufner described the Turkish Army as “a giant rock blocking the way to democratisation” (Boztekin 2010: 5). The conference aimed to “hear the results of the work on civil-military relations by distinguished researchers and their proposals to remove this rock”. For a policy of ‘peace’, it was necessary, as first steps; “to get the army under more civilian control, describe politics as a civilian area, clean the political arena of military symbols and open a new road where the society can develop its own politics and will”. In addition, against the background of recently revealed allegations about some army personnel’s involvement in ‘coup-plots’ and/or planning for coups—which later proved controversial<sup>357</sup>—she said: “The news on planning for coup which we’ve heard about recently, are horrible and, in democracies, absolutely unacceptable”.<sup>358</sup>

The conference was organised in the form of a series of panels where ‘experts’ shared their views and then responded to moderated questions. Under the influence of these widely publicised recent stories of planned, intended or ‘attempted’ military interventions, most of the views expressed

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<sup>356</sup> Conference; ‘Ozgürlükcü ve Demokratik Hukuk Düzeninin Garantisi Olarak İnsan Onuru ve Temel Haklar, AB-Almanya ve Türkiye (‘Human Dignity and Human Rights as the Guarantee for a Free and Democratic Legal System: EU-Germany and Turkey’). 30-31 May 2008.

<sup>357</sup> Legal process for particularly two cases—actually two clusters of many cases—‘Balyoz’ and ‘Ergenekon’ was still ongoing when this research was completed. On 21 September 2012, the court sentenced 325 ‘Balyoz’ defendants to prison terms ranging from 13 to 20 years with 36 being acquitted. The case was appealed.

<sup>358</sup> See, Heinrich Böll conference: “The Military’s Role in Turkish Politics: Civilian-Military Relations, the Security Sector and Civil Control”. 21-22 November 2009. Istanbul. 25 July 2012. <http://www.tr.boell.org/web/19-815.html>.

were of extreme nature and clearly anti-militarist rather than ‘democratic’ *per se*. Such statements<sup>359</sup> clearly reflect the dominant sentiment in Turkey, media and the general public in general, at the end of 2009, immediately before the 2010 Constitutional referendum process. One panelist—Ömer Laciner—was most emphatic:

Against the military tutelage which still exists in practice, a sound ideological propaganda campaign—beyond some institutional arrangements—is needed. [...] (The Turkish Army) is a scary force, it is armed and as you have realised with recent revelations, it does not hesitate to resort to even the most disgusting methods. We are faced with an organisation that harbours cowardly people who can think of bombing children, who can plan to kill you, us in cold blood”. (Boztekin 2010: 39, 72)

In May 2010, this time another conference, on the so-called ‘27 May Coup’ of 1960<sup>360</sup>, brought together the ‘victims’—surviving family members—and the living members of the so-called National Unity Committee—those who led the coup—and some columnists who were particularly familiar with the history of military interventions in Turkish politics, academics, columnists and even a senior bureaucrat from the Parliament, however, no military. The panels discussed constitution, media, the army culture, institutions and identities, and the lasting legacy of the ‘27 May’ Coup in the political regime in Turkey.

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<sup>359</sup> Ali Bayramoglu: “Gendermarie is a force by itself. [...] This organisation we are facing today is not only a machine of destruction but also a machine implementing state’s policies, in an uncontrolled way. The government should intervene in this. [...] But the government is also not that civil” (Boztekin 2010: 16). Cengiz Candar: “The results of recent polls describing the army as the most trusted institution is the outcome of a psychological warfare. We need to realise that, albeit lately” (Boztekin 2010: 26).

<sup>360</sup> “27 Mayıs Darbesinin 50. Yildönümü ve Türk Siyasetine Etkileri (‘50th Anniversary of the 27 May Coup and Its Effects on Turkish Politics’)”. 21-22 May 2010. Istanbul. 25 July 2012. <http://www.tr.boell.org/web/103-935.html>.

Just before the general elections of June 2011, Heinrich Böll this time published a comparison of political party programmes—AKP, CHP, MHP and BDP. This comprehensive study<sup>361</sup> included democratisation, civil-military relations, judiciary as well as other priority areas such as a new constitution, Kurdish question, foreign policy, human rights, freedoms, development, local administrations etc. But they did not indicate a preference or make any policy proposals.

### 3.11.2. Cooperation and networking

Heinrich Böll's cooperation with TESEV, for the purposes of 'democratisation', ranks prominent. This is probably because of the partial overlap in terms of their priority areas; Kurdish question and the role of the 'security sector' in the policy-making process related to this question. During the two-day conference in 2009 (The Role of the Army in Turkish Politics) the second day was reserved for presentations and discussions on TESEV's first Policy Report on the Security Sector Reform. There was also representation from CESS in this conference. However, other than that, Heinrich Böll's cooperation and collaboration seems to be more with smaller scale, mostly *advocacy* organisations, operating mainly locally, with limited financial resources and limited experience in civil society work. In that respect, their network of partner organisations is quite widespread, and impressive in the Turkish context—18 in the area of democratisation.<sup>362</sup>

Heinrich Böll does work with celebrities as a campaign strategy, not in the area of democratisation though. They supported a TV campaign involving female and male celebrities for a campaign to raise awareness about *domestic violence against women*, in 2011 and it proved very effective.<sup>363</sup> In terms of networking, Heinrich Böll has 'friends' in political

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<sup>361</sup> See; "Yeni Secimler, Yeni Vaatler, Yeni Beklentiler ('New Elections, New Promises, New Expectations')". Heinrich Böll Stiftung–Turkey file. 25 July 2012. <http://www.tr.boell.org/web/103-1185.html>.

<sup>362</sup> See; Heinrich Böll Stiftung Turkey web-site. 23 July 2012. <http://www.tr.boell.org/>.

<sup>363</sup> See; Sabah, 11 March 2012. 'Kadına Şiddete El Koyuyoruz'. 14 January 2013. <http://www.sabah.com.tr/Gunaydin/Magazin/2012/03/10/kadina-siddete-son-dediler>.

parties—most of them—whom they rely on for help to get their messages through. They also have contacts—columnists—in the media, like those who helped in organising the 1960 Military Coup conference and who even took the podium to talk.

Heinrich Böll, recently, started working closer with the media. There is a perceived sensitivity and this is for very good reasons. Apart from the general sensitivity of being a ‘foreigner’, there is this ‘German foundations’ label, a favourite debate in Turkish politics which often comes to the fore as detailed below. So, there is a sensitivity and—it may well sound unusual—they do not want Heinrich Böll is mentioned too often in the media. They are happy as long as “what they talk about or what participants talk and discuss in their conferences/seminars are reflected in columns”.<sup>364</sup>

Therefore, objectively, media’s interest can be improved, if it were not for the sensitive situation Heinrich Böll Turkey is in. Since they do not wish to be seen much in the media, the current situation is, to a degree, their own-making. “But, in a society, where we are under threat, even life-threats are coming personally, I do not want my face to be seen in the media” says one senior member.

### **3.11.3. Heinrich Böll Stiftung’s position on reforms**

Like many other civil society organisations in Turkey, it is difficult to measure the success of Heinrich Böll, mainly because they facilitate the debate towards formulating policy options rather than making direct policy proposals. There are exceptions to this general ‘rule’, but due to the sensitivities involved—mentioned above—‘foreign’ civil society associations are more hesitant in this respect. On the other hand, while they do not work on specific *legislative proposals*, they do work on democratisation in general and this is not always and only about laws, but also about the practice—behaviour, and then cultural/attitudinal change.

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<sup>364</sup> One typical example is the campaign for “Domestic violence against women” in March 2011. Although Heinrich Böll Turkey was instrumental in this organisation, not a single reference can be found in the media.

Still it is a challenge from measurement techniques perspective. “We always wonder if our publications are read or just used as ‘flower pot stands’ where they end up”<sup>365</sup> said one senior staff, a concern which is shared by many in the world of civil society in Turkey.

Whatever criteria are taken for measuring real success, Heinrich Böll works for opening up the debate and encourages free, tolerant, objective discussion on the subjects at hand. From this perspective the views expressed in their publications, by individual academics, journalists etc—and occasional statements by the Head of Heinrich Böll Turkey—can be taken as benchmarks for what they want. “Turkish army, whatever role they may have played in the history of Turkey and regardless of their importance, has to withdraw from politics and the political scene in modern Turkey” says Ulrike Dufner, Head of Heinrich Böll-Turkey. “They should not make public statements on the country and government’s policy. Whoever makes decisions related to defence policy and the army, should not be the army itself” (Boztekin 2010: 7) she adds.

Another view in this respect is offered by Andrew Cottey, who participated in November 2009 conference in Istanbul. He pointed out two aspects of civil-military relations: “The idea of democratic culture and its relation to the military culture” and “a phased approach to reform in civil-military relations in Turkey, as the only—albeit sometimes frustratingly slow—way” (Cottey 2010: 82-86). In terms of the role and place of civil society organisations in democratic oversight of the security sector, Yilmaz Ensaroglu argued that “the perception of security in Turkey and the meaning attached to the concept of security are extremely vague and limitless. [...] this allows the reduction of all political problems into security and public safety problems. [...] This clearly reveals that it is more of an security oversight of the civil society, rather than the democratic oversight of the security sector” (Ensaroglu 2010: 61-62). On the other hand, Joost

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<sup>365</sup> There are ‘successful’ examples by Heinrich Böll though, such as the reports on Kurdish question—which are in high demand; the conference on ‘Tarihle Yüzleşmek’—four weeks after Hrant Dink murder—was also a success.

Lagendijk, a frequent and active participant in Heinrich Böll activities, considered the amendments in the National Security Council Law as “a step in the right direction, but he—like Ensaroglu—also touched upon the subject of ‘securitisation’ and said that “Europeans were expecting debates taking place in the Turkish Grand National Assembly to find answers to questions such as ‘the limits of national security which should be dealt with by the army’” (Lagendijk 2010: 87-88).

It can be concluded that, Heinrich Böll Turkey advocates Army’s withdrawal from politics and its subordination to elected civilian authority, reforms focusing on cultural aspects—rather than institutions only, a phased approach to reform in civil-military relations, eliminating the tendency for securitisation of each and every problem in Turkey and active involvement of the Turkish Grand National Assembly in the reform process.

### **3.12. Participation: Centre for European Security Studies**

The Centre for European Security Studies (CESS)<sup>366</sup> is based in Groningen, the Netherlands. It was established in 1993, to support civil society in young democracies and to encourage democratic defence reform in Central and Eastern Europe. As the countries in these regions progressed their democratic transitions, CESS priority was shifted to the security sector reform—in the widest sense of the term—and to ‘training’. Embracing the motto of ‘reveal, explain and justify’, it seeks transparency and accountability in security sector governance where it is “the most difficult to achieve”, but nevertheless “that is exactly where it is most urgently needed”.

CESS is an independent, neutral, civil society think-tank, sponsored mainly—but not exclusively—by governments and government organisations through grants and assignments for its programmes. It works closely with national governments and international governmental organisations. CESS has a very small staff, but a wide *international* network of *associate experts* and instructors as well as some sixty “friends, colleagues, fellows”.

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<sup>366</sup> See; CESS web-site; <http://www.cess.org/>. 27 July 2012.

The main source for CESS funding is MATRA<sup>367</sup> with “some help from the British and the Americans”. Initially MATRA funds were dedicated to ‘major’, big projects and that of CESS was one of the last ones of such projects. From 2012, the focus is more on ‘local’ projects controlled by the Embassy of the Netherlands in Ankara and the Consulate-General in Istanbul aiming cooperation with local partners, such as the one with the ‘Parliament’; *Strengthening the role of civil society in legislative process*.

CESS’s primary audience is composed of stakeholders and future stakeholders in the security sector—policymakers and future policymakers, those who oversee policy, mid-career officials in ministries, bureaucracy, also staffers in parliaments, people working in the media and civil society on similar or related matters. They aim to influence policy-making and legislative process *indirectly*. CESS involves in all three stages of policy making: articulation, formulation and implementation at varying degrees. “We articulate and go a little bit into policy formulation as well, as in the case of an *integrated ministry of defence and general staff*, we are across the board” says one senior fellow.<sup>368</sup>

CESS conducts policy research on issues of *good governance* in security sector and provides training for mixed groups of practitioners from government—including the military—the media and civil society, seeks local partners and provides teaching material and training for local trainers, so that they can sustain the training effort. CESS publications are produced by outside academics, practitioners and in-house experts.

### **3.12.1. CESS’ work on ‘reforms’**

CESS Turkey programme, *Governance and the Military: Perspectives for Change in Turkey*, started in 2003 and was carried out in three phases:

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<sup>367</sup> MATRA mostly supports projects on justice, rule of law, home affairs and human rights in the classical sense. In Turkey, one major project was on the ‘reform of the judiciary’, between Bilgi University, Utrecht University and the Justice Academy in Ankara. See; <http://www.minbuza.nl/en/key-topics/matra-programme>. 27 July 2012.

<sup>368</sup> Interview, September 2011.

2004-2006, 2006-2009 and 2010-2013. The first phase<sup>369</sup> aimed at contributing to “an increased understanding in Turkey of the appropriate role of the armed forces in a democracy” in the light of the EU (Copenhagen) criteria for membership. It was sponsored by the MATRA programme.

CESS organised a conference in Ankara in September 2004. This conference had the title of ‘The Role of the Armed Forces and Turkey’s EU Membership Expectations’. Both Dutch and Turkish Ministers of Defence were planned to participate and each would deliver a speech in this conference. Dutch Minister Henk Kamp failed to travel, hence Minister Gonül also decided not to attend. But the Chief of Dutch Armed Forces, General Dick Berlijn<sup>370</sup>, did travel to Ankara and delivered a speech, on behalf of the Dutch Minister, in military uniform. He addressed the subjects such as an ‘integrated’ Ministry of Defence and General Staff, which was common in European countries; requirements of the EU membership, in terms of civilian oversight and subordination of the military; parliamentary oversight of the defence budget etc. Referring to the EU Turkey Progress Reports, he suggested that; “the EU was of the opinion that TAF should prepare itself for a different status (role) in politics”. Dutch Ambassador to Ankara, Sjoerd Gosses, was also present, sharing similar comments with the media, afterwards.

Initial reactions from retired generals—including the former chief of the Turkish Air Forces—participating in the same meeting, were controlled and mild, but they all stressed the need for considering ‘sensitivities’ involved—unique to Turkey, and ‘timing’ of the measures to be taken. One of his remarks was important in terms of the way later developments took shape. He believed that; “if the army (could) be convinced, by the politicians, that

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<sup>369</sup> CESS Turkey Programme Phase I: ‘Governance and the Military: Perspectives for Change in Turkey’. 26 July 2012. <http://www.cess.org/programmes/view/?id=4>.

<sup>370</sup> ‘AB cercevesinde asker-sivil iliskileri (‘Civil-military relations in the EU framework’), Murat Yetkin. 15 September 2004. Radikal. 27 July 2012. <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalYazar&ArticleID=722541&Yazar=MURAT%20YETK%DDN&Date=24.11.2009&CategoryID=97>.

its institutional interests would continue to be respected and preserved under the civilian leadership, that would facilitate and speed up the democratic transformation” General Berlijn said.<sup>371</sup> The draft report prepared by a group of experts—so-called the Task Force of 18 members—including Turkish nationals, military and civilian alike, under the co-chairmanship of former Dutch Minister Willem Frederik (Wim) van Eekelen of CESS and MG Armagan Kuloglu (R) of ASAM<sup>372</sup> was also distributed to the media.

CESS completed the report—Governance and the Military: Perspectives for Change in Turkey—by February 2005, and the final report, printed, was ready for distribution in April. It clearly suggested, among others, that the General Staff should become subordinate to the Ministry of Defence. However, before this planned event, Turkish co-chairman of the Task Force (of ASAM) announced that he and his institute no longer wished to be associated with the work because the report “was not satisfactory from (their) point of view and it did not reflect (their) sensitivities and the truths adequately; included items that were not agreed to and not reflecting the Turkish sensitivities” and ASAM—reportedly in communication with the military—withdrew from the Task Force late April. Soon, another Task Force member, a well-known retired general, Edip Baser, would also withdraw.<sup>373</sup>

CESS—supported by several academics from prominent Turkish universities—stood behind its main arguments and insisted that this should be the way-ahead for Turkey, if Turkey was serious about EU membership. The most controversial item was the insistence for a date or a firm commitment in the form of a *statement of intention* for ‘reform’ by the Turkish—AKP—government. However, although the original plan was to

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<sup>371</sup> ‘AB’ye uyum sürecinde asker-sivil ilişkileri yeniden düzenlenmeli’. 15 September 2004. Zaman. 27 July 2012. <http://www.zaman.com.tr/haber.do?haberno=91186>

<sup>372</sup> ASAM, Center for Eurasian Strategic Studies, was established in 1999 by the *Avrasya Bir* Foundation. It underwent a major reorganisation in 2004-2005. ASAM, under the drastically changed circumstances of the Turkish political environment, was closed in 2009.

<sup>373</sup> ‘Pasalar rapordan imzalarını çekti’. Özgür Eksi. 27 June 2005. Hürriyet. 27 July 2012. <http://arama.hurriyet.com.tr/arsivnews.aspx?id=330487>.

release the report in May in another conference in Ankara, after the withdrawal of ASAM—and resulting speculations on the motives of CESS work in Turkey—this was cancelled and postponed to Fall 2005 during which time CESS continued its work, in partnership with Istanbul Policy Centre (IPC) of Sabanci University.

The final report was published as a CESS *occasional* and distributed in a conference in November 2005, in Ankara.<sup>374</sup> Later it was published in book form, with some editions, in 2006 (Faltas & Jansen 2006).

The first phase was also a test of the permissiveness of the environment for civil society work in Turkey. The hurdles of democratic transition in Turkey of the time, inexperience in and unfamiliarity of CESS with dealing with politically sensitive issues in Turkish context, the unfortunate incident of Dutch Chief of General Staff lecturing in his national uniform on Turkish domestic politics in Ankara in front of TV cameras, all contributed to this end-result. This first phase ended with a series of seminars in 2005/2006 designed to allow dissemination of, and debate on, the Report and its recommendations.

The second phase ‘Reforms in Turkish Civil-Military Relations: Measuring Progress and Building Capacities’ was effectively launched by a conference on ‘Perceptions and Misperceptions in the EU and Turkey: Stumbling Blocks on the Road to Accession’ in June 2008. In this phase, CESS aimed to “help Turkey meet the requirements for EU accession in the field of civil-military relations” and to “promote a better understanding within the EU of the challenges that Turkey faces in this regard”.<sup>375</sup> The concluding conference, in November 2009, was titled ‘Academia Meets Government and Parliament in Turkey’ reflecting the perceived need—in the area of security sector reform—by CESS.

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<sup>374</sup> ‘Turkish Civil-Military Relations and the EU: Preparation for Continuing Convergence’. November 2005. CESS occasional. 27 July 2012.

<http://www.cess.org/publications/occasionals/view/?id=5>.

<sup>375</sup> CESS Programme II: ‘Reforms in Turkish Civil-Military Relations: Measuring Progress and Building Capacities’. 26 July 2012. <http://www.cess.org/programmes/view/?id=10>.

During the course of the second phase, CESS made a strong attempt to involve the political decisionmakers and the Parliament. In 2007, Willem van Eekelen, Chairman of the CESS Board, visited the Chairman of the Defence Committee, Kemal Yardimci (AKP), in the Parliament and invited him—and a team of committee members—to the Dutch Parliament for exchange of views. This visit was planned, based on mutual agreement, in advance and scheduled in detail, twice, and both were cancelled at the last minute by the Turkish guests, without any reasonable explanation given.<sup>376</sup>

In 2009, CESS published *Perceptions and Misperceptions in the EU and Turkey: Stumbling Blocks on the Road to Accession* (Volten 2009). This was a compilation of the papers presented at an informal international roundtable, held at Oegstgeest in the Netherlands in June 2008, organised by CESS together with the Turkey Institute<sup>377</sup>, as part of the second phase of CESS work in Turkey. The papers in this book generally argued that although the pace of reforms was ‘remarkable’, still much remained to be done and the EU was ‘impatient’ about this slow pace of reforms in Turkey.

The third phase was launched under the general description of ‘Promoting Good Governance in the Security Sector of Turkey’<sup>378</sup> with the objectives of enhancing the capacity for good governance in Turkey’s security sector; promoting good governance, transparency, accountability and the rule of law; and helping to encourage and empower civil society to participate in monitoring and overseeing the security sector. The programme included, as usual; one-day high level seminars, workshops, interactive seminars, other training courses, ‘games’—based on *plastic* or ‘generic’ scenarios—and working papers prepared by the participants.<sup>379</sup>

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<sup>376</sup> Eventually Mr. Yardimci was prepared to travel to the Dutch Parliament “on a date of Dutch hosts’ choice” but presumably ‘hosts’ were not willing to risk a third cancellation.

<sup>377</sup> Turkey Institute. 23 March 2013. <http://turkije-instituut.nl/page/home>.

<sup>378</sup> CESS Programme III: ‘Promoting Good Governance in the Security Sector of Turkey’; 26 July 2012. ‘Promoting Good Governance in the Security Sector of Turkey’ <http://www.cess.org/programmes/view/?id=17>.

<sup>379</sup> The author of this dissertation was closely associated with CESS as a ‘resource person’ throughout the 3rd phase.

The third and reportedly the final phase of CESS work on security sector reform in Turkey, was closed, in October 2012, with a visit to the Dutch Parliament and to leading think-tanks in the Netherlands by a select and diverse group of participants/contributors to this effort of almost ten years<sup>380</sup>, and the concluding conference in Ankara on 14 December 2012<sup>381</sup>.

### 3.12.2. Cooperation and networking

The Centre for European Security Studies works with local partners, mostly universities and/or institutions which are active in areas of democratisation and security sector reform in particular. Initially, in 2003 they started collaborating with the Centre for Eurasian Strategic Studies (ASAM), which was the leading Turkish think-tank of the time. After ASAM withdrew from the project in April 2005—for reasons outlined above, they continued, as partners, with the Istanbul Policy Centre (IPC)<sup>382</sup> of the Sabanci University.

The second phase of the programme was carried out mainly in co-operation with the Istanbul Policy Centre and Bilkent University, in Ankara. CESS continued working with Bilkent University as a partner during the third phase of the programme, along with IPC of Sabanci University, and recently increased practical cooperation with Ari Movement<sup>383</sup> in Istanbul and TOBB-ETÜ University<sup>384</sup>, in Ankara.

CESS also cooperated with many other institutions or organisations as well as individual experts in Turkey and elsewhere. It would be safe to talk

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<sup>380</sup> ‘Study Visit Turkish delegation to the Hague’. 21 January 2013.

<http://www.cess.org/news/?id=71>.

<sup>381</sup> Concluding Conference: Good Governance of the Security Sector in Turkey. 21 January 2013. <http://www.cess.org/news/?id=73>.

<sup>382</sup> IPC. 21 January 2013. <http://ipc.sabanciuniv.edu/en/about/our-mission/>.

<sup>383</sup> **Ari Movement** is an independent civil society movement/organisation promoting liberalism, freedom of speech, progressive ideas, participatory democracy. See; [http://www.ari.org.tr/english/index.php?page=mission\\_vision\\_and\\_principles](http://www.ari.org.tr/english/index.php?page=mission_vision_and_principles). 21 January 2013.

<sup>384</sup> At some stage, there were contacts for a partnership also with Kadir Has University in Istanbul, late 2011 and early 2012, which did not bear fruit.

about a *portfolio* of experts who have been willing—because they share similar concerns and perspectives—to contribute to CESS work, rather than a concrete ‘alliance’ directed to certain, specific ends. In this sense, CESS approach is more like that of Heinrich Böll’s. The need for this ‘style’ of civil society networking is clearly explained by a senior fellow at CESS:

Networking has its advantages, but also risks. Networking brings with it the risk of being a party (to the subject under debate). We are not an advocacy group trying to achieve certain objectives through networking. We just seek *project partners* to work with us in a similar fashion, not to (form) broad coalitions in order to exert political influence. I don’t want to be *too political* (in Turkey).<sup>385</sup>

CESS did attempt to involve the media, by informing and inviting them. However this was not an ‘aggressive’ media campaign. Their visibility remained limited to one or two articles<sup>386</sup>. There have been many columnists from prominent national dailies actively participating in conferences organised by CESS, however they have not paid much attention to CESS work nor saved one or two lines for CESS work in their articles. Compared to the intensive CESS effort to involve media, this is an exceptionally bizarre result. Most of the publicity associated with CESS has been restricted to ‘negative’ reporting in 2004-2006 period. One senior administrator in CESS complained about that and attempted a self-criticism: “Although we do not seek to operate under the media lime-light, there must have been more media interest. To some extent I blame ourselves for not being effective enough for informing the media”<sup>387</sup> he said.

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<sup>385</sup> Interview, September 2011.

<sup>386</sup> For example; ‘Recipe for Turkey to Escape Excessively Securitised Culture’. Fulya Ozerkan. 20 November 2009. Hürriyet Daily News. 27 July 2012.  
<http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=recipe-for-turkey-to-escape-excessively-securitized-culture-2009-11-20>

<sup>387</sup> Interview, September 2011.

### 3.12.3. CESS' position on reforms

“We are among the centres with the best understanding of good governance in the security sector” said one senior fellow. “My educated guess about CESS influence on policy-making is that; in *capacity building* our contribution has been small but useful, in *studies* our contribution has been bigger, in terms of *getting the subject on the agenda*, our contribution has been significant”<sup>388</sup>.

When the third phase<sup>389</sup> was started in mid-2009, the main rationale for the ‘Turkey’ programme was that “although Turkey had a large and highly professional armed forces—playing a leading role in formulating defence and security policy, there were too few civilians working in the making and execution of security policy and only a few of them were prepared for such work”. Besides, those involved in the policy formulation did not “sufficiently understand the implications of democratic reform” or “the need for collaboration amongst government agencies, between uniformed and civilian officials, and between government, journalists and civil society”. CESS project aimed to address the *main security sector problem* in Turkey: “lack of civilian capacity for the making, execution and oversight of security policy.”

Task Force Report of 2005 and *Governance and the Military: Perspectives for Change in Turkey* (Faltas & Jansen 2006) provided CESS view of the work—in the security sector—that must be fulfilled to meet the Copenhagen criteria. CESS suggested three steps: acknowledging “the need for further action”, announcing that Turkey will move “towards closer alignment when the time is right”, and start “work on a programme, [...] a roadmap or action plan” (Greenwood 2005: 22). The ‘work’ on a programme covered mainly two areas: a review of the defence organisation with a view to integrating the General Staff with the MoD, and improved oversight, i.e. accountability and transparency. More specifically, it included

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<sup>388</sup> Ibid.

<sup>389</sup> CESS ‘Promoting Good Governance in the Security Sector of Turkey: Background reading’. 26 July 2012. <http://www.cess.org/programmes/view/?id=17>.

“bringing key (T)GS functions under the aegis of an expanded MoD, building up a body of civil servants [...] knowledgeable about defence [...]”. It also called for measures aimed at “improved financial accountability” and “institutional and individual capacity-building to ensure that Turkey’s elected representatives can be genuinely effective in holding the country’s armed forces to account” (Greenwood 2005: 42-43). The latter included “more access, more information and more time, to be given to Parliamentarians, to exercise oversight” as well as much greater political input [...] in preparation of key policy documents”, in other words, addressing the problem of ‘democratic deficit’. Basically, CESS advised the Turkish government to begin laying the groundwork for further change, by reviewing its defence organisation and by bringing greater accountability and transparency to the conduct of security affairs. Although CESS adopted an active attitude based on the assumption that this council was heeded, and launched ambitious programmes accordingly, the end result has proven otherwise; the Turkish government did not share CESS priorities nor its cautionary notes, and there was very little CESS can do to help a reluctant government.

### **3.13. ‘Uphill battle’ for civil society**

Mithat Sancar, a scholar who is active in Turkish civil society, refers to a phenomenon of “a castrating and polarizing rhetoric rife” in describing the politico-psychological environment in Turkey: “As such, the general and professional public opinion becomes dominated by a castrating and polarizing rhetoric rife with ‘treason charges’ and ‘conspiracy theories’” (Aydın *et al* 2011: 4). Against this background and confirming this observation, one senior executive in a leading NGO, which was target of even ‘physical attacks’ in 2006, said during an interview: “Perhaps, it’s about ‘courage’; we are different because we create our own agenda and we are not scared by potential reactions”<sup>390</sup>. Agduk (2010), an international civil society—NDI—worker, refers to the same phenomenon in a more

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<sup>390</sup> Interview, October 2011.

detached way: “A framework with systematic, pluralistic, feedback mechanisms, providing necessary infrastructure, exists neither in the public administration nor in the legislative body. It is possible to argue that the relations between the decisionmakers and civil society (in Turkey) today are marred with many problems of communication” (134). Such ‘problems’ do create an environment which is not really encouraging—and not even permissive—for the civil society and, indeed, they do represent a *cluster* of problems obstructing a real and meaningful *participation*. The experience of those four civil society organisations particularly covered in this research is telling in this respect.

In 2006, TESEV published *Almanac Turkey 2005: Security Sector and Democratic Oversight* (Cizre 2006) and *Democratic Oversight of the Security Sector: Turkey and the World* (Aytar 2006). The latter was the product of collaboration between DCAF and TESEV. It also included texts of the speeches delivered during the May 2004 book-launching event for the Turkish translation of DCAF-IPU *Handbook for Parliamentarians*. Some of the views expressed in speeches and the official status of some of the contributors provoked the Army and soon brought counter arguments and strong criticism from the Chief of the General Staff himself, personally.

The Chief of the General Staff, Büyükanıt, delivering a speech at the opening ceremony of 2006-2007 academic year in the Combined Armed Forces Colleges in Istanbul, harshly criticised the views expressed in *Democratic Oversight of the Security Sector* (Aytar 2005), accused the *report* of having been prepared with “foreign support” and by “dark forces” which had a ‘secret agenda’; pointing to some authors from the Police Academy who contributed to this study, he said: “This reveals that some of the isolated incidents which are subject to judicial action now, are being directed from one nerve centre”.<sup>391</sup> He did not save ‘an EU official’—Hansjörg Kretschmer, Head of EU Commission Turkey Delegation; the ‘chief of general staff of a friendly and allied country’—Gen. Dick Berlijn,

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<sup>391</sup> ‘Professional army is expensive’ (Profesyonel ordu pahali). 03 October 2006. Star daily. 20 July 2012. <http://www.stargazete.com/politika/kisa-kisa-haber-57645.htm>.

a ‘Turkish official’—Antalya Deputy—and Chairman of Foreign Affairs Committee—Mehmet Dülger (AKP)<sup>392</sup>, from criticism, without naming them—except for “Mr. Kretschmer”. His words directly targeting the government were quite straightforward: “No explanation was offered, from any level in the State, against baseless accusations. It is only the most natural right of TAF—which has been paying utmost attention to remain out of political polemical talk—to defend itself against attacks which are launched under the EU cloak. Nobody is coming forward to defend us, we will not hesitate to defend ourselves” he said.

Both authors and the *rapporteur* reacted mildly to such accusations and explained that the Almanac was prepared in cooperation with DCAF of which Turkey has also been a founding member since 2003. Acting Prime Minister M. Ali Sahin (Prime Minister, then, was on an official trip abroad), agreed with these comments and said that; “Some unfounded accusations have been raised against TAF. It is only natural that the Chief of the General Staff, as the head of TAF, responds them. It is fair and right”.

This was not an isolated development which did not repeat again or an incident restricted to army ‘culture’ or army’s traditional—now changed—role and attitude only..<sup>393</sup>

CHP Chairman—since May 2010—Kemal Kilicdaroglu is one of the 306 members in the TESEV Board of Trustees<sup>394</sup>. He became a member in 2002, long before he became the Chairman of the party, nevertheless this issue,

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<sup>392</sup> For the speech delivered by Mehmet Dülger in TESEV conference on 21 May 2004, see; (Aytar 2005), pp. 28-36. 15 July 2012.

<http://www.tesev.org.tr/Upload/Publication/d3dffe0-c779-4b1b-bebb-680e45e63098/GuvenlikSektorundeDemokratikGozetim-2.Baski.pdf>.

<sup>393</sup> An internal memorandum of the military—dated 2006, but leaked to the press in 2008—identified NGOs that had received financial aid from foreign organisations, including the EU. The memorandum was never denied by the General Staff. ‘Koc da andiclandi’. Taraf, 7 April 2008.

<sup>394</sup> See the Statement of the Trustees and the Deed of Trust, Art. 23. 15 July 2012. <http://www.tesev.org.tr/Upload/Editor/Vakif%20Senedi.pdf>

unexpectedly came to occupy the political agenda<sup>395</sup> in late 2011. Those who raised the subject argued that “membership in TESEV was irreconcilable with the *nationalistic* posture of the party”. This ‘allegation’ was accompanied by rumours that there were ‘more’ TESEV members in the party central bodies—as if TESEV was a secret agency spying on Turkish national interests and being associated with TESEV meant betrayal.<sup>396</sup> They all gave the impression of being part of an ongoing in-party struggle for power.<sup>397</sup>

Kilicdaroglu, in a live interview<sup>398</sup>, early 2012, said: “Being a member of TESEV is not a crime. (Besides) I’m a member of other civil society organisations as well. [...] Sometimes we are questioned for ‘not enrolling in civil society’. (Some other times) when we do register in, then faced with the question of “Why?”. However, TESEV ‘connection’ proved to be a *soft belly* that can be used to attack a political party, particularly to the main opposition party. One TESEV member, early September 2011, before the debate over Mr. Kilicdaroglu’s connection to TESEV started, said: “But finding new members can become a real challenge because people may not desire too much, being named with or associated with TESEV due to their business interests etc. Main source of income is from abroad, EU Commission, foreign governments. Finding funds for research (by TESEV) in Turkey is a real challenge”.<sup>399</sup>

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<sup>395</sup> “Kilicdaroglu’nun kafasi neden karisik?”. 13 November 2011. Gercek Gundem. 21 July 2012. <http://www.gercekgundem.com/?c=67938>.

<sup>396</sup> “CHP Baskani TESEV’e üye olamaz”. 17 November 2011. Gercek Gundem. 21 July 2012. <http://www.gercekgundem.com/?c=67968&com=all>.

<sup>397</sup> The first article of 13 November which ignited the debate received five comments. But 17 November 2011 article—once the debate was well underway—received extraordinary 128 comments, posted on the site, in six days, most of them immediate—same day—and almost all related to in-party politics. Some comments were article-length, reflecting the intensity and depth of emotions involved in this period.

<sup>398</sup> “Kilicdaroglu’nun TESEV Yorumu”. 07 January 2012. Gercek Gundem. 21 July 2012. <http://www.gercekgundem.com/?p=429121>.

<sup>399</sup> Interview, September 2011.

Such ‘miscommunication’ is not unique to TESEV and CESS only. TÜSIAD President, of the time, Ms. Yalcindag, during a Board Meeting in January 2008, touched upon the subject of *headscarf*—which was under passionate debate then—among others, and found its introduction into the political agenda ‘untimely’ and stated that the priority should have been given to ‘economy’. MHP—junior opposition party—Chairman Bahceli criticised this statement by ‘TÜSIAD’, and similar approaches by some media outlets and during an address to MHP Parliamentary Group, he said:

This organisation, in reports prepared under the pretence of democratisation, has suggested the recognition of Kurdish identity and education in mother tongue in state schools. When it comes to headscarf, they question the ‘timing of it’. This clearly displays how sincere they are in believing in democracy, human rights and how immune they are to being slaves of double-standard.<sup>400</sup>

He did not name TÜSIAD but his description of “an umbrella organisation which acts as the *fatwa* authority of Istanbul capital” was straight forward as to whom and what organisation he meant. TÜSIAD, in a press release responded that “the hasty and haphazard way, the subject of headscarf was addressed and introduced, has given certain circles—who want to break the movement to contemporary civilisation which is represented by the EU process—an opportunity to reveal their secret agenda”<sup>401</sup> but MHP was not quoted in the text. MHP Chairman, in turn, responded to this release, this time clearly targeting TÜSIAD by name, and stated that<sup>402</sup> “decoding the past and the present of TÜSIAD and following its behaviour in the future was important and necessary, as the only way of

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<sup>400</sup> “Bahceli’den TÜSIAD’a agir gönderme”. 29 January 2008. Habertürk. 21 July 2012. <http://www.haberturk.com/polemik/haber/53331-bahceliden-tusiada-agir-gonderme>.

<sup>401</sup> “TÜSIAD: ‘Türkiye’yi AB üyeliği sürecinden koparmaya çalışanlar, demokrasi dersi veremez’. 30 January 2008. TÜSIAD Press Release. 11 March 2012. [http://www.tusiad.org.tr/\\_rsc/shared/file/basin-bulteni-2008-10.pdf](http://www.tusiad.org.tr/_rsc/shared/file/basin-bulteni-2008-10.pdf).

<sup>402</sup> “Bahceli’den TÜSIAD’a aynı sertlikte yanıt”. 31 January 2008. Hurriyet. 21 July 2012. <http://arama.hurriyet.com.tr/arsivnews.aspx?id=8141439>

understanding the reality of TÜSIAD by the public opinion” and that MHP had already “started to work on that” and “they would share the findings of this endeavour with the nation in due course”. This was an open confrontation and even declaration of ‘war’ which resulted in a complete lack of contact between the two institutions until February 2010, for longer than two years.

During the heated and polarised political debate ruling the country during the period leading to 12 September 2010 referendum, a polemical ‘exchange’ of statements started also between Prime Minister Erdogan and TÜSIAD President Boyner. Soon this exchange gained an institutional character, i.e. between the Government and TÜSIAD. Basically, Prime Minister wanted TÜSIAD to take a clear political position (and support the constitutional amendment package); he—using a well-known Turkish saying—warned that; “Whoever did not take a side, would be doomed to be eliminated”<sup>403</sup>. In response, Ms. Boyner said that “Nobody had the right to demand a statement of will from TÜSIAD”. Then the ‘dialogue’ took a new and more political—and twisted—turn, Prime Minister reminding TÜSIAD’s support to constitutional amendments in 2001, said: “We will not surrender this country to the hegemony of capital. [...] I mean, in the past, you were able to corner governments and play with them like playing with cats and dogs. But you cannot play with this government”. Boyner responded by explaining that, “in 2001, in the context of EU process, there was a consensus in the Parliament over the intended amendments”, but now, “it was a referendum and it was the responsibility of political parties, not civil society, to convince the people to vote in a certain political direction”. “Under any circumstances it was a very unfortunate statement. [...] I did not take it as a threat. This would be too much. But in a society where civil society, polyphony and pluralism should be flourishing eventually, such

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<sup>403</sup> “Erdogan: Bitaraf olan bertaraf olur”. 18 August 2010. Milliyet. 21 July 2012. <http://www.milliyet.com.tr/erdogan-bitaraf-olan-bertaraf-olur/siyaset/sondakika/18.08.2010/1277904/default.htm>.

statements can be quite disheartening” she said<sup>404</sup>. Only Can Paker—TESEV Chairman and TÜSIAD member—made a clearly-stated ‘yes’ preference for the coming referendum.

There was no direct contact between Erdogan and TÜSIAD until after January 2011—after the referendum and major changes in the judiciary were already implemented—when Erdogan attended the TÜSIAD General Assembly and delivered a speech. However it did not stop there, relations continued to be marred with an endless series of serious clash of opinions. In about four months time, towards the end of May 2011, yet another crisis occurred, this time over the Government attempts to get certain internet sites—which were deemed *harmful* to ‘children and youngsters’—under control. This led to rude, even offensive verbal attacks by one deputy prime minister, over its woman President—and her family—to TÜSIAD. Expanding the debate and taking it, again, out of context, he also said<sup>405</sup>: “TÜSIAD has always been an unreliable organisation which does not live up to its words”.

One other area of ‘miscommunication’ is more to do with the ‘way’ civil society does *business* than the—more often than not—politically motivated, selective attacks on the ‘products’ of civil society work. This may take several shapes and forms depending on the funding source of the study, other civil society organisations involved in collaboration, or the personal views, even *reputation* of academics/experts—*vis-a-vis* the NGOs’ institutional views—reflected in studies under question.

Immediately after the referendum of 12 September 2010, TÜSIAD organized a series of roundtable discussions on certain aspects of a new constitution for Turkey. Five tables met between 02 November 2010 and 01

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<sup>404</sup> “Boyner’den Basbakan’a cevap”. 31 August 2010. Vatan. 21 July 2012.

<http://haber.gazetevatan.com/boynerden-basbakana-cevap/326100/1/Haber>.

<sup>405</sup> “Arinc’tan TÜSIAD ve Boyner’e sert elestiri”. Hurriyet. 21 July 2012.

<http://www.hurriyet.com.tr/gundem/17890739.asp>. Boyner and Arinc avoided each other until they accidentally came across while walking in the street in Bursa in June 2012, one year later—and one week before yet another confrontation, this time over the subject of ‘abortion’.

March 2011. Here, TÜSIAD was a complete facilitator; 22 academics, experts and so-called *opinion-leaders* came together in 11 separate meetings and in different compositions, debated around five separate tables and TÜSIAD simply published the results in the form of a report and shared with the media on a press conference.<sup>406</sup> The publication included—in addition to the conclusions of separate tables—a common article by the two coordinators of their own, neither representing the common views of all participants, nor the views of TÜSIAD. The report was about the general principles, not on specific articles of a new constitution or about concrete formulations, but principles that could lead to such formulations. However the whole report—especially the last article by two coordinators—were taken as representing TÜSIAD<sup>407</sup> views and position. This started a new public debate and gave yet another opportunity for political manipulation as the election campaign—for June 2011 general elections—was already underway.

MHP's reaction was particularly aggressive and stronger by even MHP 'standards', to say the least. In 2007, immediately before general elections, an exchange of 'words' had already taken place between TÜSIAD and MHP.<sup>408</sup> When TÜSIAD President—Ms Arzuhan Dogan Yalcindag, then—invited party leaders, by an open-letter, to reveal their party programmes, MHP Chairman Bahceli responded that he “would appear only in front of the Nation (to explain)”. The main reason for this confrontational attitude was the Democratisation Report sponsored by TÜSIAD after which Bahceli invited TÜSIAD to “form a political party and compete for votes”. Bahceli,

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<sup>406</sup> *Five Fundamental Dimensions of the New Constitution Process*. 22 July 2012.

[http://www.tusiad.org/\\_rsc/shared/file/YENI-ANAYASA-YUVARLAK-MASA.pdf](http://www.tusiad.org/_rsc/shared/file/YENI-ANAYASA-YUVARLAK-MASA.pdf).

<sup>407</sup> “TÜSIAD’ dan çok tartisilacak anayasa taslagi”. 22 March 2011. Habertürk. 22 July 2012. <http://www.haberturk.com/gundem/haber/612875-tusiaddan-cok-tartisilacak-anayasa-taslagi>.

<sup>408</sup> ‘Bahceli’ den TUSIAD’a ret’. 25 May 2007, Radikal. 23 March 2013.

<http://www.radikal.com.tr/haber.php?haberno=222215>.

this time, called for a boycott<sup>409</sup> of ‘Boyner family’ products by “patriots and nationalists” and asked those “businessmen who are prudent, employment-creating, respectable patriots, either to save TÜSIAD from this charade or stop representing [*sic*] TÜSIAD (i.e. leave the organisation)”.

TÜSIAD, in a bulletin<sup>410</sup>, next day, explained that the round-table meetings were intended to compile different views related to specific aspects of a constitution and the last article which was reflecting the ‘personal’ views of two coordinators was not representative of TÜSIAD’s position. In a desperate attempt, in this bulletin, TÜSIAD also shared specific *institutional* views on specific ‘dimensions’ of a new constitution.<sup>411</sup>

One needs to bear in mind also the reign of extreme ‘polarisation’ widespread in the society, to put this and similar developments into context. In

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<sup>409</sup> “Bahçeli TÜSIAD’a savas acti (‘Bahçeli declared war on TÜSIAD’)", 26 March 2011. Vatan. 23 July 2012. <http://haber.gazetevatan.com/bahceli-tusiada-savas-acti/367455/9/Haber>.

<sup>410</sup> TÜSIAD views related to a new constitution: “Aforementioned document is not a report on TÜSIAD’s views; [...] there are parts which overlap or diverge from TÜSIAD’s views. [...] Keeping in mind TÜSIAD’s democratisation reports, neither in the past nor today, one cannot find a TÜSIAD view or proposals regarding the irrevocable articles of the Constitution. [...] TÜSIAD’s views on civil-military relations reflected in previous democratisation reports mostly overlap with the unanimous results of the document. [...] As for the selection of Constitutional Court judges, TÜSIAD advocates a mixed model in which the majority is elected by judicial bodies, half of the rest by the Parliament with qualified majority, and the other half by the President, universities and Bar Associations. [...] TÜSIAD is of the opinion that the presence of those, in HCJP, coming from the executive branch should be ended so that it becomes independent from it. [...] The unanimous agreement on maintaining the parliamentary system and restricting the powers of the President in line with the general practices of the former also matches TÜSIAD views.” ‘TÜSIAD Anayasa’da geri adim atti’. 27 March 2011. CNN Türk. 22 July 2012. <http://www.cnnturk.com/2011/turkiye/03/27/tusiad.anayasada.geri.adim.atti/611277.0/index.html>.

<sup>411</sup> These TÜSIAD views, shared with the Parliamentary Conciliation Committee on the Constitution, as of July 2012, are not public yet.

this frame of reference, one senior staff explains the difficulty traditionally faced by civil society in Turkey:

The process for a new constitution is participatory and it is bringing different groups and views in the society together; we just aimed to go along these, similar lines. Some other academics—who might not be of the same line of thinking—were also invited, but they refused to attend. There could have been a different composition (and different results) if they had chosen to participate.<sup>412</sup>

One recent example resurfaced in the political debate in Turkey, this time, again, when Prime Minister himself targeted and implicated ‘German foundations’, hence Heinrich Böll Stiftung-Turkey.

Apart from the general suspicion towards foreigners, the stories particularly about German foundations in general and allegedly their ‘covert’ activities in Turkey first emerged after the publication of a book (Hablemitoğlu 2001) on activities of some German companies active in gold-mining in Turkey. These allegations included; transfer of funds—in the form of donations from the German government—through local municipalities in South-eastern Turkey or through ‘German’ foundations, to PKK and to its individual members. Heinrich Böll Stiftung-Turkey was one of these six ‘German’ foundations. Assassination of the author of this book in 2002 led to several speculations ranging from the German secret service—to silence him—to ‘Cemaat’ about whom, it was known, he was also preparing a separate book for publication (Hablemitoğlu-*posthumous* 2003). The assassin was never caught and not even a single clue was found and this situation contributed to further speculations as to who wanted his death and why—and the involvement of the so-called *deep state* which had allegedly penetrated into security and intelligence services.

Such allegations in the form of a *smear campaign* were always around<sup>413</sup>. But, when they were voiced by the Prime Minister himself it made a

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<sup>412</sup> Interview, December 2011.

difference. On his way from a visit to the Republic of Macedonia, talking to journalists in the plane he said that “These (German) foundations, particularly through credit contracts with BDP and CHP municipalities, and contractors of their choice, were diverting funds to PKK”.<sup>414</sup> There were speculations<sup>415</sup> that he actually meant German Agency for Technical Cooperation (GTZ) and development funds provided by the German bank of KfW, not foundations. However, both had been active in Turkey for more than 50 years, under Turkish government’s control and support. In an attempt to correct what he described as ‘cherry-picking by the media’, Prime Minister actually repeated the same allegations what he meant to ‘correct’.<sup>416</sup>

Heinrich Böll Turkey, in a press release<sup>417</sup> immediately rejected these allegations and said that “Prime Minister’s allegations about German foundations (were) both incorrect and politically dangerous” and that “German foundations neither supported infrastructure projects nor provided credits”.

Such allegations naturally made, not only Heinrich Böll Stiftung-Turkey or other German organisations in Turkey, but civil society as a whole, a bit nervous and uncomfortable. There was a positive development though; at

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<sup>413</sup> See legal intervention by Heinrich Böll Stiftung-Turkey, against “Dövizle Gelen Ulusalcılık”. Erdal Simsek. 04 March 2008. Star Gazete. 25 July 2012. [http://www.tr.boell.org/downloads/tezip\\_star\\_2008.pdf](http://www.tr.boell.org/downloads/tezip_star_2008.pdf).

<sup>414</sup> ‘Alman vakfina suclama’. 02 October 2011. Habertürk. 26 July 2012. <http://www.haberturk.com/gundem/haber/675149-alman-vakfina-suclama>.

<sup>415</sup> ‘Alman vakiflari Türkiye’yi bölecek mi?’ Aslı Aydıntaşbas. 03 October 2011. Milliyet. 26 July 2012. <http://siyaset.milliyet.com.tr/alman-vakiflari-turkiye-yi-bolecek-mi-siyaset/siyasyazardetay/03.10.2011/1445963/default.htm>.

<sup>416</sup> ‘Basbakan’dan Alman vakiflari aciklamasına düzeltme’. 03 October 2011. CNN Türk. 26 July 2012. <http://www.cnnturk.com/2011/turkiye/10/03/basbakandan.alman.vakiflari.aciklamasına.duzeltme/631700.0/index.html>.

<sup>417</sup> Heinrich Böll Stiftung-Turkey Press Release of 04 October 2011. 25 July 2012. [http://www.tr.boell.org/downloads/Microsoft\\_Word\\_-\\_Basin\\_Aciklamasi\\_Alman\\_Vakiflari.pdf](http://www.tr.boell.org/downloads/Microsoft_Word_-_Basin_Aciklamasi_Alman_Vakiflari.pdf).

least some in the media had the courage to oppose and warn Prime Minister about his words. Ten years ago it was the other way round. Perhaps this can be taken as one sign of democratic development of Turkish society. In an unusual and unusually long interview, Head of Heinrich Böll Stiftung-Turkey, explained how they felt and why they reacted so strongly: “We were extremely sorry about this. Because all German foundations—as a matter of fact we are an *association*—active in Turkey, support Turkey’s EU process, reforms, democratisation of Turkey and mutual understanding (between the two countries)”.<sup>418</sup>

One senior representative of an international (foreign) civil society *organisation* described the impact of such ‘misunderstandings’ on their work: “The society is afraid, scared. Even on TVs, people cannot talk openly for defending us—particularly because we are ‘foreigners’—against baseless accusations. The fact that some are still maintaining connections and even dialogue with us is a positive development in itself; comparing with the situation in the past”.<sup>419</sup>

### **3.14. Civil society’s council and advice for ‘reform’**

It can be said that the demands or proposals of the civil society, domestic and international alike, have been consistent, principled and straight forward. The way they have been formulated—slightly differently—depends on the prevailing political-psychological atmosphere in Turkey and the larger international context in the region. However, they largely overlap and are in line with the expectations and demands of the European Union as reflected in successive Progress Reports of the Council and in the European Parliament’s Resolutions. In general, subjects such as legal measures, transparency and accountability (i.e. improved oversight), related to the

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<sup>418</sup> ‘Ulrike Dufner: AKP, AB reform sürecini devam ettirmek istiyorsa, bizi ve Türkiye’deki sivil toplumu desteklemek zorunda’.

Ümit Sahin. 23 February 2012. Yesil Gazete. 23 July 2012.

<http://www.yesilgazete.org/blog/2012/02/23/ulrike-dufner-akp-ab-reform-surecini-devam-ettirmek-istiyorsa-bizi-ve-turkiye%e2%80%99deki-sivil-toplumu-desteklemek-zorunda/>.

<sup>419</sup> Interview, October 2011.

NSC, MoD, the TGS, the Constitutional Court and the HCJP, and the need for a more democratic behaviour are addressed and advocated.

The general expectations of reform in the area of security sector were that; the sector should be under direct control of the Government and indirect control of the Parliament, and the Army should completely withdraw from politics. A change in the security ‘model’, not partial amendments, was sought. More specifically:

1. The NSC be eliminated as a constitutional body,
2. The relationship between the MoD and the Chief of Staff be reformulated; the General Staff be integrated with the MoD,
3. The Law on the NSC—Art. 2, ‘concept of national security’ be changed,
4. TAF’s Internal Service Law—Art. 35, ‘mission of the armed forces’ be amended,
5. Greater political input by the Parliament be provided to remedy ‘democratic deficit’.

The general expectations of reform in the area of judiciary were that; it must be independent, impartial and efficient. Explicitly:

1. Both the Constitutional Court and the High Council of Judges and Prosecutors be restructured,
2. A significant role be given to the Parliament in the selection of the Constitutional Court judges and the members of the HCJP, the authority of the President in the selection of judges be reduced. (A mixed model in which the majority is elected by judicial bodies, half of the rest by the Parliament with qualified majority, and the other half by the President, universities and Bar Associations),
3. The presence of those, in HCJP, coming from the executive branch should be ended.
4. The term of duty of the Court judges be limited to a certain period.

Civil society, recognizing the intimate interconnection between Turkey’s main areas of democratisation, economic development and consolidation, recommended a holistic approach, stressed the need for a democratisation

‘package’—not a piece-meal approach and advised *consensus* and *compromise* in the Parliament and elsewhere in the political system.

## Chapter 4

### Civil Society and Reform Process in Turkey

*“In war, more than anywhere else in the world, things happen differently from what we had expected, and look differently when near from what they did at a distance.”<sup>420</sup>*

This chapter traces the decision-making and legislative processes in two reform areas, security sector and judiciary, respectively. The focus is on what ‘civil society’ advised to happen—in terms of laws (policy outcome), how they strove to these ends—the way they sought a *role* at least a *voice* in these processes, and what the actual *policy outcome* was, *vis-a-vis* the original council.

#### 4.1. Democratic reforms in Turkey

The principal pressure for democratic reforms in Turkey originated from civil society organisations. The first and probably single most vocal organisation in this context has been TÜSIAD. Many other civil society organisations have also been active in promoting democracy in Turkey, mostly targeting political elite and elite *political culture*, TESEV, Heinrich Böll Stiftung, Centre for European Security Studies—selected as cases for this research—prominent among others. Besides these, there have been other civil society organisations which were not directly working on democratisation but providing indirect support to such efforts—particularly in the European context—such as Economic Development Foundation, European Movement Turkey, European Foundation of Turkey *etc.*. Not all civil society organisations focused on ‘democracy promotion’ activities as a whole. But this thesis aims to find out the role and influence of ‘positive’ initiatives by the civil society to this end. It therefore necessarily focuses on those activities *promoting democracy* in Turkey in general and infusing democratic values into the political elite culture in particular, yet taking into

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<sup>420</sup> Karl von Clausewitz, *On War*.

consideration the sum-effect of 'passive' and/or 'negative' factors in that context.

The reform in the *security sector* in Turkey, was initiated, immediately after the adoption of the Accession Partnership for Turkey by the European Council in March 2001, over the composition, structure, roles and functions of the National Security Council (NSC) and the legislative framework related to the NSC and the Secretariat General for the NSC. Although the reporting chain for the Chief of the General Staff<sup>421</sup> and the General Staff's legal and practical position as a stand-alone 'Ministry of Defence' responsible for formulation—and implementation—of the national security and defence policies have always been contentious subjects in domestic political debate, these issues were avoided by successive governments to start with.

First, amendments to Art 118 of the Constitution<sup>422</sup> were enacted as early as October 2001—in six months from the Accession Partnership. They

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<sup>421</sup> The Constitution. Art. 117 - [...] The Chief of the General Staff is the commander of the Armed Forces, and, in time of war, exercises the duties of Commander-in-Chief on behalf of the President of the Republic. The Chief of the General Staff shall be appointed by the President of the Republic following the proposal of the Council of Ministers; his duties and powers shall be regulated by law. The Chief of the General Staff shall be responsible to the Prime Minister in the exercise of his duties and powers. The functional relations and scope of jurisdiction of the Ministry of National Defence with regard to the Chief of the General Staff and the Commanders of the Armed Forces shall be regulated by law.

<sup>422</sup> The Constitution. Art. 118 - The National Security Council shall be composed of the Prime Minister, the Chief of the General Staff, Deputy Prime Ministers, Ministers of Justice, National Defence, Internal Affairs, and Foreign Affairs, the Commanders of the Army, Navy and Air Forces and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic. Depending on the particulars of the agenda, Ministers and other persons concerned may be invited to meetings of the Council and their views heard. The National Security Council shall submit to the Council of Ministers its views on the advisory decisions that are taken and ensuring the necessary condition with regard to the formulation, establishment, and implementation of the national security policy of the state. The Council of Ministers shall evaluate decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the state, the integrity and indivisibility of the country and

introduced minor but symbolically important changes. These changes reflected the determination of the Government to pursue EU accession goal firmly and also constituted a test for the Army's potential reaction to further 'reforms'. Major changes, in 2003, would follow.

Reform attempts in the judiciary, particularly on the Constitutional Court and the High Council of Judges and Prosecutors, came much later in 2010—after some hesitant attempts in 2008.

The 1961 Constitution—establishing the Constitutional Court—parallel to similar models in the West, gave an important role to the Turkish Grand National Assembly in the election of judges to the Court—five out of fifteen judges were elected by the Parliament.<sup>423</sup> The 1982 Constitution changed this system radically and gave the President of the Republic a dominant, almost exclusive role in the election of the judges to the Constitutional Court.<sup>424</sup> Özbudun explains this situation as reflecting the “general tendency

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the peace and security of society. The agenda of the National Security Council shall be drawn up by the President of the Republic taking into account the proposals of the Prime Minister and the Chief of the General Staff. [...] The organisation and duties of the General Secretariat of the National Security Council shall be regulated by law.

<sup>423</sup> The Constitution of the Turkish Republic, 1961. Art. 145 - The Constitutional Court is composed of fifteen regular and five substitute members. Four regular members are elected by the Plenary Assembly of the Supreme Court of Appeals, three by the Plenary Assembly of the Council of State [...]; one member is elected by the Plenary Assembly of the Court of Accounts [...]. The National Assembly elects three and the Senate of the Republic elects two members. The President of the Republic also selects two members. The President of the Republic selects one of these members from among three candidates nominated by the Plenary Assembly of the Supreme Military Court [...]. (Özbudun 2010: 14)

<sup>424</sup> The Constitution of the Republic of Turkey, 1982. Art. 146 - The Constitutional Court shall be composed of eleven regular and four substitute members. The President of the Republic shall appoint two regular and two substitute members from the High Court of Appeal, two regular and one substitute member from the Council of State; and one member each from the Military High Court of Appeal, the High Military Administrative Court and the Audit Court, three candidates being nominated for each vacant office by the Plenary Assemblies of each court from among their respective presidents and members, by an absolute majority of the total number of members; the President of the Republic shall also appoint one member from a list of three candidates nominated by the Council of Higher

of this Constitution to strengthen the authority of the President of the Republic and to design this office as a tutelary institution over elected civilian political institutions, acting on behalf of the state elites” (2010: 14). In 2010, when the Government initiated a major constitutional reform package, this system was still in force.

One other issue of major importance was the limitation of the term of membership in the Court. Contrary to general tendency in Europe—12 years in Germany, 9 years in France, Italy, Spain for example—in Turkey, a ‘judge’ once selected to the Constitutional Court, at the minimum age of ‘40’ could remain on duty for twenty-five years until he or she reaches the mandatory retirement age, i.e. sixty-five.<sup>425</sup>

Preparations for the *judicial reform* started in early 2008, after the screening report of Chapter 23—Judiciary and Fundamental Rights—was delivered, by the EU Commission, to the Ministry of Justice. The first draft of the Judicial Reform Strategy was ready to be shared with the public, on the Ministry web-site, mid-April. This was followed by a series of meetings, conferences, workshops, involving legal community, bar associations, academia, bureaucracy, civil society and EU officials. Finally, in Summer of 2009, it was adopted by the Council of Ministers. The Commission in the 2009 Progress Report commended the drafting process because it was *inclusive*. (EC 2009: 70) However, how much of the input received by the Ministry of Justice, throughout the drafting and coordination process was actually incorporated is difficult to judge. But, the Strategy itself gives only

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Education from among members of the teaching staff of Institutions of higher education who are not members of the Council, and three members and one substitute member from among senior administrative officers and lawyers [...]. 12 July 2012.

<http://www.anayasa.gen.tr/1982Constitution-1995-4.pdf>

<sup>425</sup> The Constitution of the Republic of Turkey, 1982. Art. 146 - [...] To qualify for appointments as regular or substitute members of the Constitutional Court, members of the teaching staff of institutions of higher education, senior administrative officers and lawyers shall be required to be over the age of forty [...]. Art. 147 - The members of the Constitutional Court shall retire on reaching the age of sixty five [...]. 12 July 2012.

<http://www.anayasa.gen.tr/1982Constitution-1995-4.pdf>

two examples as evidence of this assertion that “All the opinions were taken into consideration and necessary revision done” (Judicial Reform Strategy 2009: 10, 17, 38).

The Judicial Reform Strategy<sup>426</sup> paper, which was eventually posted on the website of the Ministry of Justice, contained ten objectives aiming at enhancing the *independence, impartiality, effectiveness* and *efficiency* of the judiciary. It did not give details on the *projected* changes in the Constitutional Court or the High Council of Judges and Prosecutors. It simply included “redefining tasks of the Constitutional Court and restructuring it accordingly” and “Restructuring the High Council of Judges and Prosecutors”. There were references to the 9th Development Plan<sup>427</sup> and the 60th Government Programme<sup>428</sup> in the strategy paper.

The Judicial Reform Strategy Action Plan, later, detailed the actions to be taken to achieve these objectives and laid down a timetable. Achieving these objectives would enable the establishment of a legal order meeting the requirements of a democratic state governed by rule of law and also would ensure the fulfilment of the *Copenhagen Criteria* laid down in the EU accession process, it asserted. Under the Objective 1 (Strengthening

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<sup>426</sup> “Judicial Reform Strategy objectives: strengthening the independence of the judiciary, promoting the impartiality of the judiciary, enhancing the efficiency and effectiveness in the judiciary, enhancing professionalism within the judiciary, improving management system of the judicial organisation, enhancing confidence in the judiciary, facilitating access to judiciary, ensuring effective implementation of measures to prevent disputes and improving alternative dispute resolution mechanisms, improving the penitentiary system, continuation of legislative works in line with the needs of our country and for harmonisation with the EU *acquis*”. Ministry of Justice, Judicial Reform Strategy 2009.

<sup>427</sup> See; the 9th Development Plan 2007-2013, Economic and Social Development Axis No 5, Objective 7.5.5. “Improving Justice System”, pp. 111-12. 12 July 2012.

<http://ekutup.dpt.gov.tr/plan/ix/9developmentplan.pdf>

<sup>428</sup> The 60th Government Programme Action Plan 2008-2011. 10 January 2008. See— under ‘Democracy and the Rule of Law’—DHD-01 (Preparation of a new Constitution based on public consensus), DHD-02 (Improving fundamental rights and freedoms), DHD-03 (Strengthening Civil Society and Public Accountability), DHD-04 (Continue Justice and Judicial Reforms), p. xi. 13 July 2012. <http://ekutup.dpt.gov.tr/plan/ep2008.pdf>.

independence of the judiciary) and Goals 1.1 and 1.2, Action Plan drew a detailed road map for the intended changes in the Constitutional Court and the High Council of Judges and Prosecutors, respectively. “In line with tasks and types of composition of constitutional courts in the European countries”, studies with relevant institutions would be conducted and “necessary amendments (would) be made in the legislation concerning the composition of the Court”. Intended changes in the HCJP were much clearer and more detailed, almost like a draft bill—even with *rationale*:

The HCJP will be composed according to the principle of wide representation. The HCJP will be structured with two or three chambers. The Court of Cassation and the Council of State will be represented in the HCJP by their members who are selected [*sic*] in their plenary. In order to represent the judiciary as a whole, effective representation of first rank [*sic*] judges and prosecutors in the HCJP will be ensured through selection [*sic*] by their colleagues apart from high courts. Representation of the Turkish Justice Academy [*sic*], academicians in the field of law and lawyers in the HCJP will be provided. Effective judicial remedy against decisions of the HCJP will be provided. Justice Minister, in terms of providing relations with the Parliament and ensuring accountability, and the Undersecretary of the Justice Minister [*sic*], in terms of coordination of relevant works with the Ministry will take part in the HCJP. Necessary legal amendments will be completed. (Action Plan 2009: 4)

Action Plan predicted that “inspection of judges and prosecutors (would) be carried out by the Council in a way that the prosecution and defence powers (were) not gathered in the [*sic*] one hand. Disciplinary, examination and investigation proceedings against judges and prosecutors (would) be conducted by the Council” (Action Plan 2009: 5). However, the vital question remained; as the way-ahead was already decided upon in advance and in such details, how would any other views that may be diverging from

the executive's intent be possibly incorporated or accommodated, during the consultation process, for development of the drafts for legislation?

As civil society was included among the potential contributors to this effort when the subject of 'constitutional amendment', once again, came to occupy the political agenda of Turkey in early 2010, they considered this a perfect opportunity to 'participate'—in one way or another.

#### **4.2. Security Sector Reform (National Security Council)**

The formulation of the 'Turkish defence policy' has traditionally been the direct responsibility of the Turkish General Staff (TGS). The military has also—indirectly, but effectively—been responsible for the development of 'national security policy'. This practice has its roots in the history and dominant political culture of the modern Turkish Republic. In the course of 2001-2007, and particularly following the 2010 Constitutional referendum, the Turkish political system as a whole—and the dominant role played by the Army in it—has undergone a fundamental transformation and civil-military relations have been based on a rather different legal and psychological foundation.

Until the mid-2000s, the National Security Council (NSC), as the main and the ultimate constitutional authority, constituted the backbone of the Turkish political decision-making system. The military's over-representation<sup>429</sup> in the Council further reinforced their ability to have a

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<sup>429</sup> The Constitution (as amended as of 7 May 2010). **Art. 117** - [...] The Chief of the General Staff is the commander of the Armed Forces, and, in time of war exercises the duties of Commander-in-Chief on behalf of the President of the Republic. The Chief of the General Staff shall be appointed by the President of the Republic following the proposal of the Council of Ministers; his duties and powers shall be regulated by law. The Chief of the General Staff shall be responsible to the Prime Minister in the exercise of his duties and powers. The functional relations and scope of jurisdiction of the Ministry of National Defence with regard to the Chief of the General Staff and the Commanders of the Armed Forces shall be regulated by law. **Art. 118** - The National Security Council shall be composed of the Prime Minister, the Chief of the General Staff, Deputy Prime Ministers, Ministers of Justice, National Defence, Internal Affairs, and Foreign Affairs, the Commanders of the Army, Navy and Air Forces and the General Commander of the

powerful ‘say’ in policy decisions related to security and defence and made the TGS the primary actor with constitutional status, functions and roles. Moreover, the critical positions reserved for the active or retired<sup>430</sup> military personnel within the General Secretariat for the NSC made the military the dominant ‘political’ power with real control over the national security and defence policy of Turkey—effectively in any political decision.<sup>431</sup>

Technically, the policy formulation cycle was initiated by the Secretariat, usually based on the current National Security Policy Document (*tr.* Milli Güvenlik Siyaseti Belgesi) and the recent General Threat Assessment collectively produced by the TGS, the Ministry of Foreign Affairs (MFA) and the National Intelligence Agency (MIT). The relevant parts of the NATO intelligence documents<sup>432</sup> were also taken into consideration. In addition to the ‘military’ agencies, each ministry and the MIT were requested to forward their views with a rationale. Both the document and views related to it were handled as ‘Secret’ and were strictly controlled. Based on the views received, the Secretariat would develop the draft new National Security Policy Document.

Most of the time, there were one or more meetings to discuss issues of major importance or those aspects on which there were major differences of opinion. Seldom any other agency—save the MFA—challenged the military’s view regarding national security policy options or courses of action. Potential conflicts between the views of TGS and the Secretariat—

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Gendarmerie, under the chairmanship of the President of the Republic. [...] The National Security Council shall submit to the Council of Ministers the advisory decisions that are taken and its views on ensuring the necessary coordination with regard to the formulation, establishment, and implementation of the national security policy of the state. [...]

<sup>430</sup> This was mainly due to the job specifications of those posts rather than an arbitrary *selection* favoring retired military just because of their military background.

<sup>431</sup> For a more detailed discussion on the mechanisms of the Turkish national security policy formulation and the current state of affairs see; (Solmazturk 2013), pp. 95-108.

<sup>432</sup> MC-161 series documents: NATO General Intelligence Estimate and assessments related to specific threats such as ‘proliferation’ and ‘terrorism’. MC-165, Significant Technological Developments and Military Implications.

which was considered part of the *in-house* business—were almost always avoided through utilisation of ‘informal’ channels. The Office of the Prime Minister, and the Parliament as a whole, were simply absent in this entire process of ‘national’ policy formulation and, perhaps more remarkable, in its implementation. The final draft was normally briefed to the National Security Council, and once endorsed, was signed by the Prime Minister and became effective. It was distributed, by the Secretariat, to the military and civilian agencies that had primary responsibility to implement it. The ‘executive’ implementation of this key policy document—on ‘behalf of’ the Prime Minister—for all practical purposes, was the responsibility of the General Secretariat of the NSC.

Although a similar process was employed for the formulation of the defence policy, it was more or less an in-house exercise mainly involving the military agencies only. Once approved by the Chief of the General Staff, the so-called National Military Strategy of Turkey (*tr.* Türkiye’nin Milli Askeri Stratejisi-TÜMAS), i.e. defence policy, was presented to the Prime Minister (during a briefing, traditionally given in the General Staff Headquarters), distributed and became effective. In any case it was a closed process with little, if any, participation and pluralism, excluding the Parliament—National Defence Committee, Foreign Affairs Committee, General Assembly—completely.

Since the whole process was absolutely exclusionary in nature, no meaningful debate could possibly take place in civil society or in the wider public in general, neither would they have any access to any information related to ‘defence and security’.

The European Union always maintained a watchful eye on the security sector reform and consistently urged for a change in the ‘culture’ of security and transformation of the ‘model’ of the security sector. The European Commission regular report on Turkey, in 1999, concluded that; “the NSC continue(d) to play a major role in political life” (EC 1999: 10). Commission’s 2000 report reiterated the same observation and reserved a separate paragraph for the NSC:

There has been no change in the role played by the National Security Council in Turkish political life. Its conclusions, statements or recommendations continue to strongly influence the political process [...] it appears that at present the views of the National Security Council in practice seriously limit the role played by the government. Moreover there seems to be too little accountability to the Parliament with regard to defence and security matters. (EC 2000: 14)

European Parliament in October 2001, recalling the meaning of a “multiparty democracy” as “full control over political decision-making by the democratically elected civil authorities”, suggested the (Turkish) Parliament “in the current transition period [...] be able to monitor the activities of the National Security Council”. It also stressed “Commission’s worrying observation [...] that there has been no change in the role played by the NSC in Turkish political life”. (EP 2000: Art. 13)

#### **4.2.1. Security sector reform process**

When the reform in the security sector was initiated in 2001 the reporting chain for the Chief of the Turkish General Staff—directly to the Prime Minister—and the General Staff’s autonomous status were excluded from the reform agenda. Actually Minister of Defence Vecdi Gonül, during an interview in 2002, clearly stated that there was no intention on the part of the government to this end. He said: “In the West, civilians formed the army, but (in Turkey) it was the army which established civilian (administration)”.<sup>433</sup> This interview is significant for revealing the real nature of ‘change’ in civil-military relations in Turkey. He said that he found “the debate [on the subordination of the TGS to the MoD] regretful” and that “this arrangement, which was in line with the traditions of Turkey, would continue”. Minister Gonül, three years later, in a 2005 interview,

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<sup>433</sup> “Batıda siviller orduyu, bizde ise ordu sivilleri kurdu”. Sedat Ergin. 19 December 2002. *Hürriyet*. 04 February 2013. <http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=114324>.

reiterated this position of his government on civil-military relations: “Turkey does not need to do work on something which is not on the common agenda [with the EU]”, he said.<sup>434</sup> The general argument was that the subordination of the Chief to the Head of Government, i.e. Prime Minister, provided a sufficiently democratic mechanism and direct subordination to the Minister, while not conforming to the current needs of Turkey—it was tried and failed in the past—it would probably fail again. CESS was sarcastic on this point: “However, it will take more than repeated assertion of this conviction to make the issue go away” (Greenwood 2005: 18). However, the ambiguous language adopted in EU reports, as to the initial expectations of the EU in this respect, provided the Government some *freedom of action*.

The ‘reform’ of the NSC occurred in stages. The very first changes, as a first step, came in 2001 when Art. 118 of the Constitution—on the ‘National Security Council’—was amended. In May that year, the Ecevit Government forwarded a constitutional amendment package of 38 articles to the Speaker’s Office as a draft law signed by all three leaders of the coalition parties—leading Democratic Leftist Party (DSP), Motherland Party (ANAP) and Nationalist Action Party (MHP). The general rationale<sup>435</sup> behind submitting this package read “newly emerging needs, expectations of the public, new political openings, EU membership process and related economic and political criteria”. The fact that the package was prepared by an *ad hoc* Parliamentary Interparty Conciliation Committee was also clearly stated. The rationale—specific for relevant articles—stated “requirements of the coalition government” (for the inclusion of deputy prime ministers in NSC) and “making the council decisions sounder and considerations, from legal perspective, more comprehensive” (for the Justice Minister). There

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<sup>434</sup> “AB, ordumuzu tolere edecek”. Sedat Ergin, Gündem. 15 February 2005, Hurriyet daily. 22 January 2013. <http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=296745>.

<sup>435</sup> Draft law on “Amending the Constitution”, by Istanbul Deputy Bülent Ecevit and 290 other deputies. 06 May 2001. <http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss737m.htm>. Accessed on 09 December 2012.

was no rationale given for the change from ‘priority consideration’ to ‘evaluation’—for NSC decisions.

The draft bill was submitted to the Speaker’s Office on 06 May, remained unactioned for about four months and forwarded to the Committee on the Constitution only on 19 September 2001. The Committee finalised the debate on it, in *two* days, prepared its report and forwarded it to the Plenary on 21 September.<sup>436</sup> Curiously, there was no other report prepared by—or sought from—a secondary committee, prominently the National Defence Committee. Nor a sub-committee was established, although clearly these changes would have fundamental effects on the way national security policy was formulated. It became law<sup>437</sup> in October 2001, in *less than two weeks*, and only six months after the Accession Partnership. Art. 35 of the ‘package’ amended the Art. 118 of the Constitution—‘National Security Council’.

Civil society gave a manifest support to this initiative by the government. Nine civil society organisations and platforms, including the Turkish Industry and Business Association (TÜSIAD)—the most influential, and the Union of Chambers and Commodity Exchanges of Turkey (TOBB)—the largest, circulated a paid advertisement.<sup>438</sup> Published in major national dailies on 24 September 2001—twenty days before the draft law came to the General Assembly—it openly supported a ‘Yes’ campaign.

The minor but symbolically important changes introduced by the ‘package’ reflected the intention of the Government to pursue the EU accession goal. This bill also constituted a test for the Army’s potential reaction to further ‘reforms’. The number of civilian members was increased as the membership in the NSC was expanded to include Deputy Prime

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<sup>436</sup> TGNA, Report by the Committee on the Constitution, No 2/803, 21 September 2001. 09 December 2012. <http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss737m.htm>.

<sup>437</sup> Law No 4709, adopted on 03 October 2001. Official Gazette, 17 October 2001, No. 24556.

<sup>438</sup> Sabah, 19 August 2010. “The advertisement in which TUSIAD and TOBB indicated Yes”. 09 December 2012. [http://www.sabah.com.tr/Ekonomi/2010/08/19/tusiad\\_ile\\_tobbun\\_evet\\_dedigi\\_ilan](http://www.sabah.com.tr/Ekonomi/2010/08/19/tusiad_ile_tobbun_evet_dedigi_ilan).

Ministers and the Minister of Justice. The ‘advisory’ nature of NSC decisions was also underscored. From now on, the Council of Ministers would "evaluate" the decisions of the NSC, rather than "giving priority in consideration". “The Cabinet heeds NSC decisions” was altered to “takes into consideration”, basically treating NSC decisions as “advice”.

Later in December 2001, the 57th—Ecevit/coalition—government prepared a bill<sup>439</sup> for amending the Law No 2945<sup>440</sup> in line with the changes in the Constitution—Art. 118—already passed by the Parliament. It was referred to the Committee on the Constitution on 04 January 2002 by the Speaker’s Office. However, the bill never made it to the Plenary, and when the legislative term suddenly ended in the midst of an economic and political crisis in Fall 2002 and the country went into early general elections in November, it became null.<sup>441</sup>

Civil society, at that time, did not find these changes *satisfactory*, but major changes would follow later, in 2003. The Turkish Economic and Social Studies Foundation (TESEV), for example, argued that these changes “did not represent a radical change in the status of the Council”. While referring to previous publications by TÜSIAD (Tanör 1997, 83-85; Tanör 1999, 100-109), suggesting “ending the constitutional status of the National Security Council”, TESEV, nevertheless, indicated that “in reality, current political conjuncture was not fit for more fundamental changes in the status of the Council”. Because, it was argued, “Armed forces playing a more effective political role in Turkey, in comparison to other Western democracies, (had) too fundamental historical, sociological and political

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<sup>439</sup> Government Bill on amending the Law on the National Security Council and the NSC General Secretariat; dated 28 December 2001, based on the Cabinet decision dated 27 December 2001.

<sup>440</sup> Law No. 2945, Law on the National Security Council and the General Secretariat for the National Security Council, adopted on 09 November 1983. Official Gazette, 11 November 1983, No. 18218.

<sup>441</sup> This was due to the Rules of Procedure of the TGNA, Art. 77: “Those government bills and draft laws, which are not finalised and not become law before the end of a legislative year, become null. [...]”.

reasons to be changed by a simple amendment in laws or in the constitution”. It reiterated the need for “a more restricted and concrete redefinition of the notion of national security” (Özbudun 2002, 8).

In 2 November 2002 early elections AKP, an off-shoot of conservative Virtue Party (*tr.* Fazilet Partisi)—less than a year after it was founded—came to power through a land-slide victory. An unusual event that immediately followed this, is important for correctly understanding the radically changing parameters of the political environment in Turkey. AKP leader Tayyip Erdogan—banned from active politics then, by a court decision—had a meeting with the Chief of General Staff, General Hilmi Ozkok, on 15 November 2002, the day before President Sezer asked Abdullah Gül (Chairman of AKP) to form the new government. This meeting took place in the General Staff Headquarters. The substance of this meeting, which took about an hour, is not known by general public yet. But there are credible and logical speculations that they arrived at a common understanding, a kind of *modus vivendi*.

The new, 58th—Gül—Government of the AKP, as soon as assuming office, resubmitted some government bills<sup>442</sup> which had become null, to include two proposals on the NSC—previously prepared by the Ecevit coalition government. They were referred to the Committee on the Constitution on 19 December 2002, debated on 9 January 2003—bearing in mind the holiday period, clearly given priority—supported unanimously and adopted by the Plenary on 15 January 2003, eventually reflecting the Constitutional changes of 2001, on Law No 2945.<sup>443</sup>

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<sup>442</sup> Government letter to the Speaker’s Office dated 11 December 2002, resubmitting some government bills which became null. 1/404: Government Bill, “Adding Two Articles and One Temporary Article to the Law on the National Security Council and NSC Secretariat General, and Amending the Art. 36 of the State Personnel Law”.

1/941: Government Bill, on “Amending the Law on the National Security Council and NSC Secretariat General”.

<sup>443</sup> See Law No 4789, dated 15 January 2003, Official Gazette No 24997, 18 January 2003. “Law on Amending the Law on National Security Council and the General Secretariat for

2003 and 2004 harmonisation packages and specific legislation introduced important changes and more importantly, they established a new *modus vivendi* between the government in Office—AKP—and the Army (strictly speaking, top command). The tone and content of the CESS report clearly reflected the widely shared air of *satisfaction* of the time and this *modus vivendi*:

[Prime Minister] Mr. Erdogan believes in the necessity of separating religion from politics. He and his colleagues have accordingly kept their distance from political Islam [...] . On this key subject General Özkök's sentiments mirror those of the Prime Minister. The Chief of General Staff acknowledges that pious people may pursue secular politics; [...] he respects people's religious beliefs and preferences "as long as they [are] not carried to the public realm as a symbol of political Islam". (Greenwood 2005: 17)

In July 2003, the 59th—AKP—Government submitted to the Parliament, a comprehensive 'democratisation' package of 37 articles—the so called *Seventh EU Harmonisation Package*.<sup>444</sup> It was prepared as a Government bill, amending various laws, including legislation related to the NSC and its General Secretariat, among others. Aiming to curb the operational tasks and the executive authority of the NSC, in line with its redefined constitutional role of a 'consultative' body, the general rationale—in a clear reference to the Accession Partnership Document of 2003<sup>445</sup>—referred to the "EU membership process", "legal, political and economic reforms, undergone by

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the National Security Council". 09 December 2012. <http://www.izafet.com/hukuk/368633-mgk-yasasinda-degisiklik.html#ixzz1vPCgCEr1>.

<sup>444</sup> The Government Bill for a 'democratisation' package of 37 articles amending various laws; dated 23 July 2003, based on the Cabinet decision dated 23 July 2003.

<sup>445</sup> Partnership Document of 2003 aimed to curb the vast operational tasks and authority of the NSC. Official Journal of the European Union. L 145/40, 12 June 2003. Council decision of 19 May 2003 on [...] the Accession Partnership with Turkey. 09 December 2012. [http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Apd/turkey\\_apd\\_2003.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Apd/turkey_apd_2003.pdf).

all candidate countries”, the “National Programme (of Turkey)” of March 2001 and “constitutional amendments of November 2001”.

It was referred to the Parliamentary Justice Committee—as the primary committee—on 24 July 2003; was debated, first in the EU Harmonisation Committee on 24 July—the following day of its submission to the Speaker’s Office, and then in the Justice Committee on 29 July, and adopted in the Plenary on 30 July 2003.<sup>446</sup> The whole process, for the full package, was completed remarkably in a single week.

This Seventh Package—Articles; 9, 24-28, 35—introduced further and important changes to the structure, composition and responsibilities of the NSC—particularly its General Secretariat. Since this position was no longer ‘reserved’ for a general/admiral of the Turkish Armed Forces, civilians were also ‘permitted’ to be appointed to the post of Secretary General: “If he/she was to be a member of the Turkish Armed Forces [only then] endorsement by the Chief of the General Staff would be sought”. With the new description of its responsibilities, now stated in two simple sentences—amending Art. 13, Duties and Responsibilities—the Secretariat was stripped of its traditional role of an ‘executor’ and became what was essentially a secretarial unit—with no real ‘job’. In practice, the functions of the Secretariat were downgraded and restricted to ‘mobilisation inspections’ and ‘crisis management’ through Disaster Relief and Emergency Response Department (AFAD). The authority to “supervise” the execution and implementation of the NSC decisions was transferred to one of the Deputy Prime Ministers. Also the regular NSC meetings were to be scheduled to take place bi-monthly, instead of each month.

The amendments to the Law No 2945 and the Bylaw for the General Secretariat<sup>447</sup> for the NSC were used as instruments by the Government to

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<sup>446</sup> See law No 4963, dated 30 July 2003. Official Gazette No 25192, 07 August 2003.

“Law Concerning the Amendment of Various Laws”.

<sup>447</sup> Bylaw for the General Secretariat for the National Security Council. Cabinet Decision dated 29 December 2003, No: 2003/6688, based on the Law No 2945, adopted on 09 November 1983. Official Gazette: 08 January 2004, No. 25340. 09 December 2012. <http://www.mgk.gov.tr/Turkce/yonetmelik.html>.

enact political decisions. In December 2003, the formerly ‘Secret’ Bylaw for the Secretariat was abrogated and replaced by a new ‘Unclassified’ one. As the Secretariat was fundamentally reorganised, several offices with critical tasks and responsibilities were closed. In August 2004, for the first time a civilian—an ambassador—was appointed as the Secretary General of the NSC. The overall manpower composition of the Secretariat also rapidly changed as the contracts of retired military personnel were not renewed and an influx of ‘civilians’—initially, mainly from the Ministry of Foreign Affairs—replacing them, occupied key positions. Even the style of ‘writing’ and jargon, used in correspondence and communication, transformed from ‘military’ to ‘diplomatic’.<sup>448</sup>

#### **4.2.2. Aftermath**

The reform of the NSC and reorganisation of the General Secretariat for the NSC were complete towards the end of 2006. All changes were initiated solely by the political authority and the EU process had a major impact on the overall transformation process in terms of compliance with the political criteria. This did not happen overnight and easily. Public support to reforms—as part of the EU accession process—for reducing the army’s role in politics, remained fairly consistent throughout the reform period. Over a scale of 10, it was 6.2 in 2002, 6.3 in 2005 and 6.0 in 2012. (Yilmaz 2012)

Although there was support from the civil society and the public in general, army’s attitude and top-command’s preferences and decisions also played a major role. In 2004, the NSC already having been tamed, the military having silently accepted curtailment of its power and maintaining a low profile; came a seemingly unintended test, this time from the opposition

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<sup>448</sup> Since then, as of December 2012, four ‘civilian’ secretary-generals took office, all but one with a diplomatic background. It can be argued that this was based on a conscious political choice to replace the military with the diplomatic corps, the only other state institution—apart from the army—which has been involved in formulation of the national security policy and with some capacity to maintain the effectiveness without serious disruption. The current incumbent—mid-2014—is a former governor and a recent office holder within the Office of the Prime Minister.

MHP. In June, a 17-page letter signed by the Chairman of the Party, Bahçeli, was sent to all generals and admirals as well as senior bureaucrats and all MPs.<sup>449</sup> It complained about “government’s passive attitude” regarding the ‘Kurdish’ question—and EU’s manipulation of the Turkey’s EU accession process as a ‘political tool’. These letters were returned to the originator, as directed by the Chief of the General Staff.<sup>450</sup>

In December 2004, a military investigation by the TGS Military Court was launched for a former commander of the Turkish Navy—Ilhami Erdil—on charges of *abuse of power* and *unlawfully accumulating wealth*. This was an extraordinary event in itself because he was the ‘first’ highest-ranking officer to be prosecuted and sentenced<sup>451</sup> in decades—actually since the Yassiada trials of 1960-61 following the military coup in 1960. It was taken as yet another sign of *change of heart* at the Army’s top brass and it was speculated that this was linked to the EU accession process.<sup>452</sup> This high-publicity trial—involving family members in front of TV cameras—largely eliminated the impression of ‘untouchables’ and contributed to the removal or lifting of a kind of ‘mystical’ air traditionally associated with the army.

Against this background, it made sense that there was a need to avoid reform fatigue, to slow down for digestion and train a civilian cadre to take over some ‘defence’ posts and associated functions to work with the military. Besides, both in and out of Turkey, in the immediate neighbourhood there were serious risks involved and the Turkish

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<sup>449</sup> ‘Pasalar mektubu MHP’ye iade etti’ (*Pashas* returned the letter to MHP). 5 August 2004, Radikal. 22 January 2013. <http://www.radikal.com.tr/haber.php?haberno=124155>.

<sup>450</sup> This was offensive for the MHP leadership and led to a period of coolness and distancing between the Army and the MHP until 2012, for about eight years.

<sup>451</sup> A commander of the Air Forces, in 1976, had been tried for corruption charges but was acquitted on all charges by the TGS Military Court in three weeks.

<sup>452</sup> ‘EU-Conscious Turkey Prosecutes Ex-Navy Admiral’. 22 December 2004. Los Angeles Times. 22 January 2013. <http://articles.latimes.com/2004/dec/22/world/fg-turkey22>. Adm. Erdil was eventually sentenced to 30 months in prison, stripped off his military ranks, discharged from the service—symbolically, since he was already retired—his two apartments were seized, in February 2006.

government could hardly afford alienating the Army. However, CESS warned that “it (was) not in Turkey’s interest to allow prudence to produce paralysis” (Greenwood 2005: 21). This was exactly what happened and what would follow soon.

Some important developments in 2007 which can be called a *watershed* in Turkish political history marked the end of an era, under the *guardianship* of the Turkish military. Presidential elections in the Parliament to succeed President Ahmet Necdet Sezer were due in April. The political scene had already turned extremely tense because of the conflictual debate centred around ‘secularism’ and so-called Republic Rallies across the country, involving hundreds of thousands of *secular-minded* individuals—as they described themselves.<sup>453</sup> The Constitution required a candidate to get two-thirds majority (367) vote to be elected by the Parliament in the first two rounds. Simple majority (276) would suffice only in the third round. However, opposition CHP—and some legal experts—argued that, apart from the requirement of a majority vote, a quorum of two-thirds was also necessary even at the first two rounds and they—as well as other opposition parties—decided to boycott presidential elections altogether. In the first round on 27 April governing AKP failed to secure a ‘quorum’ and their candidate—Abdullah Gul—got only 357 votes, out of 361 MPs present. This started a political chain reaction which eventually led to a complete restructuring of the Turkish political scene.

The Army—General Staff—posted a press release on its official website, late evening, 27 April. In a clear reference to AKP candidate, it stated that the TAF was “a party in those arguments and absolute defender of secularism”. This was an open threat to the governing party and an intervention in the presidential elections.<sup>454</sup> The government rejected this by

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<sup>453</sup> These meetings/demonstrations were unprecedented in terms of their size, with sometimes over a million participants.

<sup>454</sup> ‘e-muhtiraya 28 Nisan’da verilen cevap Türkiye’nin onünü acti.’ Zaman, 28 April 2009. [http://www.zaman.com.tr/politika\\_e-muhtiraya-28-nisanda-verilen-cevap-turkiyenin-onunu-acti\\_842302.html](http://www.zaman.com.tr/politika_e-muhtiraya-28-nisanda-verilen-cevap-turkiyenin-onunu-acti_842302.html).

a press conference by the Spokesman next day, but nevertheless adopted a conciliatory tone. Meanwhile CHP took this issue to the Constitutional Court. The Court ruled on 1 May that a quorum of two-thirds was necessary and annulled the first round<sup>455</sup>, which was repeated on 6 May and again failed the quorum. Governing AKP had no choice but to call early general elections. Elections of 22 July returned AKP back to power, based on an even larger electoral support—46.6 percent. AKP presidential candidate Gul was renominated and elected in the third round on 28 August 2007, thanks to MHP which decided not to boycott the election—and made a quorum possible.<sup>456</sup>

Two parallel developments as part of the overall turmoil in domestic politics also occurred in the same period. On 5 May, the day immediately before the second round of failed voting in the Parliament, Prime Minister Erdogan received Chief of General Staff, General Yasar Büyükanit in his Dolmabahce Palace office in Istanbul and reportedly the two arrived at an ‘understanding’.<sup>457</sup> This was, like the one in November 2002; yet another ‘*modus vivendi*’ meeting between the prime minister and the army chief..

Secondly, starting in mid-2007, court cases involving hundreds of generals, admirals, high ranking officers as well as a diverse group of individuals—academics, journalists, individuals who were active in civil society, even certain police chiefs—allegedly conspiring against the Government, were started and these trials soon came to occupy the political agenda of Turkey. This continued, at an increasing rate, through the Constitutional referendum process of 2010 and general elections of 2011. Besides, in mid-2008, AKP closely escaped a second closure case<sup>458</sup> on

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<sup>455</sup> Nine of the eleven members in the Court were in favor of annulling the vote.

<sup>456</sup> If MHP had insisted on a compromise candidate, AKP had no choice but to seek for a cross-party agreement on a non-partisan figure.

<sup>457</sup> The content of this meeting is still not known as both individuals said that they would *take this secret to grave*.

<sup>458</sup> The first case was even before the party came to power, in October 2002. In 2008, closure case failed by only one vote—6 to 7. The Court found AKP ‘guilty’ of charges, but did not close.

charges of violating secularism. These developments not only overshadowed the reform process—in the security sector—but also effectively stopped it.

However, some other parallel developments also took place. In May 2006, the Security Affairs Department of the Prime Minister’s Office was upgraded and completely reorganised as the Directorate General of Security Affairs. Its terms of reference<sup>459</sup> included the authority for “managing communication and coordination between the Office of the Prime Minister and other state institutions with responsibility for internal security, external security, counter terrorism”. The next step was the establishment of the Undersecretariat for Public Order and Security in the Ministry of Internal Affairs. The new Undersecretariat—without ‘operational’ responsibility—came into being in 2010<sup>460</sup> and was tasked to “develop counter-terrorism policies and strategies; support security institutions and other relevant bodies; ensure coordination between them; provide strategic information; track and analyse international developments in cooperation with the Ministry of Foreign Affairs and other relevant bodies; carry out or commission analyses and oversight”. This was actually a complete *change of hands* in the security bureaucracy. As this new bureaucratic animal had the task of “informing the public about its activities and conduct public relations”, practically all functions formerly carried out by the *military-dominated* General Secretariat of the National Security Council were taken over by a ‘civilian’-dominated new organisation and were actually expanded.

The new Undersecretariat was affiliated to the Office of the Prime Minister in July 2011 and started serving as secretariat for the Counter-

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<sup>459</sup> See Art. 12, Law No 3056, “Law Concerning the Organisation of the Office of the Prime Minister” dated 10 October 1984, amended by Law No 5508, dated 24 May 2006. 15 November 2012. <http://www.mevzuat.adalet.gov.tr/html/687.html>.

<sup>460</sup> See Law No 5952 “Law Concerning the Organisation and Missions of the Undersecretariat for Public Order and Security”, adopted on 17 February 2010. Official Gazette: 04 March 2010, No. 27511, and Bylaw dated 25 March 2011. 15 November 2012. <http://www.mevzuat.adalet.gov.tr/html/30975.html>

Terrorism Coordination Board. Finally, with the parallel and quite similar ‘de-militarisation’ process that also took place within the National Intelligence Organisation (MIT), the *security sector reform*, as of mid-2012 seemed to have reached its politically optimal extent.

Nevertheless, the EU was quite late in completely taking the transformation already occurred and its real nature, on board. This was probably due, at least in part, to the persistence of firmly-held perceptions and it also reflected an intellectual distance from the reality of Turkish politics. European Commission Turkey 2009 Progress Report which was published in October 2009, included a long list of criticism related to the current state of civil-military relations in Turkey.<sup>461</sup> It even, surprisingly, stated that “No change (had) been made [...] to the Law on the National Security Council” while radical changes had already taken place and fully implemented.

The 2010 Progress Report which was adopted in November 2010, immediately after the September 2010 constitutional referendum, adopted a rather cautious tone; but the 2011 Report<sup>462</sup>, as far as the NSC reform was

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<sup>461</sup> “The armed forces have continued to exercise undue political influence via formal and informal mechanisms. Senior members of the armed forces have expressed on a large number of occasions their views on domestic and foreign policy issues going beyond their remit [...] On a number of occasions, the General Staff reacted publicly to politicians and media reports. [...] No change has been made to the Turkish Armed Forces Internal Service Law or to the Law on the National Security Council. [...] The 1997 EMASYA protocol on security, public order and assistance units remain in force. No progress has been made on strengthening legislative oversight of the military budget and expenditure. Likewise, the Defence Industry Support Fund (SSDF), [...] is still an extra-budgetary fund excluded from parliamentary scrutiny. Parliament has no mandate to develop security and defence policies. [...] The alleged involvement of military personnel in anti-government activities, disclosed by the investigation on Ergenekon, raises serious concerns.” (EC 2009: 10-11)

<sup>462</sup> “In October 2010, the National Security Council approved a revised National Security Policy. This document is not public. It was reportedly prepared mainly by the civilian authorities. [...] The Supreme Military Council of August 2011 was a step towards greater civilian oversight of the Armed Forces. Civilian oversight of military expenditure was tightened and a revised National Security Plan [*sic*] adopted.” (EC 2011: 14).

concerned, sounded fully satisfied with the progress achieved, although actually no further changes, since 2006, had taken place. However, in less than five months—following the 2011 Report—‘European’ optimism about civil-military relations in Turkey, had gone away and—as far as the ‘army’ aspect of the *security sector reform* was concerned—replaced by a rather deep ‘concern’. In March 2011, the Committee on Foreign Affairs of the European Parliament<sup>463</sup>, while welcoming “the continued efforts to improve civilian oversight of the military”, emphasised “the need to ensure the continued secular integrity of the armed forces and their operational capability”.

This was an unprecedented official statement by any European institute as far as the militaries of any country were concerned. The EP Resolution on 29 March 2012, adopted a slightly amended version of this motion and stressed “the need to ensure the continued operational capability of the (Turkish) armed forces” (EP 2011: 11). This was remarkable because in about seven years, the European Parliament which recorded a long list of demands from the Turkish Government in 2004, including security sector reform among others<sup>464</sup>, and kept warning about “supervision and oversight by the civilian authorities”<sup>465</sup>, came to be worrying primarily about “secular integrity” and “operational capability of the (Turkish) armed forces”.

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<sup>463</sup> European Parliament. Motion for a resolution on the 2011 Progress Report on Turkey, the Committee on Foreign Affairs. 20 March 2012, B7-0189/2012, Art. 10. 10 July 2012. <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&language=EN&reference=B7-0189/2012>.

<sup>464</sup> European Parliament Resolution on the 2004 Regular Report and on the recommendation of the European Commission on Turkey’s progress towards accession. 15 December 2004.

<sup>465</sup> European Parliament, in its 2007 Resolution expressed concern “about the repeated interference by the Turkish Armed Forces in the political process”, underlined that “the formulation and implementation of the national security strategy should be supervised by the civilian authorities”, called for the “establishment of full parliamentary oversight of military and defence policy” and “parliamentary supervision over country’s secret services, gendarmerie and police” (EP 2007: Art 9).

### 4.2.3. 'Other' reforms?

The 'security sector' reform was restricted to the NSC—and its General Secretariat—only, and the expectations of civil society in the form of a general reform did not materialise. The 'sector', as far as the army is concerned, has come under the direct control of the Government and the Army has withdrawn from politics. However, all other elements of the intended reform, as of mid-2013, are still awaiting. One other symbolic move forward could have been the amendment of the TAF's Internal Service Law—Art. 35, 'mission of the armed forces'.<sup>466</sup>

An excellent opportunity to this end occurred as a result of the initiative by the political opposition and, in a sense, tested the intention of the government for comprehensive and meaningful reforms. A draft law<sup>467</sup>, prepared by a Deputy from the main opposition party—CHP, to amend the Art. 35 of the Turkish Armed Forces Internal Service Law, was submitted to the Speaker's Office in September 2011 and was referred to the National Defence Committee on 01 October 2011. Another draft law<sup>468</sup>, this time prepared by a Deputy from BDP, to amend the very same article was submitted to the Speaker's Office in October 2011, was referred to the National Defence Committee on 18 October 2011. Of significance, however, for the purposes of this research; there was no reference either to EU reports nor to civil society publications or statements, in the rationales included in the texts submitted to the Parliament. After more than a year, both drafts were still sitting in the National Defence Committee, without any action, and this was happening in a Parliament where both the Parliamentary committees and the General Assembly were firmly controlled by the majority represented by the governing party. Actually, TESEV's Security Sector Policy Report's one prominent observation in 2010, based

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<sup>466</sup> This eventually happened in July 2013.

<sup>467</sup> Draft Law by Deputy Muharrem Ince (CHP), 12 September 2011;  
[http://www.tbmm.gov.tr/develop/owa/tasari\\_teklif\\_sd.onerge\\_bilgileri?kanunlar\\_sira\\_no=93899](http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.onerge_bilgileri?kanunlar_sira_no=93899). 30 July 2012.

<sup>468</sup> Draft Law by Deputy Hasip Kaplan (BDP), 07 October 2011;  
<http://www2.tbmm.gov.tr/d24/2/2-0108.pdf>. 02 August 2012.

on the 2008 National Programme was that “the pledges made in civil-military relations (were) limited in scope” and the Programme did “not envision [*sic*] a fundamental shift in the structure of law enforcement units”, nor did it promise “a real change in the security model in Turkey” (Akay 2010, 30-31). This was “a sign of the lack of political will in this area”, it concluded.

These reforms notwithstanding, in terms of formulation of the national security policy and the defence policy, little has changed since the beginning of the 2000s. The General Secretariat of the NSC, as before, is nominally responsible for the overall coordination and compilation of the national security policy with the same agencies involved. But, now the TGS—as the once dominant political actor—has been, reportedly, replaced by a small *ad hoc* group working for the Office of the Prime Minister as need arises. The National Security Policy Document is now a purely ‘political’ document, that is, it reflects priorities more in line with the political priorities of the Government and the governing party. The whole process is still closed to the Parliament, civil society, the public and the media. As for the defence policy, it still remains within the sole purview of the TGS and there is no discernible intention on the part of the political elite to take any initiative to make elected civilians responsible for ‘policy’.

#### **4.3. Judicial Reform (Constitutional Court and High Council of Judges and Prosecutors)**

The debate of ‘judicial reform’ is connected to the wider—classical—debate of *constitutionalism*. There are two openly conflicting, perhaps irreconcilable approaches to the subject. One opts for the parliaments—simply because they are *elected*—as the sole owner of the legislative power. The other, on the other hand, opposes this rather restrictive approach and considers ‘power sharing’ essential for democracies so that they can perform to their best. In a sense, the existence of Constitutional Courts, clearly means sharing ‘legislative’ power with the *judicial* branch.

Particularly in parliamentary systems, this power sharing also—perhaps more so—involves the executive branch.

This is also related to executives' *natural* inclination to control the judiciary, thereby becoming immune to judicial control—which means a major impediment for the proper functioning of democracies, particularly parliamentary democracies. Ran Hirschl (2004), in this context, argues that, “There is now hardly any moral controversy in the world of new constitutionalism that does not sooner or later become a judicial one. The global trend toward *juristocracy* is arguably one of the most significant developments in the late-twentieth and early twenty-first century government” (qtd. in Ozbudun 2010: 13). This brings us to the subject of ‘reform’ of the Constitutional Court and the High Council of Judges and Prosecutors in Turkey, by the ‘executive’ in the course of 2010 and 2011.

The European Commission, from 1999 on, included ‘judiciary’ in its regular reports, initially pointing out the need for increasing the number of judges and prosecutors and improving their training. The 2000 report indicated limited progress and stated that; “[...] no other specific measures [other than the increase in numbers] aimed at increasing the efficiency of the judicial system can be reported” (EC 2000: 13). However as Turkey progressed towards adopting and implementing the *acquis*, both the letter and the spirit of the Progress Reports started to change and the ‘judiciary’ was treated as a matter of priority. In late 2007, there was a straight forward criticism as to what the expectations of the EU with respect to the judiciary were:

Overall, there has been some progress as regards the efficiency of the judiciary through implementation of adopted legislation and continued use of IT. However, tensions in the relations between the government and the judiciary have not been conducive to the smooth and effective functioning of the system. More needs to be done in terms of strengthening the independence and impartiality of the judiciary. Finally there is no overall National Reform Strategy for the functioning or a plan to implement it. (EC 2007: 10)

The Judicial Reform Strategy and the Action Plan of the Ministry of Justice would only be ready late 2009, finally paving the way for reform in Turkish judiciary. The approval of the Judicial Reform Strategy by the Government was seen as a positive step by the EU. However concerns remained about the independence, impartiality and efficiency of the judiciary, particularly on its *independence*:

[...] no progress on the composition of the High Council of Judges and Prosecutors or on the reporting lines of judicial inspectors. [...] The composition of the High Council is not representative of the judiciary as a whole; only senior members of the Court of Cassation and of the Council of State are members of this Council. [...] The judicial inspectors, who are responsible for evaluating the performance of judges and prosecutors, are attached to the ministry, not to the High Council. [...] Under a 2007 regulation, judicial inspectors can request a court order authorising interception of telephone calls by members of the judiciary. (EC 2009: 11)

By the same token, the EU also found the procedures for the selection of candidate judges and prosecutors as “open to subjective interpretation” (EC 2009: 69). Such concerns were also shared by the European Parliament and they invited the Turkish Government “to restructure the High Council of Judges and Prosecutors, so as to ensure its representativeness, objectiveness, impartiality and transparency” (EP 2009: Art 9).

In early 2010, the domestic political agenda in Turkey was dominated by the hot debate on the constitutional reform package, the government’s so-called ‘Kurdish opening’ and the ever-widening investigations into alleged ‘coup plans’ involving not only the military but also civilian bureaucrats, academics, journalists, politicians, civil society members, even ordinary citizens. The political climate was openly confrontational. The relations between key institutions—particularly the Army, the Police, MIT, the

judiciary and the Government—were strained with unclear boundaries of ideological/political fronts and shifting alliances.

The judicial ‘reform’ process which was launched in the midst of such a political strife was considered as part of the general ‘manoeuvring’ for gaining positional and legal advantage, by both its opponents and proponents, heavily criticised by the former, equally justified by the latter. Soon it became simply the continuation of the already harsh political and ideological battle on yet another front and further complicated the overall democratisation process in Turkey.

Like the security sector reform, reform in the judiciary developed in stages: drafting the Constitutional amendment package, making it into law—legislation, campaign for the referendum, adoption of the laws on the Court and on the HCJP, elections for the HCJP, followed by (s?)elections for the Court of Cassation, the Council of State and the Constitutional Court.

When the process was effectively started in early 2010, there were, on the part of the European Union, still some criticism of the involvement of the military in politics<sup>469</sup>, however, main concerns were now about the judiciary. The EU wanted a “comprehensive and swift reform of the judiciary” because it was “vital for the success of the modernisation process in Turkey” (EP 2009: 9). Other concerns centred around *lack of dialogue* and *spirit of compromise, polarisation* within the Turkish society and political parties, and—as an inevitable result of this situation—failure in translating political initiatives and rhetoric, into concrete amendments to legislation.

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<sup>469</sup> “On occasions senior members of the judiciary, of the military and of an association of judges and prosecutors made statements which likely to be perceived as pressure on individual courts and members of the judiciary, putting thus the impartiality of the judiciary at risk in important cases” (EC 2009: 69). “[...] is concerned about the continuing involvement of the military in Turkish politics and foreign policy, and reiterates that in a democratic society the military must be fully subject to civilian oversight; calls in particular on the Turkish Grand National Assembly [...] to engage in the development of security and defence policies” (EP 2009: Art 10).

The EU—as reflected in both the Commission reports and EP resolutions—invited the Turkish Government as well as all political parties, “to develop an appropriate balance between political competition and pragmatic cooperation, so as to facilitate reconciliation within Turkish society and to enable the realisation of key reforms, in particular that of the Constitution” (EP 2009: Art 2).

The Constitutional Court was first introduced into the Turkish constitutional system by the 1961 Constitution. The 1982 Constitution also maintained the Court and its jurisdiction remained the same. The amendments which were put to referendum in September 2010, introduced important changes to the structure and role of the Court: the status of ‘standing’ judges was eliminated, the number of judges was increased from 15 to 17, the sources judges were coming from were rearranged and diversified, the Parliament had a chance to select three judges directly, the serving term for judges was limited with 12 years, an ‘individual complaints’ procedure was also introduced at the Constitutional Court.

The referendum of 12 September 2010 was a benchmark in the course of democratisation in modern Turkish political history, and an important milestone in the ongoing democratisation process because of its wider implications. The 1982 Constitution had already been amended 16 times before. But the ‘12 September’ amendments while eliminating the *military guardianship* in domestic and foreign policy, it effectively ended the separation of powers in Turkish political system and carried the political and ideological polarisation of the Turkish society to extremes.

After the referendum, the government launched work on implementing the constitutional amendment package, giving immediate priority to ‘reforming’ the judicial structures—in particular the Constitutional Court and the HCJP. In November 2010, a new ‘High Council of Judges and Prosecutors’ law; in January 2011, a new law on the ‘Organisation of the Constitutional Court and Trial Procedures’; in February 2011, an amendment package involving major changes in the Court of Appeals and in the Council of State were passed by the Parliament. Within the next six

months, after the referendum, Turkish judiciary was completely transformed and reorganised in a *revolutionary* fashion. These laws addressed a number of priorities of the Accession Partnership as included in respective parts of the Judicial Reform Strategy and the Action Plan, however not necessarily in the exact form and substance one would expect from ‘democratic’ reforms.

Besides, the issues such as the ‘Judiciary police’, Political Parties Law, Election Law, prominent among others, never came out because of other higher priority items—as deemed so by the governing majority party. There was very little that could be done—although they did attempt—by the political opposition to have any influence on the fast developing process. Political agenda—and changes to it—was set almost ‘daily’ and it was virtually impossible to maintain even the attention of the general public on specifics of the judicial reform package for an extended period.

#### **4.3.1. Judicial reform process**

A new constitution always had a place in the political agenda of Turkey, ever since the first civilian government, after 1980 military takeover, took office in 1983. From time to time it dominated the political and, occasionally, the larger debate in society. A draft constitutional reforms package, in response to invitation from the Government, was prepared in 2008 by a group of academics, but there was no consensus between political parties and the society as a whole divided over the subject of *constitutional reform*. European Commission 2009 Progress Report stated that “Despite numerous announcements, the government did not put forward any proposal for amending the constitution, nor did it propose any methodological approach, based on consultation, to that end” (EC 2009: 7).

Soon after, in January 2010, the governing party forwarded a *draft law*<sup>470</sup> to the Speaker’s Office, amending the Law on Referring Constitutional

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<sup>470</sup> Draft law on amending Art. 2 of the the Law No 3376 on Referring Constitutional Amendments to Public Referandum, dated 23 May 1987, submitted to the Speaker’s Office on 07 January 2010.

Amendments to Public Referendum. This was a clear sign of government's decision to go ahead for fundamental changes in the Constitution. The rationale, in the draft text, argued that the period of 120 days before any resolution can be put to referendum—as originally required by this law—was “well beyond the time period needed for reaching the correct and pluralist information and forming a firm belief about the amendments, and long enough to wear down the current interest on the referendum”. It was not possible to “reconcile the practice of focusing the public so much on the referendum with the principles of rational democracy [*sic*]”. The proposal would shorten the period from 120 to 45 days, in other words from four months to *one and a half* months. It was referred to the Committee on the Constitution on 08 January 2010—the next day.

On 22 March 2010, the Justice and Development Party announced a draft composed of twenty three articles and three provisional articles in order to amend various provisions of the Constitution. They included a number of different elements, introduction of an Ombudsman system, collective bargaining rights for public servants, the lifting of the legal immunity for the leaders of the 1980-83 military regime and for all those ‘served’ in this period. However, the key and the most controversial items were about the reform of the ‘judicial system’—the Constitutional Court and the HCJP.

The draft immediately started a debate as to the way it was prepared, as well as its content, even before it was submitted to the Parliament. Soon—in a week time—it was ‘finalised’ and after the addition of three new articles—making it a total of 29 articles—was submitted to the Parliament as a draft law—not a government bill—on 30 March<sup>471</sup> and was referred, by the Speaker, to the Committee on the Constitution on 31 March, the next day. However because of an unexpected signature crisis, in a very unusual way, the first text was withdrawn from the Committee and then it was

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<sup>471</sup> Draft Law on “Amending Some Articles of the Constitution of the Republic of Turkey”. See; Report by the Committee on the Constitution, dated 14 April 2010. 24 March 2013. <http://www.tbmm.gov.tr/sirasayi/donem23/yil01/ss497.pdf>.

resubmitted on 5 April 2010, this time as a 28-article package.<sup>472</sup> The legislative process developed in parallel with the debate on the package and it was hotly contested. The opposition CHP took the case to the Constitutional Court for annulment of intended changes—the whole package—arguing that they were ‘unconstitutional’.

General rationale for the constitutional amendment package included; “comparative law, requirements of the country, general consensus on the need for a constitutional change—particularly in areas generally considered *problematic*, some draft texts for a new constitution already prepared by various civil society organisations and political parties, extensive debate which already took place in the society involving experts on the subject”. In separate articles there were also references to Venice Commission Report on Turkey<sup>473</sup>, requirements of the National Programme, various international texts such as the Partnership Programme, Progress Reports, consultative visit reports etc.

Critical issues such as ‘Constitutional Court judges serving until the age of sixty five, i.e. compulsory retirement age’, ‘selection monopoly by the President of the Republic’, ‘the need for diversification of sources for membership’, and particularly ‘selection of judges for the Court by the Parliament and the election method’ were all addressed and rationalised in relevant articles of the draft law. The Parliament would be able to select judges to the Court, allowing conciliation and compromise based on qualified majority that would be sought primarily—failing that, simple majority would suffice in the second tour. While in the past the President selected all fifteen judges, the new arrangement would allow “only fourteen

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<sup>472</sup> Actually the text of the draft law was submitted twice. First draft included the signature of the Speaker of the Parliament as well as other Deputies from the governing party—AKP. Since this was against the Rules of Procedure, a second text was submitted, this time without his signature. But it included a new article and a change in one other article, reflecting the haphazard and the loopy way this critical text was developed. See; Notes of Dissenting Opinion by the opposition parties in the Report of the Committee on the Constitution, dated 14 April 2010, pp. 41-63.

<sup>473</sup> Venice Commission Report on Turkey, 13-14 March 2009.

of the seventeen judges” be selected by the President. The term of service in the Court would be “limited to twelve years so that membership profile of the Court could renew itself to reflect the new social conditions and new perceptions”.

The Venice Commission strongly supported the reform process, particularly the 12 September Constitutional referendum, from the outset and throughout. However, it was said during the campaign for the referendum that the government had “forgotten” to ask for an official opinion—on the constitutional amendments package—from the Commission. This was hardly a hidden criticism and, with the benefit of hindsight, it is not difficult to guess why the AKP government refrained from asking for an opinion from the Venice Commission on such a critical package—they probably knew what the opinion would be like.

Immediately after the referendum, on 27 September 2010, Venice Commission provided opinions—in response to the request already made by the Ministry of Justice—on the draft law on the Supreme Council of Judges and Prosecutors and on the law on the Establishment and Rules of Procedure of the Constitutional Court.<sup>474</sup> This means that, even before the time of the Referendum, the drafts of these laws, actually intended for implementing the expected constitutional changes, had already been prepared—in ‘anticipation’ of a positive result from the Referendum—and submitted to the Commission for opinion.

If there was any involvement on the part of the civil society in the ‘drafting’ process, it has not been possible to trace any such ‘participation’.

The constitutional package was debated in the Committee on the Constitution on 08 April for the first time and it took only three meetings to ‘debate’ such a critical and comprehensive package as a whole. It came to

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<sup>474</sup> Concerns raised by the Venice Commission in these ‘opinions’ were clearly reflecting the SIGMA Peer Review Team’s earlier findings (See; SIGMA Report, Chp. 3 and Chp. 4). They had already visited Turkey four times, last one being in June 2010, and witnessed the lack of any cooperation or dialogue between the governing and opposition parties, and with the public and civil society at large.

the Plenary on 19 April. It was a painful process, far from any resemblance to any kind of a search for a consensus or compromise between the political parties represented in the Parliament, let alone the wider public or stakeholders, so to speak. It never received the non-partisan political backing which constitutional amendments are—ideally—supposed to secure. At the end, the legislated text<sup>475</sup>, which was to be put to referendum, was the product of the governing party and was passed only based on the majority enjoyed by the governing party in the Parliament. This aspect of the ‘reform’ would be sharply criticised by the European Commission’s Turkey 2010 Progress Report<sup>476</sup> which was released less than two months after the September referendum took place.

None of the proposed articles for amendments received the required two-third majority—which was 367 votes—to be passed directly, as a Constitutional amendment, without a referendum. All except one, just passed the threshold of 330 votes needed to be put to referendum. The only proposal that failed this threshold—and dropped—was the one on the prohibition of political parties—Art. 69. The ‘package’ was approved by the President and submitted to a referendum set for 12 September 2010.

Although the President’s signature is not a ‘condition’ for policy outcomes in the form of a law, his or her constitutional authority to influence policy outcomes and both the chance and the administrative capacity to carry out this authority are significant. However, the Office of the President did not make an effective use of this opportunity particularly during the judicial reform process when it was most needed because the

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<sup>475</sup> Law No 5982 was passed by the Parliament on 07 May 2010 and published in Official Gazette on 13 May for referendum. 05 January 2013. <http://www.anayasa.gen.tr/5982.htm>.

<sup>476</sup> “Concerns about the administrative capacity of Turkey’s Parliament persist in several fields, including executive-legislative relations and parliamentary oversight and scrutiny. The Turkish Grand National Assembly plays a limited role in the formulation and implementation of Turkey’s accession strategy” (EC 2010: 9). “Attention needs to be paid on the establishment of an effective dialogue with all stakeholders and the civil society at large, and on implementation of these reforms in line with European standards” (EC 2010: 80).

whole society was deeply divided over the proposed amendments and the whole legislative—and referendum—process turned into a fiercely waged political pitched battle.

There were some initiatives to involve the President of the Republic, as a last and evidently only resort, by the civil society—as well as the political opposition—to become instrumental for arriving at a compromise over the constitutional amendment package of 2010. There is evidence that civil society and academia did attempt to urge the President to intervene as his constitutional authority—and responsibility—required. However such attempts to make their views/concerns be known by the President turned out futile. The package arrived at the Office of the President on 7 May 2010. Fourteen prominent academics, all experts in the area of constitutional law, submitted a comprehensive report on the amendment package, to be taken into consideration by the Office of the President, on 12 May 2010. But the very same day—immediately after the receipt of this report was acknowledged—the package was signed and sent for publication in the Official Gazette, although the Constitution allowed the President ten more days for a thorough review.<sup>477</sup>

The Constitutional Court, over the application by the main opposition party—CHP, annulled only ‘minor’ elements of the articles related mainly to the election methodology of members to the Constitutional Court and to the HCJP<sup>478</sup> and the referendum process went ahead.

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<sup>477</sup> ‘Kazan’dan Anayasa paketinin bes günde onaylanmasına tepki’, 13 May 2010, Cumhuriyet. 6 March 2013. <http://www.cumhuriyet.com.tr/?hn=139602>.

<sup>478</sup> These seemingly and relatively minor elements would prove extremely critical in determining the election results, allowing the majority—reportedly orchestrated by the Government—to eliminate the opposing minority. This was criticised by the EU Commission only in 2011 Progress Report; “Judges and prosecutors or members of a body nominating candidates for members of the Constitutional Court can cast as many votes as the number of candidates for full and substitute members to be elected [...] excluding those supported by voters from a minority. The process of selecting the Bar candidates does not ensure that the list of candidates is adequately representative of the overall membership of the Turkish Bars, while at the same time not completely dominated by the large metropolitan Bars” (EC 2011: 85).

### 4.3.2. Referendum

An extensive and sweeping debate on the ‘package’ had already started even before it was passed by the Parliament. It just got a new boost as the package was enacted early May. The political environment simply became extremely heated and polarised, making any involvement by the civil society painfully difficult.

Nevertheless, in the period leading to the constitutional referendum of 12 September 2010, civil society did make an attempt to become involved in the process and inform the public. However, it was hardly a success in terms of attracting wide publicity. The polarisation was so intense that it did not allow any reasonable, cool-headed argumentation or deliberation. At the end, the debate, no matter how intense and sometimes extremely emotional and confrontational it was, remained restricted to a small circle of ‘stakeholders’. The EU 2010 Report which was released on 9 November—two months after the referendum—did criticise this situation and warned that “the implementation of the amended constitutional provisions through legislation, in line with European standards, (was) key”.<sup>479</sup>

The media, as was the case, applied self-censorship and largely remained outside the debate.<sup>480</sup> In spite of that, there were some civil society

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<sup>479</sup> “The drafting and adoption of the constitutional reform was not preceded by a consultation process involving political parties and civil society. [...] broad public consultation involving all political parties and civil society, with their full engagement, is needed to strengthen support for constitutional reform. The implementation of the amended constitutional provisions through legislation, in line with European standards, is key” (EC 2010: 8).

<sup>480</sup> European Commission 2010 Turkey Progress Report criticised the political pressure on the media: “Regarding freedom of expression, including freedom and pluralism of the media, there was limited progress while open and free debate has continued and expanded. However, Turkish law does not guarantee freedom of expression in line with the ECHR and the ECtHR case law. [...] Undue political pressure on the media and legal uncertainties affect the exercise of freedom of the press in practice” (EC 2010: 78). The EP was more vocal in their criticism of the censorship; “[...] concerned about the deterioration in freedom of the press, about certain acts of censorship and about growing self-censorship within the Turkish media [...] calls on the Turkish government to uphold the principles of

organisations that were really active. YARSAV prepared booklets, as early as April 2010—even before the package came to the Plenary—to convey its views, but was even unable to distribute them to Deputies because the Office of the Speaker of the Parliament obstructed this initiative. “Even pizza-sellers can distribute ads in parliament, but not YARSAV” complained one senior official.<sup>481</sup> YARSAV also briefed the political opposition—parties—including Abdullatif Sener, leader of the *Türkiye Partisi* which was not represented in the Parliament. However, the governing party—AKP—and the Minister of Justice even refused to give an appointment. “We tried to reach the public through the media, indirectly only” said one other YARSAV official.

The polemical row between TÜSIAD President Boyner and Prime Minister Erdogan over ‘taking sides’ about the ‘package’ which was put to referendum occurred in this process. Because TÜSIAD’s position—on the way all the amendments were wrapped up together—was identical to that of the opposition CHP, it was taken as opposing the Government. Actually, TÜSIAD—like opposition parties—did want the controversial two items related to the Constitutional Court and the HCJP be removed from the package and voted on separately. There was a concern—which would soon prove true—that these two items could further polarise the society and hamper the impending work on a new constitution and frustrate the motivation for compromise and consensus-seeking which were considered essential for such a gigantic endeavour. However, Prime Minister was emphatic in his words: “Whoever did not take a side, would be doomed to be eliminated.” This widely publicised quarrel did have a very discouraging effect, not only on TÜSIAD but on the civil society as a whole.

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press freedom; stresses that an independent press is crucial for a democratic society [...] decides to closely follow the cases of [...] journalists facing police or judicial harassment” (EP 2010: Art 8).

<sup>481</sup> Interview, January 2012. This complaint was raised by more than one member of YARSAV as well as some other civil society organisations.

The whole ‘package’ was put to the voters with one single choice, either ‘yes’ or ‘no’ alternative.<sup>482</sup> The constitutional amendments gained the vote on 12 September 2010. Turnout was 74% and 58% voted ‘Yes’, while 42% voted ‘No’. Soon after the referendum, the Government took further legislative initiatives in order to implement the Constitutional amendments.

The key provisions of the package changed the composition, structure, membership and election methods of the Constitutional Court and of the High Council of Judges and Prosecutors. Soon after, the government prepared an action plan for legislation necessary for the implementation of these constitutional amendments.

Immediately after the referendum, on 27 September 2010, the Minister of Justice Ergin, requested an opinion of the Venice Commission on four draft laws implementing the constitutional amendments: the laws on the High Council of Judges and Prosecutors, the Organisation of the Ministry of Justice, the Organisation of the Constitutional Court and the Law on Judges and Prosecutors.

#### **4.3.3. Law on the High Council of Judges and Prosecutors**

The constitutional amendment package brought about some fundamental changes to the High Council of Judges and Prosecutors.<sup>483</sup> Its composition

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<sup>482</sup> See; Law No 5982, dated 07 May 2010, Art 27.

<sup>483</sup> The Constitution of the Republic of Turkey (as amended on 07 May 2010). “Art. 159 – [...] The Supreme Council of Judges and Public Prosecutors shall be composed of twenty-two regular and twelve substitute members and shall comprise three chambers. The President of the Council is the Minister of Justice. The Undersecretary to the Minister of Justice shall be an ex-officio member of the Council. For a term of four years, four regular members of the Council [...] shall be appointed by the president from among academicians in the field of law, and lawyers; three regular and three substitute members shall be appointed by the plenary assembly of the High Court of Appeals [...] two regular and two substitute members shall be appointed by the plenary assembly of the Council of State [...] one regular and one substitute members shall be appointed by the plenary assembly of the Turkish Justice Academy [...] seven regular and four substitute members which are first category judges [...] shall be selected by civil judges and public prosecutors [...] three regular and two substitute members which are first category judges [...] shall be selected by

became more pluralistic and more representative of the judiciary as a whole. The number of full members was increased from seven to twenty-two. In addition to representatives of the Court of Cassation and the Council of State, the representatives of first-instance courts, the Justice Academy, law faculties and lawyers were also included as new members. The Inspection Board which was under the Ministry of Justice was transferred to the High Council.

The Government, before long, took initiative for the implementation of these changes and forwarded a bill<sup>484</sup> to the Parliament on the ‘High Council of Judges and Prosecutors’ on 27 October 2010 and it was referred to the Justice Committee on 01 November 2010 by the Speaker’s Office.

The general rationale in the bill included first a listing of shortfalls in the existing law to include Justice Minister being the sole authority for inspections and investigations, membership of the Minister and Undersecretary in the Council, absence of Council’s its own Secretariat, premises, and an independent budget. The need for a “more democratic, transparent and broad-based structure” for the HCJP was emphasised. The rationale had nothing to do with specific articles of the text in hand, but was just a repetition of general principles which came to appear in many legislative texts in the course of judicial reform: “[...] requirements of the country, general consensus on the need for a constitutional change [...] some draft texts for a new constitution already prepared by various civil

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administrative judges and public prosecutors for four years [...] They may be re-elected at the end of their term of office. [...] The administration and the representation of the Council are carried out by the President of the Council. The President of the Council shall not participate in the work of the chambers. [...] The president may delegate some of his/her powers to the deputy president. [...] Supervision of judges and public prosecutors with regard to the performance of their duties [...] investigation [...] inquiries [...] shall be carried out by the Council’s inspectors [...] with the permission of the President [...]. Apart from the decisions regarding the prohibition of the pursuit of the profession, there shall be no recourse to any judicial remedy against the decisions of the Council.”

<sup>484</sup> Government Bill for the ‘High Council of Judges and Prosecutors’ replacing the Law No 2641; dated 27 October 2010, based on the Cabinet decision dated 25 October 2010.

society organisations and political parties, extensive debate which took place in the society involving experts on the subject”.<sup>485</sup>

It clearly stated that “the Inspection Board—previously part of the organisation of the Ministry of Justice—was subordinated to the Council and the prerogatives of the Minister related to inspection of judges and approving requests for investigation were *largely* transferred to the Council” (emphasis added). Secretary General for the High Council of Judges and Prosecutors would also “be appointed by the Minister from among the three candidates proposed by the Plenary of the Council”.

The rationale for Art. 6, made reference to the concern raised earlier in the Venice Commission’s report<sup>486</sup> that “the Minister should not attend all meetings of the Council, particularly those related to discipline”. The draft increased the authority of the Acting President extensively. He/she would be elected by the Plenary with simple majority. The rationale given for Art. 11, for the selection process of the HCJP Secretary General from among three candidates by the Plenary, and his/her appointment by the Minister was that “a *harmonious* working relationship was aimed between the Secretary General and both the Council and the Minister” (emphasis added). However, critically, Art. 6 clearly stipulated that the President—i.e. the Minister of Justice—would have the final say for “approval of inspection, examination, investigation and prosecution proposals, forwarded by relevant departments of the Council, for judges and public prosecutors.”

A preliminary version of the draft had already been sent to the Venice Commission early October 2010. The two *rapporteurs* tasked by the Commission transmitted some immediate ‘individual’ comments to Turkish authorities in mid-November—when the bill was in the Committee. A Venice Commission delegation—*rapporteurs*—travelled to Ankara for a two day visit late November 2010. They met with Deputy Undersecretary of the Ministry of Justice, the Vice President of the Court of Cassation, the

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<sup>485</sup> Clearly this was the product of a copy-paste which took previous work on the constitutional package as the basis.

<sup>486</sup> Venice Commission 2007 Report, Art. 33.

President of the Constitutional Court, the President of the Council of State, the President of the High Council of Judges and Prosecutors, representatives of the Turkish Bar Association and political parties.

On 20 December 2010, Venice Commission provided an interim opinion on the draft law<sup>487</sup>, still based on the original ‘preliminary’ version of 27 September text. In this opinion the Commission observed that the draft law was primarily a text implementing the Article 159 of the Constitution which laid down the basic principles for HCJP and making them operational, and that the constitutional ‘reform’ package—as it was already passed by the referendum—could not be changed following the Commission’s advice. The Commission stressed that its opinion “should be seen as input in the broader and longer process of constitutional reform” and hoped that “further reforms” would be “made in the years to come”. In this, once again, there was a hardly hidden criticism, dissatisfaction with the general results of the constitutional ‘reform’ package, clear warning about a need for further—and deeper—(constitutional) reforms and a manifestation of a lack of faith in this respect. These messages were further clarified and spelled out in the ‘opinion’.

The Venice Commission repeated its earlier offer of 2009 to provide assistance to a constitutional reform *process*, “should the Turkish authorities make such a request”. There was a general observation that “the institutionalisation of the HCJP would be at least as important for its future role and function as the formal rules”. Much would be depend on “the institutional culture, dynamics and context”. The tone adopted by the *rapporteurs* was indeed clearly—and unusually—pessimistic for the future: “It is to be hoped that it will develop in an independent, impartial, professional and efficient way”. Nevertheless, the Commission welcomed several steps taken: increase in the number of members, the more pluralistic

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<sup>487</sup> European Commission for Democracy Through Law (Venice Commission) ‘Interim Opinion on the Draft Law on Judges and Prosecutors (of 27 September 2010)’. 20 December 2010. Opinion No. 600/2010. 27 August 2012.  
[http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)042-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)042-e.asp).

composition, the wide transfer of power from the Ministry of Justice to HCJP, institutionalisation as a separate entity, reduction in the power of the Minister of Justice, creation of an internal appeals and judicial review system.

However, there were “some issues that still required attention”. The appointment of four members who were not judges “did not establish the link between the HCJP and the Parliament and did not ensure the presence in the HCJP of different cultural and political orientations”, leaving the conduct of the relationship between the world of politics and the HCJP to the Minister of Justice. The Commission recommended, as the best solution, at least four members, appointed by the President “be elected by the Parliament, preferably with a qualified majority”. There was reference to a TESEV publication (Yazici 2010) in the paragraph addressing this subject.

The Commission noted that the Minister for Justice, as the president of the HCJP, retained “substantive powers” with regard to the setting the agenda, the appointment of the Secretary General, approving all investigations which gave “the power of veto over investigations of judges and prosecutors”. It would be “preferable” that the power of the Minister “be further limited”, in particular *veto power* over investigations “be eliminated”. Finally, Turkish authorities were encouraged to “broaden the process by inviting the active participation of the opposition parties, civil society, non-governmental organisations, and the general public—in a process that should be as inclusive and transparent as possible.

However, the Law on the High Council of Judges and Prosecutors, Law No 6087, was passed on 11 December 2010—about a week even before the Commission’s interim opinion was rushed.<sup>488</sup>

Venice Commission’s ‘opinion’ on the draft Law on Judges and Prosecutors<sup>489</sup> was made available late March 2011. This was not only an

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<sup>488</sup> The EU Commission in its 2010 Report had already reminded the Government the need for a consultative process for implementation, to no avail: “[...] indicated its intention to consult stakeholders. Consultations are also ongoing with the Venice Commission of the Council of Europe for those constitutional amendments regarding judiciary” (EC 2010: 7).

opinion on this law *per se*, but also an opinion on whether the previous opinions offered were taken into consideration by the Turkish authorities in reform efforts. The Commission concluded that “the recommendations made by the Venice Commission in its opinion on the ‘HSYK (HCJP)’, which contained several critical remarks, (did) not seem to be reflected in this draft law (on Judges and Prosecutors)”. This observation led to even more straight-forward remarks throughout the text:

[...] it remains largely unchanged and the amendments cannot be regarded as a comprehensive or fundamental reform. [...] it can therefore not be considered as being a new codification, nor has it introduced a new type of ‘philosophy’ for regulations and it does not introduce any new ways of protecting judicial independence, at least not as far as appointments, promotions, supervision and disciplinary sanctions are concerned. [...] there are certain fundamental problems within the system, mainly centring on the role of the Ministry of Justice and its relationship to the judiciary, which are not addressed in the amendments in any fundamental way.

The Commission, once more, remarked that “the relationship between the executive—in the form of the Ministry of Justice—and the judiciary and prosecutors, which in some respects too close in a manner which may pose a risk to independence”.

#### **4.3.4. Law on the Organisation of the Constitutional Court and Trial Procedures**

The amendment package voted in the referendum introduced important changes also to the Constitutional Court.<sup>490</sup> The Government introduced a

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<sup>489</sup> European Commission for Democracy Through Law (Venice Commission) ‘Opinion on the Draft Law on Judges and Prosecutors of Turkey’. 29 March 2011. Opinion No. 610/2011. 27 August 2012. [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)004-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)004-e.pdf).

<sup>490</sup> The Constitution of the Republic of Turkey (as amended as of 7 May 2010). Art. 146 - The Constitutional Court shall be composed of seventeen members. Turkish Grand National Assembly (TGNA) shall elect two members among the presidents and members of

bill for the ‘Organisation of the Constitutional Court and Trial Procedures’<sup>491</sup> on 11 January 2011. It was referred to the Committee on the Constitution on 11 January 2011—the same day—by the Speaker’s Office. The law, Law No 6216, was adopted on 30 March 2011. A Venice Commission delegation, in September 2011, held meetings in Ankara with the Constitutional Court, the Council of State, the Court of Cassation and the Ministry of Justice. However, when the Commission gave its opinion<sup>492</sup>

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the Court of Auditors, [...] and one member [...] from among three candidates nominated from among self-employed lawyers by the heads of the Bar Associations. [...] [...] In this election to be carried out in the TGNA, two thirds majority of the component members for each vacant position shall be required for the first ballot, and absolute majority of component members shall be required for the second ballot. If an absolute majority cannot be obtained in the second ballot, a third ballot shall be held between the two candidates who have received the greatest number of votes in the second ballot [...]. [...] The President of the Republic shall choose three members from High Court of Appeals, two members from Council of State, one member from the Military High Court of Appeals, one member from the High Military Administrative Court [...] shall choose three members from among three candidates to be nominated for each vacant position by the Council of Higher Education [...] shall choose four members from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteurs of the Constitutional Court. [...] [...] To qualify for appointments as members of the Constitutional Court; academicians shall be required to possess the title of associate professor or professor; lawyers shall be required to have practiced as a lawyer for at least twenty years; high level executives shall be required [...] to have worked for at least twenty years in public service, and first category judges and public prosecutors with at least twenty years of work experience [...] provided that they are all over the age of forty five [...]. Art. 147 - The members of the Constitutional Court shall be elected for a term of twelve years. A member shall not be re-elected. The members of the Constitutional Court shall retire on reaching the age of sixty-five. [...]

<sup>491</sup> Government Bill for the ‘Organisation of the Constitutional Court and Trial Procedures’ replacing the Law No 2949; dated 11 January 2011, based on the Cabinet decision dated 08 November 2010.

<sup>492</sup> European Commission for Democracy Through Law (Venice Commission) ‘Opinion on the Law on the Establishment and Rules of Procedure of the Constitutional Court of Turkey,’ 18 October 2011. Opinion No. 612/2011. 27 August 2012. [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)040-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)040-e.pdf).

in October 2011, the law, again, had already been adopted and it was *after the fact*.

The Commission criticised the voting procedures in the Parliament: “[...] the threshold of two thirds can easily be circumvented. A qualified majority in all rounds of voting can lead to situations of blockage. However, requiring such a qualified majority ensures that the majority will seek to find a political compromise, ideally settling on neutral candidates rather than simply waiting for the third round of voting for electing candidates close to the majority”. However, it was also noted that “the effect of this deficiency (was) limited by the fact that the Grand National Assembly (was) only free to vote among the candidates presented” by the respective high courts and the Bar Associations”.

It is noteworthy that although the Commission listed some thirty recommendations “to improve the law”, this list did not include anything related to the dominant position of the President of the Republic maintained in the selection process of the judges of the Court. Perhaps this was due to the fact that this aspect had already been stipulated in the Constitution and the ‘opinion’ was related to the law only.

#### **4.3.5. Court of Appeals and the Council of State**

As the final episode of the long-running judicial reform process, the Government forwarded a bill<sup>493</sup> for amending the Law on the Court of Appeals<sup>494</sup> and the Law on the Council of State<sup>495</sup> on 21 January 2011. It was referred to the Justice Committee on 24 January 2011 by the Speaker’s Office. The rationale included references ranging from *Magna Carta Libertatum* of 1215 to the Court of Appeals web-site, to speeches by presidents of the high courts—but nothing from the civil society work or

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<sup>493</sup> Government Bill for amending some laws and government decrees; dtd 21 January 2011, based on the Cabinet decision dtd 20 January 2011. 6 February 2013. <http://www.tbmm.gov.tr/sirasayi/donem23/yil01/ss610.pdf>.

<sup>494</sup> See; Law No 2797 adopted on 4 February 1983. Official Gazette No. 17953.

<sup>495</sup> See; Law No 2575 adopted on 6 January 1982. Official Gazette No. 17580.

input in any form. Basically, the number of departments and the personnel rosters in the Court of Appeals and in the Council of State were increased.

<sup>496</sup>

The debate in the Justice Committee on the intended changes in respective institutions was typical and symbolic of the ‘spirit of the time’—extremely confrontational. The main opposition party—CHP—members resigned from the Committee, and MHP members, having failed in either obstructing the debate or making any amendments, abstained and lodged a statement of opposition. The debate in the Committee was completed in three days, thanks to ‘sufficiency of discussion’ motions regularly made by the ruling party MPs and seconded/adopted again by themselves. The bill was passed by the Plenary on 9 February 2011.<sup>497</sup>

#### **4.3.6. Military courts**

The Constitutional changes of 2010 also included reaffirmation of limits of the military courts’ authority.<sup>498</sup> Crimes related to “state security, constitutional order, and its proper functioning” covered in Sections Four and Five of the Turkish Criminal Code<sup>499</sup>, “even if they are committed by military personnel” were excluded from the jurisdiction of the military courts. This change would have far-reaching effects on not only civil-

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<sup>496</sup> In the Court of Appeals, the departments were increased from 32 to 38, personnel from 250 to 387; the Council of State had 15 departments with two increase and personnel roster was increased by 61. There were also some changes in the State Forensic Institute.

<sup>497</sup> See; Law No 6110 adopted on 9 February 2011. Official Gazette No. 27846.

<sup>498</sup> The Constitution of the Republic of Turkey; “Art. 145 – Military justice shall be exercised by military courts and military disciplinary courts. These courts shall have jurisdiction to try military personnel for military offences committed by them against other military personnel or in military places, or for offences connected with military service and duties. Those cases of crimes committed against state security, constitutional order, and the proper functioning of this order, under any circumstance, shall fall within the jurisdiction of criminal courts.”

<sup>499</sup> See; Law No 5237, Turkish Criminal Code. Volume Two, Part Four, Section 4-Art 302-308; Section 5-Art 309-316. 7 February 2013.

<http://www.tbmm.gov.tr/kanunlar/k5237.html>.

military relations in Turkey but also on the general political climate. Because, extensive trials in Special Criminal Courts<sup>500</sup> involving hundreds of high-ranking military officers—which were made possible by this single amendment—soon became a major point of contention between the governing party and the opposition on one hand and their constituencies on the other. The fact that such trials had already started as early as mid-2007, i.e. initially lacking real legal jurisdiction, made this development even more important and contributed to the already high polarisation and confrontational attitude in Turkish politics and in society in general.

#### **4.3.7. Aftermath**

Unlike the Venice Commission, the European Union, initially, seemed satisfied with the constitutional changes which received a clear endorsement by the Turkish people. The only concern the 2010 Progress Report registered was about the ‘military’ judges in the Constitutional Court. Even the limited number of judges who were to be elected by the Parliament or the simple majority required in the Parliament—which eliminated any possibility for compromise between the majority party and the minority opposition—‘escaped’ the attention of the rapporteur.<sup>501</sup> In the HCJP, only the unchanged position and authority of the Minister of Justice within the HCJP was raised as a point for concern.<sup>502 503</sup> However, the European

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<sup>500</sup> These controversial courts were finally closed in February 2014 and the case files they were holding were transferred to Criminal Courts.

<sup>501</sup> “There are three voting rounds in Parliament. In the third voting round the candidates are elected by simple majority. No alternate members are envisaged. The involvement of the Turkish Parliament in the election of Constitutional Court judges brings Turkish practice closer to that of EU Member States. However, two of the judges are still military judges. [...] As constitutional jurisprudence in a democratic system is a civilian matter, the presence of military judges is questionable. In addition, [...] military judges might return to the military justice system when their term in the Constitutional Court expires, which could raise questions about their impartiality as Constitutional Court judges” (EC 2010: 13).

<sup>502</sup> “Overall, there has been progress in the area of the judiciary. [...] However, the Minister of Justice still chairs the High Council and has the last word on investigations” (EC 2010: 14).

Parliament was more straightforward in their assessment of the referendum results. EP Resolution<sup>504</sup> welcomed the amendments “as a step in the right direction”, called on the Government “to ensure that all political parties, as well as civil society, are closely involved in the whole process”, recommended that “the Venice Commission also be invited to participate”. EP also made a very critical assessment as to the perception of the general nature of recent changes:

[...]judicial independence and impartiality are among the keys to the functioning of a pluralistic democratic society; is concerned that Turkish judicial arrangements have not yet been improved sufficiently [...] asks the government to implement the constitutional amendments adopted in this area, with full observance of the separation of powers between the executive and the judiciary, and of judicial independence and impartiality, in accordance with European standards. (EP 2010: Art 13)

The elections for the HCJP were held on 17 October 2010—in less than a month following the referendum. Ten full and six substitute members of the HCJP were elected by first-instance judges and prosecutors with almost total turnout. Candidacy was open to all judges and prosecutors, including those working at the Ministry of Justice. The vote was secret, but campaigning was prohibited by the Law No 6087.<sup>505</sup> An appeal by YARSAV to the Supreme Election Board alleging unfair elections and

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<sup>503</sup> YARSAV was also vocally critical of the political influence of the Ministry of Justice in the HCJP: “Under Secretary of the Ministry of Justice is always under the administrative control and political influence of the minister himself and this has not changed. The number of HCJP members was increased but, in practice, decisions are still made by a small group—of 3 or 4—still not democratic, nor representative” said one senior official. Interview; 3 January 2012.

<sup>504</sup> “Welcomes the adoption of constitutional amendments as a step in the right direction, and urges their proper implementation [...] underlines at the same time, however, the pressing need for overall constitutional reform transforming Turkey into a fully-fledged pluralistic democracy [...]” (EP 2010: Art 6).

<sup>505</sup> See; Law No 6087 adopted on 11 December 2010. Official Gazette, 18 December 2010, No. 27789. Art. 25.

undue influence by the Ministry of Justice<sup>506</sup> was rejected, on 24 October, unanimously. The newly formed HCJP held its first meeting the next day, on 25th.

In 2011, the views in EU—based on the way constitutional amendments were actually implemented and the Venice Commission’s input was largely ignored—had already started to change, coming much closer to the Venice Commission’s earlier observations:

[...] the system imposed by the Constitutional Court leaves no room for election of minority candidates, [...] candidates who are elected by the majority of the voters could take all the seats. Nomination of the four non-judicial members of the High Council is left to the discretion of the President of the Republic, whereas the Grand National Assembly is not involved. The current provisions do not ensure permanent representation of members of the Bar in the High Council. The Minister can veto the launching of disciplinary investigations against judges and prosecutors by the High Council. (EC 2011: 84)

The changes implemented in the Constitutional Court, through the Law on the Organisation of the Constitutional Court and Trial Procedures in March 2011, were also subject to criticism:

[...] Constitutional Court is insufficiently representative of the Turkish legal community as a whole and still over-dominated by the high courts. The influence of the Grand National Assembly over the composition of the Constitutional Court is also inadequate, in terms of both the number of members it elects and the choice of eligible candidates. [...] The current election process in the Assembly does not fully guarantee the Court’s impartiality. At the same time, the President

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<sup>506</sup> One YARSAV senior member explained the rationale behind their appeal to YSK: “In HSYK (High Council of Judges and Prosecutors) elections; justice minister—due to his prerogative to authorize investigations on any wrong-doings by judges and prosecutors, judicial investigators—and Heads of Judiciary Commissions in Court Houses—decided the outcome, through intimidation and through a mixture of coercion and promises.” Interview; 3 January 2012.

of the Republic plays an over-dominant role in the appointment process. (EC 2011: 85)

Also EU was disappointed and certainly dissatisfied with the way the whole process was handled, i.e. complete lack of ‘public consultation’, transparency and inclusiveness.<sup>507</sup> It clearly stated that; “[...] further steps are needed for the independence, impartiality and efficiency of the judiciary [...]” (EC 2011: 18).

#### **4.4. The outcome: Turkey after the ‘reform’**

Despite the ‘rather gloomy’ picture of the political scene after the reforms, both the Turkish public and the international community—above all the EU—although intuitively sceptical, was nevertheless hopeful of a change. After the intense and wide-spread polarisation over the September 2010 referendum, ongoing court cases—Balyoz, Ergenekon, KCK prominent among others—involving thousands of arrests, the so-called ‘Kurdish opening’ which came to dominate the public debate from mid-2009 on, and the Syrian crisis with direct and deeply felt effects on Turkey and Turkish domestic politics, the wishful- thinking was about emergence of a ‘Turkish spring’. Actually, it was generally felt that this confrontational, zero-sum politics was not sustainable. In the period leading to the general elections of 2011, some sense of reconciliation, compromise—and in the face of the developing dire situation in the Middle East—an attempt for national unity, easing of political tension along with some loosening of the restrictions on the media and greater respect for fundamental freedoms—

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<sup>507</sup> “[...]the adoption of legislation implementing the September 2010 constitutional amendments was not accompanied by broad and effective public consultation involving stake holders in the country, despite government commitments to this” (EC 2011: 7). “The upcoming review of the judicial reform strategy needs to be carried out with the participation of all stakeholders, the Turkish legal community and civil society” (EC 2011: 19). “There is a need to review the existing (judicial reform) strategy in a transparent and inclusive fashion, so that the revised strategy will be owned by the Turkish legal community and the wider public” (EC 2011: 86).

freedom of expression and freedom of press being prominent—were wishfully anticipated. The onus, it was felt, was on the Government and the leadership of the governing party as they came out of the referendum, politically, extremely powerful—to an unprecedented degree in the modern Turkish history.

In January 2011, as the general elections were looming over the horizon, TÜSIAD, wiping out the unpleasant memories of the previous year, launched yet another ‘opening’ to politics and political parties. A TÜSIAD team led by Ms. Boyner visited the parties and former president Demirel, in Ankara.<sup>508</sup> Boyner expressed hope for “collaboration with all parties and exchange of views during the election process”. She stressed ‘democratisation, new constitution, economy, judicial reform’ as priorities and said that they were expecting “refined and civilised debate”. However such expectations proved false and major confrontations between the civil society and the Government—partly involving also MHP—dominated 2011 and 2012. This unfavourable state of affairs, gradually expanded to involve also EU institutions and authorities, eventually having an indirect but powerful negative effect on the democracy enhancing functions of civil society organisations.

Prime Minister Erdoğan himself participated in the opening ceremony of the Open Government Partnership (OGP) Initiative in September 2011.<sup>509</sup> In OGP Action Plan (2012), the government declared that for the ‘objective’ of ‘active participation of citizens, non-governmental and private sector’—in the policymaking process; “the aim (was) to increase the level of public

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<sup>508</sup> “TÜSIAD Baskani Boyner’in son duragi MHP oldu”. 12 January 2011. Milliyet. 22 July 2012. <http://www.milliyet.com.tr/tusiad-baskani-boyner-in-son-duragi-mhp-oldu/siyaset/sondakika/12.01.2011/1338459/default.htm>.

<sup>509</sup> ‘Erdoğan Obama ile gorustu’. 20 September 2011, Haberturk. 25 March 2013. <http://www.haberturk.com/dunya/haber/671456-erdogan-obama-ile-gorustu>, and; <http://www.akparti.org.tr/site/haberler/acik-yonetim-ortakliginin-acilis-torenine-katildi/13156>.

participation in policymaking and implementation processes”.<sup>510</sup> Also there were pledges regarding the freedom of the press, “to enhance the access of all citizens to such information, so as to ensure that public oversight of officials is made possible and easier, thereby providing for greater democratisation and a free press regime” (OGP Action Plan: 2). But such *cliché* statements did not make much difference in terms of implementing even the basic principles associated with the concept of ‘open government’.

The decision-making, law-drafting and the legislative process for the so-called Third Judicial Package presented yet another opportunity to test what really changed—if any—in Turkey and in particular in the political system and the political behaviour. In January 2012, Justice Minister Ergin announced government plans to amend Art. 250 and Art. 251 of the Code of Criminal Procedure (on organised crime and the authority and procedures to investigate such crimes), within the scope of the Third Judicial Package.<sup>511</sup> Earlier, a split between the judiciary, or ‘parts’ of the judiciary—i.e. Criminal Courts with Special Powers—and the National Intelligence

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<sup>510</sup> For example, during the preparation of laws and other regulatory processes, “the information (would) be shared with the public over [www.regulation.gov.tr](http://www.regulation.gov.tr)” (OGP Action Plan: 5). <http://www.opengovpartnership.org/country/turkey/action-plan>.

<sup>511</sup> The Third Judicial Reform Package, consisting of some 88 ‘articles’, included amendments in four different and mostly unrelated areas: Bankruptcy and Enforcement Law, civil judiciary, criminal judiciary and freedoms of press and expression. Those amendments were mainly related to Law No 2004, twentyseven articles; to Law No 5521, one article; to Law No 5683, two articles; to Law No 1618, one article; to Law No 2575, five articles; to Law No 2576, two articles; to Law No 2577, nine articles; to Law No 4054, one article; Law No 2802, one article; to Law No 3402, one article; to Law No 3713, two articles; to Law No 4301, one article; 5187, two articles; to Law No 5237, twenty articles; to Law No 5252, one article; to Law No 5271, four articles; to Law No 5320, one article; to Law No 5326, one article; to Law No 5352, three articles—*nineteen laws*, in one single ‘bag of laws’. Plus, one article amended Government Decree 190—dated 13 December 1983, and various articles of eight different laws. For details see the government bill dated 30 January 2012 “Yargi Hizmetlerinin Etkinlestirilmesi Amaciyla Bazi Kanunlarda Degisiklik Yapilmasi ve Basın Yoluyla Islenen Suclara Iliskin Dava ve Cezaların Ertelenmesi Hakkında Kanun Tasarisi”. 26 March 2013. <http://www.adalet.gov.tr/duyurular/2012/ocak/kanuntasarisi/tasari.pdf>.

Agency, that is the Under Secretary for MIT, had prompted the government to provide a shield to the Under Secretary in office against a criminal investigation launched by one of these courts—by passing a single-article amendment to the Law on MIT. From then on, two differing views emerged—and were hotly debated—not only within the governing party but also in the wider political stage in Turkey in general. If and when enacted, new articles would make it difficult for Special Courts and Prosecutors to issue detention orders. In the face of serious resistance and unhappiness about a change—in different circles and for various reasons—government declared that this issue *would not* be included in the Third Package and gave *repeated* assurances. This continued until the government forwarded the draft bill—as promised—to the Parliament on 30 January 2012.

The bill was referred to the Justice Committee—and to the Plan and Budget Committee and the Committee on the Constitution, as secondary committees—on 2 February, then to the sub-committee of the Justice Committee—on 15 February. The Justice Committee, after a long interval of four months, completed its report in mid-June.<sup>512</sup> The bill eventually came to the Plenary, on Saturday 30 June 2012.

The most critical and controversial amendment—on abolishing the *Special Courts*, so-called *Art. 250 courts*—was presented as a motion by the governing party deputies, tabled only on the second and the last day of the debate on this comprehensive package, on Sunday 1 July, thereby bypassing the Committee—and effectively, also the Plenary—stage of the legislative process. The law was adopted, at the end of a legislative marathon<sup>513</sup>, on 2 July and was signed into law by the President on 5 July 2012.<sup>514</sup> Because of the way, such a major change was imposed on the Parliament, clearly avoiding any debate not only in the Parliament but also in the general public, academia, media and civil society, there occurred an immediate

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<sup>512</sup> Justice Committee Report, dated 12 June 2012. 26 March 2013.

<http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss278.pdf>.

<sup>513</sup> Two sessions from mid-30 June to mid-2 July took about 40 hours.

<sup>514</sup> Law No. 6352.

reaction, violent anger which prompted physical fight between the deputies, followed by a short break by the Acting Speaker and then, the article was passed by the governing party majority in a minute time. Since this amendment was never debated—even the nature of it was not known—until it was tabled in the Plenary<sup>515</sup>, the debate started immediately after—not in the Parliament because it went into summer holiday for three months starting next morning, but in its absence, outside the Parliament, further heightening the already very high political and ideological polarisation in the country.<sup>516</sup>

Another test bed was the new education law which restructured the Turkish education system radically. When the governing party introduced, in February 2012, the so-called ‘uninterrupted education’<sup>517</sup> draft law, TÜSIAD objected to it and said that “the submission of this law proposal to the Parliament—not even by the Government, but by a group of Deputies—without initiating a participatory and comprehensive negotiation process, had proven to have several shortcomings”.<sup>518</sup> Prime Minister Erdogan<sup>519</sup> reacted aggressively and said: “These reactions are stale, out of date and

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<sup>515</sup> One opposition MP, A. Rıza Öztürk—spokesperson for the CHP in the Justice Committee—said in a live interview that; “this article of the draft law did not come to the Committee. They (CHP) sought the text, before the Plenary session, from the governing party officials to review and offer their views, but this was refused on the ground that ‘it would be distributed when it was tabled in the Plenary’ anyway”. Habertürk Tv. 03 July 2012, 14.20.

<sup>516</sup> The EU 2011 Progress Report had warned, about nine months ago, that “the upcoming review of the judicial reform strategy needs to be carried out with the participation of all stakeholders, the Turkish legal community and civil society” (EC 2011: 19).

<sup>517</sup> Although it was called ‘uninterrupted’, in fact the new system introduced a system of interruptions in the form of 4+4+4 years. It went into affect starting from 2012-2013 academic year.

<sup>518</sup> “TÜSIAD’dan ‘4+4+4’e tepki”. 24 February 2012. CNN Turk. 21 July 2012.

<http://www.cnnurk.com/2012/turkiye/02/23/tusiaddan.4.4.4e.tepki/650396.0/index.html>.

<sup>519</sup> “Erdogan TÜSIAD’i fena fircaladi”. 28 February 2012. Milliyet. 21 July 2012.

<http://siyaset.milliyet.com.tr/erdogan-tusiad-i-fenafircaladi/siyaset/siyasetdetay/28.02.2012/1508808/default.htm>.

ignorant of the facts of Turkey” to which Boyner responded by stating that she<sup>520</sup> was “surprised by his reaction“ and that it was “only normal for TÜSIAD to work on this subject and express opinions”. Erdogan<sup>521</sup> hit back by even harsher words: “We are not the government of the gentry, elites or bosses. Nobody should behave with the reflexes of the old Turkey. The will of the nation is above all. Everybody should be living with this and have to stomach it”. A potential contact was avoided when Prime Minister cancelled attendance to a previously planned opening in the city of Mardin, at the last minute, early March.

Later on 8 March, during a ceremony<sup>522</sup> when Ms. Boyner was awarded, by Economist, for the second time, the title of ‘Civil Society Leader of the Year’, she said:

Civil society institutions are absolutely indispensable institutions of democracy for us—the citizens—so that we can participate in governance and have a relative say in the process of making rules that govern our lives. On the other hand, unrestricted mediums for public debate are certainly needed so that participants are encouraged, and civil society organisations can exist, take initiative and work productively.

After this unusually coarse and abrasive exchange of salvos of extraordinary nature, there started yet another stand-off between the two parties. In less than four months time, mid-June 2012, yet another crisis, this time over the Government attempts to reregulate the practice of ‘abortion’ came about.<sup>523</sup> Again, as was the case the year before, Dpty. Prime Minister

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<sup>520</sup> “Basbakanin tepkisine sasirdim”. 01 March 2012. Cumhuriyet. 21 July 2012. <http://www.cumhuriyet.com.tr/?hn=319010>.

<sup>521</sup> “Patronların hükümeti degiliz”. 02 March 2012. Milliyet. 21 July 2012. <http://ekonomi.milliyet.com.tr/patronlarin-hukumeti-degiliz/ekonomi/ekonomidetay/02.03.2012/1510058/default.htm>.

<sup>522</sup> Manset. March 2012. 19 July 2012. <http://manset.tusiad.org/index.php/mart-2012/137-uemit-boyner-yilin-sivil-toplum-lideri-oedueluenuue-aldi>.

<sup>523</sup> “Bulent Arinc’tan carpici aciklamalar”. 15 June 2012. Sabah. 22 July 2012. <http://www.sabah.com.tr/Gundem/2012/06/15/bulent-arinctan-carpici-aciklamalar>.

Arinc—apparently because of their opposing views—directed hardly concealed threats against TÜSIAD. He said that “her careless outbursts” were “disregarding (the interests of) her organisation”. They had just shaken hands, only eight days ago—after a year-long resentment and lack of communication.

Also, allegations about German foundations in general and Heinrich Böll Stiftung Turkey in particular did not stop. In February 2012, one ‘witness’ said that there was a connection between the members of alleged terrorist network ‘Ergenekon’ and German foundations in Turkey and Heinrich Böll did make some payments at least to one of the accused in the case<sup>524</sup>. Head of Heinrich Böll in an interview said that “the real problem they (Heinrich Böll) were concerned about was the fact that courts took this individual and his allegations seriously”.<sup>525</sup>

On the other hand, despite repeated assurances from the Prime Minister and from the Speaker of the Parliament<sup>526</sup> himself who has been leading the effort for drafting a brand-new and ‘democratic’ constitution, in mid-2013, this aim looks like a *bridge too far*. The work of the Parliamentary Conciliation Committee on the Constitution seems to have stuck in fundamental disagreements over the articles, related—potentially—to a ‘Kurdish’ national identity and a regional home-land with autonomy granted to a ‘Kurdish people’ within Turkey, relations between state-society-

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<sup>524</sup> “Perinçek ve avukatına duruşmadan men cezası”. 21 February 2012. Radikal. 25 July 2012. <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1079475&CategoryID=77&Rdkref=6>.

<sup>525</sup> “Ulrike Dufner: ‘AKP, AB reform sürecini devam ettirmek istiyorsa, bizi ve Türkiye’deki sivil toplumu desteklemek zorunda’. Ümit Sahin. 23 February 2012. Yesil Gazete. 23 July 2012. <http://www.yesilgazete.org/blog/2012/02/23/ulrike-dufner-akp-ab-reform-surecini-devam-ettirmek-istiyorsa-bizi-ve-turkiye%e2%80%99deki-sivil-toplumu-desteklemek-zorunda/>.

<sup>526</sup> ‘Yeni anayasayı halk yapacak’. 13 January 2011, Sabah. 25 March 2013. [http://www.sabah.com.tr/Gundem/2011/01/13/yeni\\_anayasayi\\_halk\\_yapacak](http://www.sabah.com.tr/Gundem/2011/01/13/yeni_anayasayi_halk_yapacak). and; ‘Cicek: Basın özgürlüğü geriye gitmez’. 14 July 2012, NTVMSNBC. 25 March 2013. <http://www.ntvmsnbc.com/id/25366461/>.

religion, and—partly connected to others—replacing the *parliamentary* system with *presidential* system, as well as many other details.

Relations between Turkey and ‘Europe’ are also not giving any signs of progress. To the contrary, immediately after the referendum of 2010 and following the enacted laws critical for the judiciary, the EU adopted a distinctly disapproving and critical posture towards Turkish government. The main areas of concern have been freedom of the press, freedom of expression and the independence of the judiciary, i.e. separation of powers and accountability.

First, during a planned visit to Brussels in March 2011—before the general elections—Prime Minister Erdogan was ‘unable’ to secure *rendezvous* with the President of the European Council Herman Van Rompuy and President of the European Commission Jose Manuel Barroso. This visit was postponed twice and then cancelled altogether. When EU Commissioner—for Enlargement and Neighbourhood Policy—Stefan Füle, after the elections, came to Ankara in July 2011, this time both President Gül and Prime Minister Erdogan were too ‘busy’ to receive him.<sup>527</sup>

Discontentment and criticism were not restricted to the EU Commission only. Venice Commission President Gianni Buquicchio, in an interview to a Turkish daily<sup>528</sup> in August 2012, said that the Commission was not consulted by the Turkish government in the drafting process of the new constitution, despite earlier announcements to do so. He stressed that “the involvement of the Commission in this process would contribute to the

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<sup>527</sup> ‘Devletin zirvesinden AB’ye ince mesaj’. 12 July 2011, Sabah. 25 March 2013.

<http://www.sabah.com.tr/Gundem/2011/07/12/devletin-zirvesinden-abye-ince-mesaj>.

<sup>528</sup> ‘Venice Commission was not consulted by the Turkish government’. Selcuk Gültasli, 07 August 2012, Today’s Zaman. “The power of the military has certainly been reduced to a considerable extent. [...] The Venice Commission has not followed the Ergenekon case and similar trials. While they have undoubtedly led to a decrease in the role of the military, we are well aware about the concerns regarding the wide scope of the prosecutions, including with respect to journalists and writers.” 17 August 2012.

[http://www.todayszaman.com/newsDetail\\_getNewsById.action?newsId=288848](http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=288848).

domestic as well as international credibility of the process”. Furthermore, in the context of presidential system debates in Turkey, he said:

[...] this would seem to be a risky step to take. Strong presidential powers in countries that do not have a strong liberal tradition often lead to an authoritarian government. The purpose of the new constitution is, however, to move the country away from authoritarian structures. This step would therefore run counter to the very purpose of this reform.

Although the government and the Minister of Justice had announced on more than one occasion that the Venice Commission would be consulted during the drafting process of the new constitution, this never happened. When the Venice Commission took initiative and offered assistance in early 2013, the Parliamentary Committee simply refused it. However, President Buquicchio continued to be vocal in his council—and warning—about the current and, potentially, future shape of Turkish democracy.<sup>529</sup>

It seems that the EU’s future focus will be on institutions directly concerned by political reforms in the judiciary and law enforcement services, i.e. the police, on adoption and implementation of the *acquis* in priority areas. The revised IPA, Multi-annual Indicative Planning Document (MIPD) 2011-2013 for Turkey was adopted by the Commission in June 2011. It followed a sector-based approach and aimed to better focus assistance on political priorities in order to achieve a greater impact.<sup>530</sup> European Parliament Resolution on the 2011 Progress Report on Turkey-- dated 29 March 2012—gave clear indications of this focus:

Expresses its full support for the drafting of a new civilian

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<sup>529</sup> ‘Turkey’s democracy not up to strong presidency: Venice Commission head’. 16 February 201, Hürriyet Daily News. 25 March 2013.

<http://www.hurriyetdailynews.com/turkeys-democracy-not-up-to-strong-presidency-venice-commission-head-.aspx?pageID=238&nid=41239>.

<sup>530</sup> Instrument for Pre-Accession Assistance (IPA) Multi-annual Indicative Planning Document (MIPD) 2011-2013 Turkey. 10 July 2012.

[http://www.ab.gov.tr/files/ardb/evt/2\\_turkiye\\_ab\\_iliskileri/2\\_2\\_adaylik\\_sureci/2\\_2\\_7\\_turkiye\\_ab\\_mali\\_isbirligi/2\\_2\\_7\\_1\\_ipa/2\\_2\\_7\\_1\\_11\\_diger\\_belgeler/mipd\\_2011\\_2013.pdf](http://www.ab.gov.tr/files/ardb/evt/2_turkiye_ab_iliskileri/2_2_adaylik_sureci/2_2_7_turkiye_ab_mali_isbirligi/2_2_7_1_ipa/2_2_7_1_11_diger_belgeler/mipd_2011_2013.pdf).

constitution for Turkey as a unique opportunity for true constitutional reform, promoting democracy, the rule of law, guarantees for fundamental rights and freedoms (in particular freedom of expression and freedom of the media), pluralism, inclusiveness, good governance, accountability and unity in Turkish society [...] welcomes [...] the decision to ensure equal representation of all political forces in the Constitutional Conciliation Committee and the pledge to base the drafting process on the broadest possible consultation of all segments of society as part of a process which genuinely engages Turkish Society, stresses that the new constitution [...] guarantee the separation of powers, ensure the independence and impartiality of the judiciary, secure full civilian oversight of the military [...]. (EP 2011: Art 8)

This was clearly a road-map for democratisation and “true constitutional reform” in Turkey. The European Parliament also directed the Commission to include “a detailed analysis of the progress of the implementation process [of the 2010 constitutional reform package]” and “to closely follow the aforementioned cases [investigations of alleged coup plans] and to publicise the findings in more detail in an annex to its 2012 Progress Report”.

Commissioner Füle, during a speech<sup>531</sup> in May 2012—soon after the publication of EP Resolution—against a background of the ongoing work on a *new constitution*, highlighted the need for “transparency”, an integrated process that would “allow a compromise”, respect for “diversity of opinions”. He expressed ‘hope’ for a “swift adoption of the Third Judicial Reform Package” and that the Fourth Judicial Reform Package—in the area of freedom of expression and the media—would soon follow. “These issues (would) have (their) particular attention when preparing this year’s (i.e., 2012) progress report” he warned.

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<sup>531</sup> Commissioner Stefan Füle speaking in Brussels. 15 May 2012. Speech 12/360. <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/360&format=HTML&aged=0&language=EN&guiLanguage=en>.

2012 Turkey Progress Report, in terms of the political criteria, particularly ‘democracy and the rule of law’—not surprisingly—was the worst report card of all-times. According to this report:

- Political life is characterised by limited dialogue and frequent tensions,
  - Concerns persisted over the rights of the defence, lengthy pre-trial detention, excessively long and catch-all indictments, wide scope and shortcomings in judicial proceedings,
  - Investigations tend to expand rapidly; the judiciary accepts mainly evidence collected by the police only or supplied by secret witnesses,
  - (Constitution drafting) There are some limits on transparency, with submissions to the committee by civil society and others removed from or not published on the internet,
  - Few of the capacity concerns identified by the 2010 Parliament/SIGMA Peer Review have so far been addressed; proper functioning of the Parliament yet to be ensured; due attention needs to be paid to reform of the Parliament’s rules of procedure; oversight of the executive,
  - Key legislation was adopted with insufficient preparation and consultation.
  - Members of the government reacted virulently to criticism voiced by the media or civil society and brought court cases on a number of occasions.
  - Consultation of civil society remains the exception rather than the rule.
- (EC 2012: 5-10)

The European Parliament’s Resolution on the Progress Report just paraphrased these observations and expectations, and reiterated that “the rule of law at the heart of the enlargement policy, and confirmed the centrality in the negotiating process of Chapter 23 on judiciary and fundamental rights, and Chapter 24 on justice, freedom and security” (EP 2012).

The Fourth Judicial Package was submitted to the Parliament on 11 March 2013. It aims to strengthen human rights, fair trial, freedom of expression, freedom of press, prevention of long detention and trial periods.

If it will serve its stated purposes or will remain as ‘window-dressing’ remains to be seen.

In terms of the specific expectations of the civil society, the policy outcomes related to the judicial reform have mostly met those originally prescribed and advocated by the civil society as a whole. Both the Constitutional Court and the High Council of Judges and Prosecutors have been restructured, a role—albeit less than significant—has been given to the Parliament in the selection of the Constitutional Court judges (but not members of the HCJP), the authority of the President in the selection of the Court judges has been reduced—albeit symbolically, the term of duty of the Court judges has been limited. Looking at this outcome ‘only’, it can be argued that the civil society has been largely successful in its quest for a reform in the Turkish judicial system by having an *influence on the policy outcomes* related to this reform. However, looking into details, the general picture is rather bleak. Two questions stand prominent here: first, if this was the result of civil society’s success or of ‘other’ factors; if so, what was the part played by the civil society, if any. Secondly, as the reform package was taken as a complete whole, what was the effect of some details—that were overlooked or excluded—on the whole package?

The evaluation, on the part of the civil society, of success or performance so to speak, confidently, or the share of the civil society work within the overall ‘success’—in relation to others—is not easy. TESEV, for example, in their 2010 Report<sup>532</sup> which covered the period leading to and including the constitutional referendum and other developments related to the judicial reform, included some ambitious, pretentious and even ostentatious remarks: “a communication strategy planned in detail for reaching the public [...] interest in and the use of TESEV documents/publications by the media, academia, politicians, bureaucrats and diplomats as a reference [...]

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<sup>532</sup> See; TESEV Board of Trustees 24 February 2011 meeting, , 2010 Activity Report, 2011 Programme and Budget. 11 January 2012.

[http://www.tesev.org.tr/UD\\_OBJS/PDF/Genel/TESEV%202010%20Faaliyet%20Raporu.pdf](http://www.tesev.org.tr/UD_OBJS/PDF/Genel/TESEV%202010%20Faaliyet%20Raporu.pdf).

developing partnerships with civil society organisations and other institutions, individuals”. TESEV also aimed for “increased visibility [...] reaching wider audience inside and outside of Turkey through the use of new means of communication such as social media” and “new partnerships on common projects”.

To what degree such *self-evaluations* of the civil society are reflecting the reality and if the judiciary in Turkey is now independent, impartial and efficient—as anticipated at the outset are difficult to judge. In other words, civil society did not aim democratic reforms in the judiciary simply for sake of reform, but for *improving* and *advancing* the independence, impartiality and efficiency of the Turkish judiciary. If the policy outcomes aimed by civil society have been mostly materialised but nevertheless the practical outcomes aimed at the outset have not come about, then we are faced with a problematic situation. There are some clues to this fundamental question in some critical details of the reform package.

The presence of those, in HCJP, coming from the executive branch has continued, a mixed model—for the election of HCJP members—in which the Parliament would play a role has not been materialised, and the Parliament elects Constitutional Court judges—in effect—with simple majority. Also, a holistic approach—need for a democratisation *package*, rather than a piece-meal approach—and *consensus* and *compromise* in the Parliament and elsewhere in the political system, as advised by the civil society, have certainly not come about.

## **Chapter 5**

### **Findings and Conclusions**

*“Whoever knows he is deep, strives for clarity; whoever would like to appear deep to the crowd, strives for obscurity. For the crowd considers anything deep if only it cannot see to the bottom: the crowd is so timid and afraid of going into the water.”<sup>533</sup>*

This thesis aimed to determine and explain the role and the relative influence of civil society on policy outcomes. In this chapter, civil society’s input, role and the resulting influence on issue articulation, political decision-making, drafting of texts and legislation are discussed against other actors, factors, influences and put into context *vis a vis* policy outcomes.

In validating the findings some other key studies as well as EC Reports and EP Resolutions were also consulted. SIGMA Peer Review Report of 2010<sup>534</sup> and STGM Impact Evaluation Survey (2005-2010)<sup>535</sup> Report among them are prominent.

The reform process, particularly after mid-2007, progressed along with an intensive political debate over the general direction the political regime in Turkey is heading and an unprecedented scale of court cases based on allegations of *coup attempts*. These court cases of historical importance and of extreme political sensitivity involved not only hundreds of high-ranking military—active and retired alike—but also others in bureaucracy, academics, journalists, civil society leaders and opposition politicians—to include even some former AKP MPs, members, supporters.<sup>536</sup> They

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<sup>533</sup> Friedrich Nietzsche, *Beyond Good and Evil*.

<sup>534</sup> SIGMA Report of 2010, took an *x-ray* of not only the TGNA but also—perhaps more—of the Turkish political system with all its shortcomings, flaws and illnesses.

<sup>535</sup> STGM Impact Evaluation Survey (2005-2010) Report, provides a comprehensive assessment of the needs of civil society in Turkey for development.

<sup>536</sup> The amendments to Art 301 of the Turkish Criminal Code which entered into force in May 2008, introduced a ‘permission’ by the Minister of Justice in order to launch a criminal investigation on the basis of this particular article. This led to a significant decline

contributed to further deterioration of the already problematic state of freedoms of expression and the media.

The legal framework—which was too ambiguous anyway—was often interpreted in a restrictive way by public prosecutors and judges and this led to frequent prosecutions of journalists for breaches of the confidentiality of investigations or for attempting to influence a fair trial. As such prosecutions became common for journalists who were critical of the government policies and extended to cover other forms—and groups—of political opposition, the media became too concerned with its own survival, applied self-censorship and distanced itself from any initiative that could be interpreted by the Government—and public prosecutors—as interference in politics, i.e. political opposition. This included civil society and its ‘democratisation’ programmes.<sup>537</sup>

Particularly during the period from mid-2009 through mid-2011 was important in terms of the timing and concentration of civil society’s effort in this respect as they directly participated in the debate related to the overall reform process.

Under such circumstances, to make a rational and objective evaluation of the success of civil society in supporting democratisation in Turkey in general and its effective role in the decision-making, legislative processes and on policy outcomes in particular is a real challenge. Generally, it is difficult to detect stable patterns in relations between civil society and the ‘society’ as a whole, in those between civil society organisations

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in prosecutions compared with previous years. However, the main problem—restrictive interpretation by prosecutors—hence legal uncertainties due to misuse of judicial authority, along with the political pressure on the media continued.

<sup>537</sup> EU authorities while admitting the importance of these investigations, nevertheless voiced some concerns from the beginning. Commission, in 2009 Report, indicated that certain media outlets “were discriminated against” and “senior political leaders”—in an open reference to the Prime Minister himself—“called for a boycott of newspapers and television channels” (EC 2009: 17-18). The European Parliament also accused the Turkish government of allowing “legal proceedings to be used as a pretext to exert undue pressure on critical journalists, academics or opposition politicians” (EP 2009: Art 11).

themselves, and their relations with the state, i.e. for all practical purposes the government.

A recent study focusing on the same subject as this paper, found that “[...] the contribution of civil society to democratic consolidation in Turkey is limited, but not totally absent” (Torus 2010: 166). However it limited this contribution to ‘agenda-setting’, in other words ‘issue articulation’. The same study suggested that “[...] for a more comprehensive evaluation of civil society in Turkey as a contributor to democratic consolidation one should consider the complexity of social change and mobility among the Turkish society” (Torus 2010: 167).

Morlino (1998) calls this so-called *complex social change and mobility*, a ‘crisis’. ‘Crisis’ is the opposite of ‘institutionalisation’, “the process by which organisations and procedures acquire value and stability” (Huntington 1968: 12).

In such a crisis environment the EU Turkey Progress Report of 2011 found the inclusion of civil society organisations in policy processes “still in a nascent stage” (EC 2011: 28). Against this background, below are the findings of this thesis which largely confirmed this observation.

### **5.1. Main findings**

Civil society’s contribution or participation in policy-making, i.e. decision-making, drafting and legislative processes, is not sanctioned in Turkey neither by the Constitution nor by the Parliament’s Rules of Procedure or any specific law. Furthermore, legal, administrative, political and mental/cultural infrastructure for civil society ‘participation’ is largely absent. Therefore civil society’s effort for getting a foothold is an uphill battle fought with a lot of sweat and toil, against various actors and overwhelming odds.

This thesis has concluded that; *the influence of civil society on policy outcomes—particularly on those primarily of political nature—in Turkey is negligible*. In terms of having an impact—any impact—on policy outcomes through direct or indirect participation in decision-making

mechanisms, it is difficult to talk about a clear-cut success of the civil society in Turkey, that would justify the resources dedicated. However, in terms of capacity building in civil society, improving networking, cooperation with the media, adopting a more assertive posture, international cooperation, learning to work through the state apparatus and reaching out, clearly, there have been important developments that can be considered, with a long-term perspective, success. The results of such successes will only be seen and better measured or qualified in coming years.

It can only be argued that there is a ‘start’ or a ‘beginning’ for the civil society to have an influence, if anything, on policy outcomes. It is simply a modest positive step, slowly moving forward, occasionally with some important setbacks and against major political, institutional and cultural challenges, even *extremely strong* attitudinal resistance at the individual level.

The Turkish political system and the dominant political culture is not prepared to relinquish a place to civil society, let alone a role as an actor in politics or to accommodate civil society otherwise. Civil society is not recognised nor respected as a *legitimate partner*. It must be noted that there is a huge difference between ‘political’ topics (in other words, those primarily related to politics and political balance of power) and others—e.g. economic, social, financial, technical—in terms of accepting or tolerating civil society input in the decision-making or legislative processes. In the latter case, political tolerance—but still not participation *per se*—is more forthcoming.

In 2001, there was an advocacy coalition—to include civil society—for security sector reform, but in 2010, during the judicial reform process this had been replaced by a two-level game symbolically—and typically— involving the EU, but excluding civil society (even the Venice Commission). The political leadership, i.e. Prime Minister, the governing party’s programme/political aims and the EU accession process—as far as its requirements overlap with the former two—have largely determined the

policy outcomes. One senior civil society official described the ‘selective’ nature of consultation in a sarcastic way:

Taking and accepting inputs from the civil society is rather arbitrary (*tur.* keyfi); it all depends on if policy alternatives offered are in line with the intention and aims of the Government or not. If they are in line with the *already established* policy, then, they are ‘taken’ into consideration. Otherwise, our reports are utilised as ‘flower-pots’.<sup>538</sup>

Consequently, civil society is only influential and ‘inspiring’ as its aims coincide with those of the political leadership and only when strongly supported by the EU accession process and or global civil society, i.e. because of their ‘instrumental’ quality—as perceived by the Government and other key decisionmakers, NOT because of the intrinsic value of recommendations or suggestions offered by civil society. The ‘selective’ nature of heeding the requirements of the EU accession process can typically be seen in the absence of any progress in some fundamental areas, repeatedly advised by respective EU authorities, such as the law on political parties, electoral law, 10% minimum electoral threshold for representation in parliament.<sup>539</sup>

One of the two main problems faced by civil society in Turkey is the opportunity to participate in legislative and political decision-making processes—the other being stable funding, i.e. financial survival, not necessarily in this order. Because of the pre-eminent position of the executive and the resulting—fundamental—question of *separation of powers* in Turkey, as well as the increasingly deteriorating state of freedoms of expression and the press<sup>540</sup> civil society has had but one choice of

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<sup>538</sup> Interview; October 2011.

<sup>539</sup> “[...] reiterates, yet again, the importance of a reform of the law on political parties and of the electoral law, with the lowering of the 10% minimum threshold for representation in parliament [...]” (EP 2011: Art 4).

<sup>540</sup> EP emphasised these aspects in March 2011; “[...] the crucial role of a system of checks and balances in the governance of a modern democratic state which must be based on the principle of separation of powers with balance between the executive, legislative and

approaching the executive. Civil society, dedicated its already scarce resources primarily at seeking to influence the executive stages of law-making. Civil society efforts on political parties—other than the governing party—were based on a sense of democratic ‘politeness’ rather than practical expectations for support to current legislation and/or basic political decisions. The Parliamentary stages of the legislative process—Committees and the Plenary—were largely ignored. In the face of a clear ‘conflict of interest’, this brought with it an inevitable conflict with the executive, alienated the political opposition and resulted in a few, if any, ‘allies’ for civil society.

## 5.2. Processes and actors

The main problem of ‘participation’ is about the ‘nature’ of participation or what is understood by the word ‘participation’ by various actors: one-time, one-way consultations without a *dialogue*. When even this occasionally happens, it is when essential policy decisions are already made, policies formulated, legislative texts are drafted. One civil society representative explains how it should be: “Restructuring built-in mechanisms at each level of policy formulation, rather than simply taking views in a perfunctory fashion with indifference” (Agduk 2010: 120). “Only then, “participation could possibly contribute to the legitimacy of political decisions taken through such processes” she explains.

Furthermore, this opportunity for ‘consultation’ is extended or granted to civil society—in the form of groups, individuals or organisations—representing similar or closer views to the already formulated policy rather than to those of differing position.

Turkey and the Turkish political system is a showcase—and a test bed—for what Smith (2005) discusses as ‘barriers to participation’ by civil society, particularly; “conflicting policy imperatives for public authorities,

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judicial functions, on respect for human rights and fundamental freedoms—in particular freedom of expression and the freedom of the press—and on a participatory political culture truly reflecting the plurality of a democratic society” (EP 2010: Art 4).

organisational and professional resistance to participation, a failure to respond to the outcomes of participation, lack of cultural change in public authorities, lack of trust in authorities or scepticism that participation will make no difference” (106-08).<sup>541</sup>

The tendency what one interviewee described as “What people want versus what people *should* want”<sup>542</sup> overrules and overrides personal attitude, controls the behaviour. One other interviewee, a senior civil society official sounded frustrated with the way civil society was received: “The main problem is that political actors, government, parliament are disinterested (*tur. ilgisiz*) in (our input). They—in the Parliament—invite civil society and listen to them but then do not mind at all. They listen to and then forget whatever civil society says, even say ‘shut up’. This is unacceptable. It’s a show, it is artificial (*tur. yapay*) (not sincere a search for input or participation from civil society)”.<sup>543</sup>

Opportunities for civil society participation did exist, sometimes were encouraged, even sought after.<sup>544</sup> However the differentiation between politically more sensitive and less conflictual subjects at hand is of extreme importance. ‘Political’ items, questions are simply no-go areas for civil

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<sup>541</sup> Others: “Poorly executed participation, lack of dedicated resources for participation, a lack of clarity about the aims of participation at national and local level, a lack of creativity and imagination in designing engagement strategies, a tendency towards ‘incorporation’ of citizens into official and bureaucratic ways of working, a tendency to engage ‘natural joiners’, often no incentive for citizens to participate, lack of awareness of opportunities to participate” (Smith 2005: 106-08).

<sup>542</sup> Interview; March 2012.

<sup>543</sup> Interview; October 2011.

<sup>544</sup> For example the Law on the Committee on Equality of Opportunity for Women and Men, Art. 4 calls for consultation from a wide range of institutions, public and private alike, including civil society institutions. Art. 4 - [...] (2) The Committee may benefit from the studies of public body and institutions, universities, civil society organisations and public professional organisations which are active in the field of interest of the Committee. (3) The Committee may, if needed, consult relevant experts. [...]. Law No. 5840, adopted on 25 February 2009. Official Gazette 24 March 2009, No 27179. 03 March 2012. <http://www.tbmm.gov.tr/komisyon/kefe/act.htm>

society and can easily turn into political mine-fields where politicians would like to navigate without ‘company’ or ‘council’.<sup>545</sup> One senior member—and one of the original founders—of TÜSIAD, recently illustrated this major obstacle to participation by the civil society in cynical words: “One may fight for the economy with governments, but shall not fight a political battle. Politician does not like who talks too much, but he likes whoever likes him.”<sup>546</sup>

While ‘none’ of the civil society organisations in Turkey pursued an aggressive media campaign, the media was also less than eager for such a role in support of civil society.

There are four ‘black boxes’ in the legislative process into which civil society has very little chance to enter to have an influence on policy outcomes: ministries, political parties, Office of the Prime Minister, Office of the President.

**Black Box 1:** Although drafting of laws in *ministries* is the first and—in terms of the ‘quality’ of the law-making—the most critical phase of the legislative process, civil society is almost completely excluded from the work in ministries. Even naming or deciding potential ‘partners’—in civil society as well as academia, private sector and state institutions—in an area which is being regulated by a draft legislation at hand is a challenge because there is no such a ‘list’ regularly updated, nor is there an office for managing communication with such partners.

**Black Box 2:** Civil society in Turkey has very few, if any, systematic, institutionalised links to *political parties*, hence very little effect on the

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<sup>545</sup> “For example in the area of ‘energy’ there was so much enthusiasm to such a degree that we could not possibly meet expectations and demands. But in the area of ‘democratisation’ they neither demand nor support. When we attempted to send a copy of our report on the Kurdish Question—and the work on the new draft Constitution—to each MP, about 150 were returned from the Parliament”. Interview; October 2011.

<sup>546</sup> Halit Narin; “Hükümetlerle ekonomi kavgası yapılır, siyasi kavga yapılmaz. Siyasetçi çok konusani sevmez, kendisini seveni sever.” 10 February 2013. Haberturk. 10 February 2013. <http://ekonomi.haberturk.com/is-yasam/haber/818680-720-milyon-dolarimiz-var-veremiyoruz>.

policy outcomes formulated or initiated by parties or their MPs—to include the ruling party. Each political party has its ‘own’ civil society which is considered an extension of the party organisation. Other parties’ civil ‘societies’ are mutually considered *hostile* and any contact is strictly avoided. As for the ‘independent’ civil society, i.e. that is not closely and openly associated with any one political party—like those four civil society think-tanks studied in this paper—a safe distance, the best, is carefully maintained. Parties try ‘very hard’ to stay clear of any open contact let alone cooperation with them, unless they are really obliged for face-saving purposes. “We do not aim to influence political parties’ central administrations. We try to talk to those MPs who value our work and eager, at least prepared to talk to us” explained one senior staff in a civil society think-tank, in desperation.<sup>547</sup>

Black Box 3: *Office of the Prime Minister* is as impenetrable as other black boxes—*bureaucracy* in ministries, and *political parties*. The initiatives which governments have pretended to have taken, have not resulted in any real change that would facilitate civil society’s access to decision-making mechanisms, even at this office. Prime Minister’s Office is also a black-box otherwise. Once the draft bill comes from the ministry, it can change completely, before being forwarded to the Parliament for the committee work. And most of the time, there is very little that can be done, then.<sup>548</sup>

Black Box 4: Although the President has constitutional authority to influence policy outcomes he has not made an effective use of this opportunity particularly during the judicial reform process when it was most

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<sup>547</sup> Interview; September 2011.

<sup>548</sup> For example; Collective Labour Relations Act (Toplu İş İlişkileri Kanunu) was prepared by a joint commission composed of representatives from the Ministry of Labor and Social Security, labor unions and employers’ unions. But the draft sent by the Government to the Parliament was completely different in important aspects such as the 3% *membership ratio threshold* required from labor unions to enter into labor negotiations. See; Government Bill, dated 31 January 2012. 13 February 2013. <http://www2.tbmm.gov.tr/d24/1/1-0567.pdf>.

needed. The attempts made by civil society and academia to urge the President to intervene were unsuccessful.

A fifth ‘box’, Parliament, represents a box open, but ‘closed’. The forms and conditions under which civil society can present their views to Parliamentary committees, how these views can be capitalized on and are reflected in committee reports are not regulated in the Rules of Procedure. One way is to make their reports and other publications available to committee members, individual MPs, particularly to Committee chairmen, ideally by personal visits. Some civil society organisations did try this. However, as usual; there was limited time, it was one-way—i.e. in the form of offering input, not engaging into a dialogue. Besides, both sides, i.e. civil society and parliamentarians, were fully aware of the inability of the Parliamentary committees to challenge Government policy. The logical *assumption* that their value is properly appreciated and they are given priority for a reading and/or are summarised for the MPs—by their advisors, or committee members—by staffers, does not hold. One senior staffer in a ‘key’ committee, when questioned, exclaimed: “There are *no documents* arriving from civil society organisations. Members in the Committee even do not read what *WE* prepare for them. There is no interest (in any publication)”<sup>549</sup>.

Therefore, unless a general cultural transformation of the understanding on ‘participation’ occurs and some legal measures for civil society participation—to cover the whole process starting, particularly, from the drafting stage in ministries—are introduced, partial improvements and palliative measures would simply make civil society participation more complicated and cumbersome, but not improve it.

### **5.3. Cultural hurdles and civil society**

Since key political decisions on politically sensitive subjects such as ‘reform’ were made in small, closed groups, civil society did not have a real chance or opportunity to involve in any form in the judicial reform process

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<sup>549</sup> Interview; March 2012.

in 2010-2011. However when the matter in hand was not politically too sensitive and the general sentiment in the public was in line with Government's political aims, as was the case during the NSC reform process of early 2000s, there was some chance for the civil society to participate. Even then the participation was mostly symbolic, in the form of 'offering' input.

Since civil society—threat to *absolute* political power—was not recognised as a legitimate actor in Turkey, politicians, i.e. key actors in the legislative process, were also restricted and restrained by the anticipated public perception of the legislative initiatives if they involved civil society. This was more of the case when *issue articulation* was led by the civil society or the political initiatives were supported by them. During the judicial reform process in 2010-2011 'distancing' was mostly the preferred form of relation with civil society. There was a complete air of 'secrecy'. When access was possible, it was limited and restricted, when information was made available, it was sporadic and inconsistent.

The dominant culture of the Turkish elite, 'looking' self-reliant, confident of his/her competence, in most cases did not lead to a real interest in civil society products, inputs, alternative approaches, even when they were made available and/or accessed.

As the tendency of 'avoiding clash' with the *executive*, i.e. governing party, became a common feature of the political system, participation 'allowed' in a particular legislative business was simply aimed for 'legitimising' the already decided upon outcome rather than benefitting from civil society input.

Advisory dynamics are *formalistic*, composed of small nucleus of close and permanent advisors. Political appointments have politicised and devalued bureaucracy. As a *predominant leader* becomes the ultimate decision unit, *group-think* dominates the decision-making environment. *Shared-images, analogies* and *metaphors* play a strong role in political decision-making. In such an environment, individuals—bureaucrats in ministries, MPs in parliamentary committees or political parties—when

even faced with a moral dilemma, that is a conflict between their own values and utilitarian demands of daily ‘politics’ or expectations of a predominant leader, choose to violate their own standards.

The obsession with ever speeding up the legislative process rendered any involvement—that would slow down the legislative process—from outside ‘actors’, but particularly from civil society, unwarranted and unjustified.

On the other hand, civil society itself, in most cases, was the major obstacle to its own success. Absence of development in civil society networks was a major shortcoming. Inter-agency interaction and cooperation remained limited to interpersonal relations between ‘friends’. Real, systematic, effective cooperation with other civil society organisations—for the purposes of democratisation reforms—was negligible. ‘Networking’ with international civil society organisations—and others—was largely one-way and mostly restricted to providing or receiving funding to various projects.

#### **5.4. Role of the European Union and global civil society**

The EU aid to civil society in Turkey has not enjoyed the much needed political support and synergy that could come from better coordination and ‘serious’ work. There was almost no real ‘political’ ownership of the reform projects supported. They have been implemented in a piecemeal fashion and the results, naturally, have not been too impressive.

Lack of a proper understanding of the ‘EU’ and EU accession process—coupled with the mistrust traditionally associated with the West—has given rise to a general suspicion in Turkey. There was very little, if any, that was done to ensure correct perception of the EU and this publicity problem directly and indirectly hampered civil society’s effective functioning in reform process.

The suspension of negotiations with the EU and the perceived indifference on the part of the Turkish government also had a negative effect on civil society and its democratisation efforts.

Global (international) civil society's principle of 'dealing with governments' worked against the very purpose of such projects—encouraging the government to reform. Their views were *taken* but not always implemented. In the absence of the 'ownership', national counterparts often represented the main obstacle to efficient implementation. There was a complete lack of cooperation even communication between the international civil society organisations and Turkish ones and even among themselves, making partnership and networking very difficult.

Foreign civil society organisations (foreign embassies) and the EU in general, being well aware of the extremely polarised political climate in Turkey were—understandably—reluctant to adopt a more assertive stance. They shied away and generally maintained a physical and emotional distance from the reform process—until after it was 'completed'.

### 5.5. 'Cemaat'<sup>550</sup>

The seemingly eternal cultural conflict in Turkey has always been between the secular and the religious—centred around the role and place of religion in politics and in society as a whole. As the overwhelming majority in Turkey today—85%—defines themselves as 'religious', gives priority to their Muslim identity over national identity, 60% believes that 'having a strong leader' is a 'good' thing and this trend is on the increase, is worrying for democratic consolidation.

This study has focused on a particular aspect of civil society—the role and influence on policy outcomes related to democratisation—in a relatively short period of time. However, the influence of increased religiosity and the

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<sup>550</sup> 'Cemaat', meaning 'community', particularly religious community—congregation—in Turkish, is associated with a religious order called 'Nurculuk'. It has a long and controversial history in Turkey and is sometimes referred to as 'Gülenist Movement' after the name of its current leader, Fethullah Gülen. For two different views of the movement and its political ambitions see; (Yavuz & Esposito 2005) and (Sharon-Krespin 2009); for an outsider view of the current developments related to the Gulenist network's alleged involvement in domestic politics and influence in judiciary and police see; (Jenkins 2012).

long-term cumulative effects of those organisations—claiming the status of ‘civil society’ but representing less than democratic a culture, denying "voice" and "exit" to their members—on the overall democratisation process and political decision-making, hence policy outcomes in Turkey requires thorough and separate studies.

The influence of ‘Cemaat’, its claims to civil society status, and the depth of its penetration in state institutions—particularly, but not exclusively, in the judiciary, police, army and certain state bureaucracy—is a commonly expressed view and this view has not been challenged by even one single interviewee. It is argued that this independent and autonomous network, allegedly infiltrated into all major state institutions—until recently in cooperation with the Government and under its protection, but increasingly in conflict with it—controls all major policy decisions<sup>551</sup> and has largely decided the policy outcomes throughout the 2010-2011 reform process, especially in the area of judicial reform. This suggestion and its examination go beyond and outside the scope of this research. However, this phenomenon may be the missing link or the *Higgs boson* of the Turkish politics—predicted to exist, but not confirmed with certainty yet—as touched upon in parts of this study, without which one cannot explain many political developments, including some of the policy outcomes in *security sector* and *judicial* reforms, as well as the court cases or endless investigations, some still without any conviction or acquittal, for over five years now. The fact that almost no debate—particularly on bills/drafts of major importance—in the Parliament goes without frequent reference to ‘Cemaat’ by the political opposition—and is never denied by the governing party representatives—is testimony to this weird and extraordinary phenomenon of Turkish politics<sup>552</sup> which requires a separate study.

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<sup>551</sup> Those who talked on the subject of ‘Cemaat’ indicated that “the relative weight and control of Prime Minister (Erdogan) personally and the ‘Cemaat’ on the policy outcomes related to the judicial reform (was) 9 and 10—over 10—respectively”.

<sup>552</sup> Debate on the Third Judicial Package. TGNA, Minutes of Session 129. Sunday 1 July 2012. 27 March 2013.

## 5.6. Conclusion

Civil society's council and advise on democratisation in general and reform of the security sector and the judiciary in particular have been in line with those of the European Union. In terms of legal measures, transparency and accountability for improved political oversight, there has been considerable progress. However, this 'oversight' has remained mainly restricted to that of the Government. The Parliament—and the society as a whole—are still far from being able to provide any meaningful input to policy-making or to have a real supervisory role over the execution. Failing to adopt a holistic approach, the interconnection between various dimensions of the democratic 'reform' process in seemingly separate areas, such as *accountability, transparency, pluralism, participation* and *separation of powers*, above all *rule of law*, has been overlooked in Turkey. Also overlooked, has been the concept of *good governance*, in other words, the 'technical' nature of policy-making process—that is efficient and effective policy-making.

The Army has effectively—and seemingly irreversibly—withdrawn from politics and come under political control. The judiciary has been almost completely restructured. However, the security 'model' still remains the same. The NSC no longer has the *executive power*, but still Turkey does not have a properly working national policy decision-making system, involving the Parliament—as a vital player, transparent, open to inputs and criticism from civil society, media and the public in general. The key issue—an integrated MoD and general staff—is still missing from the political agenda. The potential risk awaiting Turkey, then, is a symbolic move making the military 'subordinate' to the political authority, but leaving the decision-making system as it has always been—inefficient.<sup>553</sup>

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[http://www.tbmm.gov.tr/develop/owa/tutanak\\_g\\_sd.birlesim\\_baslangic?P4=21215&P5=H&PAGE1=2&PAGE2=231](http://www.tbmm.gov.tr/develop/owa/tutanak_g_sd.birlesim_baslangic?P4=21215&P5=H&PAGE1=2&PAGE2=231).

<sup>553</sup> The Parliamentary Conciliation Committee on Constitution, drafting a new constitution, agreed on an article that would make the Chief of the General Staff answerable to the Minister of Defense rather than directly to the Prime Minister. 'Genelkurmay Savunma Bakanligina baglaniyor'. 21 February 2013, Radikal. 5 March 2013.

In terms of a significant role given to the Parliament in the selection of the Constitutional Court judges and the members of the HCJP<sup>554</sup>, reducing the authority of the President in the selection of judges, ending the presence of those, in HCJP, coming from the executive branch, much action are still to be taken. So the current picture, in terms of the cases studied in this paper—reforming the National Security Council and the high judiciary—in mid-2013—is a mixed one, in other words, the glass is barely half full.

The security sector reform period of 2001-2006 witnessed a kind of *elite settlement* and created an air of optimism. However, weak commitments to democracy, general lack of *social trust* and *civic competence* did not allow this settlement develop into a *convergence* and a political *stasis* settled. One outcome of this development was the almost complete replacement of elite by a ‘counter-elite’. As a result, during the judicial reform process half a decade later, paradoxically, *majority rule* suppressed the opposition and minority views. This was followed by an elite *disunity* and frequently shifting *pacts* excluding certain groups.

With regard to overall democratisation, the picture is rather gloomy. Civil society’s central message ‘holistic’ rather than a piece-meal approach to democratisation, the need for a democratisation ‘package’, advise for *consensus* and *compromise* in the Parliament in particular and in the political system in general notwithstanding, the Turkish political system—as reflected in both the European Commission Progress Reports and the European Parliament’s Resolutions—has turned more authoritarian,

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<http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1122329&CategoryID=77>.

<sup>554</sup> Both CCEJ and Venice Commission argued that “the method employed to select the members (of HCJP) is as important as the composition of the judicial council in terms of its autonomy, and ultimately on judges’ and prosecutors’ security of tenure” (CCEJ, para 18; Venice Commission: para 29). It was announced by the Minister of Justice during the meeting he held on 5 September 2009 with the press that some members of the HCJP were to be elected by the National Assembly. But this never happened and even not included in the ‘Judicial Reform Strategy’.

polarised and confrontational.<sup>555</sup> Typical of *delegative* democracies under *personalistic* rule, executive-type policy-making has taken over the functions and responsibilities of the legislature.

It is strikingly ironic that the European Parliament has even come to warning the Turkish government about maintaining the operational capability of the Turkish Armed Forces, in other words, the Parliament has offered protection to the Turkish army, traditionally the only and the most powerful ‘guardian’ of the political system in Turkey. This example alone offers a telling clue of the state of affairs and turn of events in Turkish politics in terms of relative power relations to judge the situation from civil society’s perspective and its ability to have an influence on policy outcomes.<sup>556</sup>

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<sup>555</sup> “[...] in practice, freedom of expression is undermined by the high number of legal cases and investigations against journalists, writers, academics and human rights defenders and undue pressure on the media. [...] Turkey’s legal, and judicial practices, legislation, criminal procedures and political responses are obstacles to the free exchange of information and ideas.” (EC 2011: 26-27). “[...] deplores the disproportionate restriction of the freedoms of expression, association [...] recalls that freedom of expression and media pluralism are at the heart of European values and that a truly democratic free and pluralistic society requires true freedom of expression [...]” (EP 2011: Art 20, 23).

<sup>556</sup> “Welcomes the continued efforts to improve civilian oversight of the military [...] emphasises the need to ensure armed forces operational capability, given the importance of Turkey’s NATO membership” (EP 2011: Art 11).

## **Appendix A**

### **Questions for Directors of Democratisation Programmes**

#### MISSION AND AIMS

- How can you define (X)'s democratisation programme's mission and aims?
- What distinguishes (X) from other civil society think-tanks running a democratisation programme?
- Which aspects of democratisation is (X) focusing on primarily? Why this selection?
- Do you consider (X) as part of an epistemic community or an advocacy group?

#### ROLE

- Do you believe civil society think-tanks have a leverage in supporting democratisation?
- How favourable, permitting, encouraging the overall environment in Turkey for your work?
- Do you think there is demand for what you are offering? Who demands?

#### OPERATIONS

- Think-tank world is described by some as "marketplace of ideas", do you agree with that? Do you market your ideas? Aggressively?
- Who are your target audiences – mass people, elites in general, policymakers in government/bureaucracy, other political actors? Primary target audience?
- Do you give priority to educating the public (indirectly influencing the policy process) or to (directly) influencing key policy-making actors? Why? (..at what stages of policy cycle do you prefer to participate in: issue articulation, policy formulation, policy implementation?)

## FUNDING/NETWORKING

- How are (X) projects funded—private donations, state, international, membership fees, contracts? What is the influence of funding source on the impact of your work, if any?
- Who produces your ‘products’ - in-house experts, outside academics, combination of the two?
- Do you support the idea of networking? Which other organisations/persons do you work/cooperate with – academia, opinionmakers, politicians/legislators, media? Are you happy with the results?

## MEDIA

- Are you happy with the media coverage of/support for (X) work?
- Are ‘institutional’ views given better coverage than views voiced by some ‘celebrities’?

## IMPACT

- It is difficult to quantify a think-tank’s impact. (“War of ideas”; are you winning this war for democratisation?) Do you believe (X) has had and is having an impact on / role in public policy and in public policy debates - little, significant, moderate?
- Do you regularly measure the impact of your programmes? How? Satisfied with the results (and the methodology used for measurement)? (Would you consider (X) successful? Why—based on what criteria?)

## FEEDBACK

- Do you receive any feedback – if at all - from your target audience? ..inputs, requests, reactions, protests?

## **Appendix B**

### **Questions for Those in the Policy-making and/or Legislative Processes**

#### BACKGROUND/ORIENTATION

- What is *your actual role* (as policy-advisor, MP, member of a parliamentary commission, minister in the cabinet) ?
- ..in decision-making process related to democratisation:
  - *strengthening judicial independence, impartiality, efficiency* (judicial reform),
  - *improving political oversight of the security sector* (security sector reform),
- *How, in what ways, to what degree* does civil society have an influence on policy outcomes related to democratisation?

#### PERCEPTION AND INVOLVEMENT IN CIVIL SOCIETY IN GENERAL

- *Have you ever heard of* civil society think-tanks (TESEV, Heinrich Boell Stiftung, CESS, TÜSIAD) democratisation programmes (products, activities etc.)? *Others?*
- Do you think civil society ‘disseminating viable policy alternatives’, among others, is the proper way a democratic political system operates?
- *Did you participate in any* civil society activity (conference, panel, workshop, press-conference, film-screening etc)? (In what capacity – guest, panellist, moderator, delivering key-note?)
- In your opinion, do civil society think-tanks in general play *a role in* or *have an influence on decision-making* process related to democratisation (*improving political oversight of the security sector, strengthening judicial independence, impartiality, efficiency*) as reflected in policy outcomes?
- What are *the most effective ways*, in your opinion, civil society has played or is playing a role in the process related to ... ? (*improving political*

*oversight of the security sector, strengthening judicial independence, impartiality, efficiency)*

- At what stage(s) of the policy cycle, if any, does/should civil society participate in: issue **articulation**, policy **formulation**, policy **implementation**?

#### INVOLVEMENT IN THINK-TANK ACTIVITY ON DEMOCRATISATION

- Have you **ever heard about** civil society think-tanks' democratisation programmes?

- Did you **ever receive** personally **any of their products**? (Who passed them to you? For what purpose?) (Did you personally **read them**? Did you **use them** in your work?)

- Do you believe this is the way policymaking process should develop? (or, do you believe policy outcomes should take shape that way? **Why** do you think so?)

- Do you think it is useful (and legitimate) for civil society think-tanks to play a role (or become an actor) in political decisionmaking? (Why?)

- Did you **ever quote** (TESEV, Heinrich Boell Stiftung, CESS, TÜSIAD) views/proposals/positions on (*improving political oversight of the security sector, strengthening judicial independence, impartiality, efficiency*)?

**Why?** (Personal conviction/belief, public opinion, media coverage, because voiced by a celebrity, inclusion in EU reports, party leaders/friends said so, political opposition's rhetoric, party programme, other reasons..).

Such proposals; are/were they **relevant and useful for the work** you were handling?

#### PERCEPTION OF THINK-TANKS' ACTUAL ROLE AND IMPACT

- Is civil society **more effective at elite level** or at mass level? Why?

Civil society's influence; is it direct or rather indirect?

Do civil society think-tanks affect **cultural transformation** (or just **behavioural**)? Elite/mass..

Is civil society a '*factor*' to be taken into consideration or an '*actor*' to be dealt with?

- In the final analysis, do you think civil society (TESEV, Heinrich Boell Stiftung, CESS, TÜSIAD) initiatives "*positively/negatively*" affecte(d) the process of democratisation and policy outcomes?
- How would you *evaluate and score* the role of civil society in affecting policy outcomes related to specific areas of democratisation? (*improving political oversight of the security sector, strengthening judicial independence, impartiality, efficiency*) **10 - extremely effective; 1 -no effect at all.**
- If you had a chance, what would you like *think-tanks to focus on* more?
- Did you ever provide *feedback to civil society* organisations and/or ask for further input?

#### OTHER FACTORS

- Do policy decisions, related to democratisation, involve an *initiative* or a *reaction* to something in the environment?
- (Based on your personal experience) What *other factors* have/had an influence on the outcome? How would you *order them* in terms of the degree of influence?
- "What pressures", if any, do (did) you feel or feeling in ....?
- Who makes the final decision(s) in the area of ....?
- Did you ever feel obliged to make certain statements just because you represented a certain office?
- Do you think that real democratisation is possible without an established democratic mass culture? (Do you think civil society has a role toward that?)

#### EUROPEAN UNION

- Do you believe Turkey's EU integration process helps democratisation? (..facilitating policy moves that are otherwise infeasible, internally) (Distinguishable from domestic players?)

- Do you think EU-integration process helps civil society work in a more favourable and/or permitting environment in Turkey? (How?)
- Did you have a chance to read the parts (of) EU Turkey 2010 Progress Report, EP March 2011 report, EU Turkey 2011 Progress Report?

#### MEDIA

- What role(s), if any, does/should the media play in supporting civil society?

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