

Democracy Anchored in the Presidential System: The “Solution Process”, Constitution Making and the Future of Europeanization in Turkey

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Abstract

Since the beginning of 2013, the efforts to re-open the accession negotiations between Turkey and the EU have coincided with two important democratization processes, i.e., the solution of the Kurdish Issue and the termination of the 1982 Constitution. After the suspension of the accession negotiations in December 2006, Turkey seemed to distance itself from the EU and the process of the Europeanization of Turkey’s political system came to de facto halt. The article analyzes the recent democratization moves in this respect and argues that the ruling party’s objective of system change, that is the project of presidential system rather than Europeanization has seemed to guide the recent reform moves in Turkey.

Keywords

Turkey, Europeanization, Kurdish Question, democratization, constitution making,

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Introduction

With the passage of the rotational Presidency of the European Union to Ireland, hopes about the revival of Turkish-EU relations in general and about the restart of the membership negotiations in particular have been given voice more loudly since the beginning of 2013. After the bilateral meeting between Turkish Foreign Minister Davutoğlu and his French counterpart Fabius in February 2013, it was announced that France would allow one of the five chapters it has blocked in the negotiation process to open. In April 2013, the European Parliament called for the opening of negotiations on the 22nd chapter and also for the lifting of the blockades on 23rd and 24th chapters. As a result, the way for the restart of the negotiations has been opened after nearly three years pause.

This lowly attempt on the part of the EU has been more a sign of France's own consideration to calm down the relations with Turkey, which deteriorated during Nicholas Sarkozy's presidency, rather than a fresh start in Turkish-EU relations.¹ However, even if it is a superficial attempt to restore the political dialogue with Turkey, this does not lessen its importance since it has coincided with the two extremely important democratization processes that have been going on in Turkey since the beginning of 2013. The first one is the establishment of a permanent ceasefire with the PKK that has been carried under the name of

¹Hugh Pope, "Turkey's tentative EU springtime", 4 March 2013, www.crisisgroup.org/en/regions/europe/turkey-cyprus/op-eds/pope-turkey-tentative-eu-springtime.aspx, (access date: 7 May 2013); Emiliano Alessandri, "Turkey-EU relations: Back to basics", The German Marshall Fund, *On Turkey Series*, 27 February 2013, www.gmfus.org/archives/turkey-eu-relations-back-to-basics/ (access date: 8 May 2013); Ahmet Insel, "Boosting negotiations with Turkey: What France can do?" *Global Turkey in Europe Series, Policy Brief 4*, 2012, İstanbul, İstanbul Policy Center.

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the “Solution Process” referring to the final ending of Turkey’s most significant democracy and security issue, namely the Kurdish Question. The other is again a long-standing problem of the termination of 1982 Constitution, which was the product of the 1980 coup, a problem that severely harmed the development of a genuine democracy in Turkey. To what degree, the EU will infuse into these major undertakings as an actor seems important if one remembers the fact that especially after its declaration of candidacy in 2001, through conditionality, the EU has been the major initiator of democratization in Turkey. Since the suspension of the membership negotiations in December 2006 however, the EU conditionality has steadily weakened as a framework of democratic reform for Turkey.² In other words, Europeanization is not the main track on which Turkey’s democratization train has been progressing since that time. This study aims to ask “whether or not the government’s “Solution Process” and efforts to make a new constitution have been guided by Europeanization?” and “what are the conditions for the AKP government to carry out these major projects within the standards of the Europeanization?”

In order to answer these questions, first, the study will briefly mention about the concept of Europeanization. Then the developments in the EU-Turkish relations between 2007-2012 during which Turkey has distanced itself from the EU will be summarized. In the following part, the study will focus on the AKP’s moves about the Kurdish issue, namely the Kurdish

² Paul Kubicek, “Political conditionality and European Union’s cultivation of democracy in Turkey.” *Democratization*, Vol. 18, No.4, 2011, p.918-19; Gamze Avci, “The Justice and Development Party and the EU: Political pragmatism in a changing environment.” *South European Society and Politics* , Vol.16, No. 3, 2011, p.412; Kemal Kirişçi, “The Kurdish Issue in Turkey: Limits of European Union Reform.” *South European Society and Politics*, Vol. 16, No.2, 2011, p. 338; G. Noutcheva, and S. Aydın-Düzgüt, “Lost in Europeanization: The Western Balkans and Turkey” *West European Politics* , Vol. 35, No.1, 2012, p.68.

opening of 2009, the simultaneous fights against the PKK and with Union of Communities in Kurdistan (KCK) -the urban branch of PKK-, and finally the ongoing ‘Solution Process’ with the argument that, both in terms of the method and the substance, the handling of the Kurdish question does not fit with Europeanization. Then, in a similar way, the constitutional amendments and the recent constitution-making efforts led by the AKP government will critically be assessed with the argument that recent political reforms have prepared the ground for a system change, namely for a kind of presidential system rather than bringing more Europeanization in Turkey. After discussing in what respects AKP’s “Solution Process” and constitution making have both fallen short of the standards of Europeanization, the study will assess the idea that the recent reforms especially since 2010 public referendum might have moved Turkey forward but not closer to EU.

Europeanization and Turkey’s Transformation

Europeanization is the concept, which explains the EU’s impact on the domestic political governance of accession states as a top-down process of transformation. From the perspective of the EU’s evolution, the concept concerns to what extent policies and institutions of the European Union spread across different contexts. From the perspective of the accession countries, on the other hand, it refers the country’s firm commitment to a set of political values and norms outlined in the Copenhagen criteria and further elaborated in the EU Charter of Fundamental Rights.³

³ F. Schimmelfenning and U. Sedelmeier, “Governance by conditionality: EU rule transfer to candidate countries of Central and Eastern Europe”, *Journal of European Public Policy*, Vol.11, No.4, 2004, pp.677-678; T. Börzel and D. Panke, “Europeanization” *European Union Politics*, eds. M.Cini and N.P.Solorzano Borrogon, Oxford, Oxford

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Therefore, it is a performance indicator for both sides. The Europeanization literature focuses on the political processes, which specifically relates the changes brought about by the EU. Therefore, to analyze a country's democratization process in terms of Europeanization means to exclude other processes, which might also buttress democratization. Substantially, Europeanization refers to the adoption of a whole range of political reforms covering democratic consolidation in terms of institutions and procedures, respect for human rights, minority protection, conflict resolution and political stability.⁴ The issue is to what extent the member states or prospective member states adopt EU rules and implement EU policy-making in these areas. However, in order to be effective, Europeanization has to find a fertile domestic ground on which the reformers could totally adopt the European democratic standards and values. This issue has been discussed by a newer branch of Europeanization literature, which has concentrated, on processes of social learning, adaptation and lesson-drawing as mechanisms involved in Europeanization.⁵

At that point, one should underline the differentiation between Europeanization and EU-ization. The EU-ization is the *political encounters* where specific political entities such as the EU

University Press, 2010, p.405-417; Kenneth Dyson, "Reinventing Europe? Turkey, European Union Accession and Europeanization" *Turkey and the European Union: Prospects for a Difficult Encounter*, eds.E. LaGro and K.E. Jorgensen, Basingstoke, Palgrave Macmillan, 2007, p.51-68.

⁴ F. Schimmelfenning, "EU political accession conditionality after 2004 enlargement: Consistency and effectiveness", *International Influence Beyond Conditionality: Postcommunist Europe after Enlargement*, eds. Rachael A. Epstein and Ulrich Sedelmeier, New York and London, Routledge, 2009, p.123.

⁵ Trine Flockhart, "Europeanization or EU-ization? The transfer of European norms across time and space." *Journal of Common Market Studies*, Vol.48, No. 4, 2010, p.790.

and the member state engage in the transfer of institutional and organizational practices and policies. Europeanization, however, refers to *cultural encounters* resulting in an ideational transfer of norms, values, rules and behavioural practices that make up the identity of Europe.⁶ In that sense, Europeanization ideally includes the transfer and internalization of all norms and practices, which is expected to bring changes in the attitudes and behaviours of the accession states' governments. Although Europeanization is a complex and multi-dimensional process changing over time, all the aspects of the process is related with the construction and spread of the European norms such as commitment to peace, liberty, democracy, the rule of law and the human rights.⁷ It should not be taken with a narrow focus of institutional democratization. Rather, Europeanization depends on the ruling elite's performance of initiating the social processes that will produce grassroots democratization in the society.

Turkey and the EU after December 2006

The accession negotiations between Turkey and the EU officially began in October 2005 and soon after it started; it was suspended in eight chapters by the EU Council decision in December 2006. Since the suspended chapters constitute the bulk of the *acquis*, with this decision, the accession negotiations came to a *de facto* halt. As of end of 2012, 13 chapters were opened, only one is provisionally closed. Since the opening of last chapter in July 2010, not only negotiations but also the political dialogue between Turkey and EU has been uneven. The tension reached its

⁶ *ibid.*,p.791.

⁷ Thomas Diez, A. Agnantopoulous and A. Kaliber, "Turkey, Europeanization and civil society." *South European Politics and Society*, Vol.10, No.1, 2005, p.2.

peak especially after Turkey's decision to freeze the relations during the Greek Cypriot Presidency in the second half of 2012.

The period beginning with 2007 has been essentially different from 2001-2006 period in Turkish-EU relations. In the first period, the prospect of opening of the accession negotiations was the major impetus for reform in Turkey. Europeanization was the main framework of analysis in explaining the level of Turkey's EU-induced democratization and "the effects of Europeanization on Turkey's democratization" were extensively analyzed.⁸ In terms of both EU-ization and Europeanization, the 2001-2006 period was evaluated as remarkable and irreversible in much of the related literature on Turkish-EU relations.⁹

The second period which has coincided with AKP's second and third terms in office, however, has been different both in terms of the quality of the democratic reforms and of the level of conviction about Turkey's European future. "The limits of Europeanization in Turkey's democratization" has become the dominant theme in the debate, which has brought the questioning of AKP's commitment to basic values and norms of

⁸ Ziya Öniş, "Contesting for Turkey's political centre: Domestic politics, identity conflicts and the controversy over EU membership" *Journal of Contemporary European Studies*, Vol.18, No.3, pp. 361-376; Avcı, "The Justice and Development Party.."; Mirella Bogdani, *Turkey and the Dilemma of EU Accession*, London, I.B. Tauris, 2011; Noutcheva, and Aydın-Düzgit, "Lost in Europeanization...".

⁹ Ioannis N. Grigoradis, *Trials of Europeanization*, New York, Palgrave MacMillan, 2009, p.155-156, Öniş, "Contesting for Turkey's", p.363; W. Hale, "Human rights and Turkey's EU accession process: Internal and external dynamics, 2005-2010", *Turkey and the EU: Accession and Reforms*, eds. G. Avcı and A. Çarkoğlu, New York, Routledge, p.117; Kubicek, "Political conditionality and..", p.914-915; Kirişçi, "The Kurdish Issue..", p.335.

Europeanization.¹⁰ In other words, parallel to the stalemate in accession talks, the country has seemed to run off the rails of Europeanization for a number of aspects. More importantly, Europeanization as an “ideational transfer” which refers essentially to the internalization of the democratic standards and values of the EU by the accession states’ elites has become questionable in Turkish case.

Among the reasons of the stopping of democratic reforms, the decline in the credibility of the EU commitment for Turkey’s full membership is the primary one. Once the credibility of the EU commitment declined, the AKP began to recalculate the political benefits of the reform process for itself.¹¹ The enlargement fatigue of the EU was a factor against Turkey, but there were also reasons specific to Turkish case, that is, the deadlock in the Cyprus issue and continuing suspicions of France, Germany, Austria and the Netherlands about Turkey’s membership.¹² Especially EU’s attitude in Cyprus question was considered as unfair in Turkey and declining public support to membership began to characterize the relations. Beginning with 2007, there has been less and less incentive for Turkey to comply with the EU’s democratization agenda and the Commission’s progress reports began criticizing the government’s failure to continue and implement the reforms.

Another important factor that has diminished AKP’s incentive for reform was the increasing political violence and

¹⁰Avcı, “The Justice and Development Party..”, p.416; Kubicek, “Political conditionality and..”, p.919.

¹¹ Firat Cengiz and Lars Hoffman, “Rethinking conditionality: Turkey’s European Union Accession and the Kurdish question” *Journal of Common Market Studies*, Vol. 5, No.3, p.428; Avcı, “The Justice and Development Party..”, p. 411.

¹² Kubicek, “Political conditionality and..”, pp. 921-922.

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polarization in Turkey's domestic politics.¹³ After 2005, the PKK ended the unilateral ceasefire that was announced when its leader, Abdullah Öcalan was captured in 1999. Violent attacks on the civilian and military targets closed the doors for public approval on the necessity for further democratization. This period was marked by a parallel rise in Turkish and Kurdish nationalisms, which fostered social and political tension in the country. As Kirişçi specified, different segments in the society, the military, the AKP and even the Prime Minister himself became engulfed in the nationalist and populist atmosphere of the period.¹⁴

The power struggle between the government and the secular state establishment was another factor that distanced Turkey from the EU. This struggle intensified around two issues in this period.¹⁵ The first one was the election of the new president, which turned into a major political crisis and could be solved only after the AKP consolidated its power in the early general elections. This issue revealed a considerable political instability and polarization in the society, materialized in huge civilian rallies against the government. The second was the beginning of a series of investigations and waves of accusations about an alleged plot against the government, which was said to be prepared by a secret organization called as *Ergenekon*, consisting of figures from the military, bureaucracy, intellectuals, universities and the media. This internal political turmoil effectively slowed down the reform process. In its annual progress report of 2007, the EU Commission noted that the resolution of the political crisis was a sign of the country's democratic maturity, yet especially in the

¹³ Kirişçi, "The Kurdish Issue..", p.340; Avcı, "The Justice and Development Party..", p.413.

¹⁴ Kirişçi, "The Kurdish Issue..", p.341.

¹⁵ V. Morelli and C. Migdalovitz, "European Union enlargement: A status report on Turkey's accession negotiations" *Current Politics and Economics of Europe*, Vol. 22, No.1, 2011, p.53.

areas of fundamental rights and freedoms, of the fight against corruption and of the curtailment of the military's influence in politics, the AKP government displayed limited progress.¹⁶

After 2008, one can see the continuation of these patterns in Turkish-EU relations that have steadily taking Turkey out of Europeanization. Throughout 2008, the AKP government had to deal with critical internal issues the most important of which was the closure case prosecuted against it. The AKP's move to lift the headscarf ban fuelled the concerns that the government had a secret agenda to Islamize the country. In July 2008, the Constitutional Court, which was then the strongest opponent of the AKP within the state, decided that the AKP became the focus of anti-secularist activity although it did not close down the party. The tension and polarization in the society continued to mount as the accusations with respect to the Ergenekon trial led to growing interpretations that the government was in fact using this opportunity to suppress the opposition and to silence the media.¹⁷ From this period onwards, criticisms against the AKP have heightened for becoming increasingly authoritarian. Accordingly, the EU Commission's report for 2008 was much harsher. The amendment of the Article 301 of the penal code, which was crucial for the expansion of freedom of thought and speech in Turkey, was found limited since it did not touch the essence of the problem.¹⁸ After more than four years delay, AKP government enacted a new 'National Program for the Adoption of the Acquis' in December 2008, but still the Commission announced its general

¹⁶ European Union. 2007. "Turkey 2007 Progress Report", http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf, (access date: 22 April 2013).

¹⁷ Kirişçi, "The Kurdish Issue", p.434.

¹⁸ European Union. 2008. "Turkey 2008 Progress Report", http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf, (Access date: 22 April 2013).

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disappointment since the government abandoned its own proposal to adopt a new constitution in order to give priority to lift the headscarf ban in the universities.

Indeed, beginning with its second term, the AKP government adopted strategic reforms that would increase its power over the military and the judiciary, which were the domestic opponents of Europeanization. However, the decline in these opponents' power did not directly result in acceleration in the reform process.¹⁹ On the contrary, especially after 2009, there have emerged signs of civil authoritarianism in Turkey, most evidently in the attitudes towards the Kurdish issue and in the rising pressures over the media. Moreover, as Çarkoğlu and Kalaycıoğlu specified, it is even possible to talk about the curtailment of the rule of law for minorities in the second term of the AKP government.²⁰ Therefore, domestic political calculations rather than the EU conditionality was the incentive for political reform, which meant *de facto* end of Europeanization and the beginning of the consolidation of AKP's power.

The government's democratic moves remained restricted to the lifting of the bans over the use of native languages in public and in broadcasting. In July 2009, an initiative named first as the Kurdish opening –in the face of mounting criticisms, the government changed its name first as 'the democratic opening' and then as 'the national unity and fraternity program'- was launched which caused further nationalist reactions both among the Kurds and the Turks. This move resulted in the closing down of pro-Kurdish Democratic Society Party and rising terrorist attacks by the PKK. Under these conditions, the 2009 Commission Report critically stated the areas where Turkish laws and practices did not

¹⁹ Cengiz and Hoffman, "Rethinking conditionality..", p.428.

²⁰ A. Çarkoğlu and Ersin Kalaycıoğlu, *Rising Tides of Conservatism in Turkey*, New York, Palgrave MacMillan, 2009, pp.50-54.

meet the EU standards including the rules on political parties, promotion of minority languages, trade union rights, allegations of torture, corruption, discrimination on basis of sexual orientation, bans on Internet sites, use of the Anti-Terror law against Kurdish groups, the lack of a gender equality body, and the continued political influence of the military.²¹ The EU Parliament's 2009 Resolution on Turkey called to prove its political will to continue the reform process. Since the year 2009 was cited as a deadline for certain progress, many Turkosceptics in Europe began to suggest 'special relationship' or 'privileged partnership' with Turkey, which caused further alienation in Turkey.²²

As of year 2010, the EU Commission's Progress Report drew attention again to the confrontational political climate, which was according to the report the main reason behind the slowing down of the political reforms.²³ The tension in Turkey was attributed to the opening of new criminal investigations about alleged coup plans and the lack of effective judicial guarantees for all suspects, which became discernable in the length of pre-trial detentions. More importantly, the closing down of pro-Kurdish DTP and the banning of its 37 members from party politics for five years including two MPs was cited as a serious setback to the government's efforts at democratic opening. The report reminded the Venice Commission's conclusions about the articles 68 and 69

²¹ European Union. 2009. "Turkey 2009 Progress Report", http://ec.europa.eu/enlargement/pdf/key_documents/2009/package/tr_rapport_2010_en.pdf, (access date: 22 April 2010).

²² Morelli and Migdalovitz, "European Union enlargement", p.55; Bogdani, "Turkey and the Dilemma of EU.." pp.165-167; Alexander Bürgin, "Ongoing opposition in the west, new options in the east: Is Turkey's EU accession process reversible?" *Journal of Balkan and Near Eastern Studies*, Vol.12, No.4, 2010, pp.420-421.

²³ European Union. 2010. "Turkey 2010 Progress Report", http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf, (Access date: 22 April 2010).

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of the Turkish constitution which have been used to ban political parties in violation of the European Convention of Human Rights and called for Turkey to make appropriate changes in its constitution.²⁴

In September 2010, a constitutional package, which did not respond these calls but included mainly reforms about judicial independence, was approved in a public referendum. The EU viewed the constitutional amendment as a step in right direction, yet criticized the government since the provision, which made party closures more difficult, was dropped from the package with the votes of AKP's MPs in the parliament. Moreover, 10% national threshold for the presentation in the parliament remained as the main defect of the long-awaited amendment package. The lack of public consultation in the reform process, which is the key for a stable and healthy democracy was also paid attention as another problem. Violations of freedom of expression (continuing prosecutions under Article 301), the state's treatment of journalists and the media, and the disproportionate use of force by the police continued to be concerns.²⁵

Throughout 2011, the government's priority was implementing the constitutional amendments and judicial reforms which would finally empower the civil authority over the judiciary. Towards July 2011 elections, AKP's main motivation was to obtain the two-thirds majority in the parliament, which is necessary to change the constitution single-handedly. The party focused on getting extreme right-wing votes and abandoned its previous reformist path almost completely.²⁶ Generally, judicial reforms

²⁴ Commission Report, 2010.

²⁵ Ibid.

²⁶ R. Updegraff, "The Kurdish Question..", *Journal of Democracy*, Vol.23, No.1, 2012, p.126; Cengiz and Hoffmann, "Rethinking conditionality..", p.428.

resonated positively on the part of the EU, however, it was cited that substantial problems remain in the areas of the independence, impartiality and efficacy of the judiciary. The power of the justice minister in the election of the members of the High Council of the Judges and the Prosecutors and the parliament's limited influence over the election of the high courts were cited as the problems impairing judicial impartiality and strengthening the power of the execution over the judiciary. The Commission once again cited the persistence of 10% national threshold and the lack of progress in the issue of party closures as unfits with the European standards.²⁷

The Commission's 2011 Progress Report underlined the strained relations between the major political institutions and the rising tension in the society as the factors hampering democratization. Violations of freedom of expression and freedom of media were discussed at length in this report. The detention of a number of journalists and confiscation of an unpublished book as a document of a terrorist organization were cited as the events rising concerns about freedom of expression in Turkey. It was specifically stated that terrorism related articles of Turkish Penal Code and anti-terror legislation were still widely used as grounds for criminal investigations against human rights defenders and Kurdish politicians. The frequent use of arrests instead of judicial supervision, long detention periods and the undue detention decisions specifically in alleged coup and KCK investigations were cited as the grounds of total 7764 new applications which were made to the ECtHR since October 2010. The Commission also criticized the use of disproportionate force by the security forces in

²⁷ European Union. 2011. "Turkey 2011 Progress Report", http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/t_r_rapport_2012_en.pdf, (Access date: 22 April 2013).

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the demonstrations related to Kurdish issue, student's rights and the trade unions rights.²⁸

In October 2011, the AKP government set up of a Constitution Conciliation Committee on the basis of equal participation of all the parties represented in the parliament. It held public consultations with the representatives of civil societal organizations, universities, trade unions and various professional associations between November 2011 and April 2012. The EU Commission's 2012 Report celebrated this initiative as a very democratic and participatory process and emphasized that the new constitution should guarantee the rule of law, human rights and the protection of minorities as well as address the long standing Kurdish issue. The report accentuated the inextricable link between the Kurdish problem and the establishment of a new political order with the new constitution. However, especially after the launching of the Solution Process in December 2012, AKP has tended to view constitution making and the solution of the Kurdish question as two separate issues.²⁹ As of summer 2013 the Commission has reached a consensus on over half of the articles but its works has entered into a stalemate mainly due to AKP's proposal on presidential system.

Throughout 2012, judicial reform and the normalization of civil-military relations remained priorities of the government.³⁰

²⁸ *ibid.*

²⁹ İltar Turan, "Turkey's second Kurdish opening: Light at the end of the tunnel or another failed attempt", *The German Marshall Fund Analysis, On Turkey Series*, 12 April, 2013, (Access date: 22 May 2013). <http://www.gmfus.org/archives/turkeys-second-opening-light-at-the-end-of-the-tunnel-or-another-failed-attempt/>.

³⁰ In April 2012, two other criminal investigations were launched into 1980 coup and the 28 February incident. Former Commander of General Staff was put under arrest together with several other high commanders within the Sledgehammer investigation that was started in

Two judicial reform packages were adopted in July 2012 and in February 2013. While the former prioritized the effective functioning of the judicial system, the latter brought the fundamental rights and freedoms closer to the European standards but effectively avoided full compliance with them especially concerning the rights of political participation. In terms of impartiality, independence and efficacy of the judiciary, the Commission Report found the new legislations as insufficient since they did not bring the necessary alignment with the European standards.³¹ As regards to freedom of expression and freedom of assembly, the year 2012 was again very troubled and confrontational for Turkey. Several journalists, writers, academics and media workers were imprisoned; cases were opened against mainly left-wing writers and journalists writing on the Kurdish issue. The Commission Report explicitly underlined that the pressure on the media reached to a point that self-censorship has become a common phenomenon in Turkey. As a matter of fact, for the first time in a several years, the Commission criticized the government so severely that one of the leading figures of AKP, Burhan Kuzu who is a professor of constitutional law reacted harshly by saying that this report should be put in garbage.³²

The year 2012 passed away with immense discussions about the Kurdish issue under the shadow of violent terrorist attacks by PKK, the inadvertent killing of 35 civilians in Uludere with an air strike and the widening of KCK investigations to

2010. With these operations, the balance between the government and the military was completely reversed.

³¹ European Union. 2012. "Turkey 2012 Progress Report" available online at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/t_r_rapport_2012_en.pdf, (access date: 22 April 2013).

³² http://www.bbc.co.uk/turkce/haberler/2012/10/121012_eu_turkey_diplomats.shtml

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include majors, party administrators, academicians, lawyers, intellectuals and journalists. While the country has seemed to be deadlocked in the Kurdish issue, as a result of the secret talks which had been continuing between the PKK and the government, on 27 December 2012, the Prime Minister announced the launching a new initiative under the name of “Solution Process”, the expected outcome of which would be a permanent ceasefire with the PKK. EU’s High Representative for Foreign Affairs and Security Policy Catherine Ashton and the Commissioner for Enlargement Stefan Füle found the developments as “pleasing”.³³ At the time of writing, the real substance of the political solution is yet to be ascertained. As a beginning, the government has passed a legislation recognizing the right of defense in mother tongue in January 2013, established seven groups of Wise Men who would gather local reactions and a parliamentary commission for the monitoring of the process. As a result, Turkey entered 2013 with two great tasks, solving the Kurdish issue and making a genuinely civil constitution.

As this brief summary of events has made clear, in its second and third terms the AKP government made political reforms not to respond EU conditionality, but to empower its rule within the state. Accordingly, EU’s criticisms have intensified around the violations of the fundamental rights and freedoms, especially of the freedoms of expression, of fair trial and of the rights of political participation. Since 2009, the Commission Reports have defined the Kurdish issue and the making of a new constitution as the two crucial challenges that the country has faced with on the way of becoming a true democracy. However and conversely, the AKP’s focus has been to strengthen its power

³³ Sabah English 2013. “Eu and US offer support for the solution process in Turkey”, 22 March 2013, <http://english.sabah.com.tr/world/2013/03/22/eu-and-us-offer-support-for-the-solution-process-in-turkey>, (access date: 10 May 2013).

to such a degree that the party's growing hegemony as evident in its attitude of ignoring the need for genuine public deliberation in both issues has started to create concerns in wider segments of Turkish society.

The Kurdish Question, Democratic Openings, and Europeanization

Throughout its candidacy and negotiation processes, the Kurdish issue has been at the core of Turkey's EU induced democratization agenda. The AKP government and the Prime Minister himself created the impression that they had the political will and power to solve this question by recognizing Kurdish cultural rights and by strengthening democracy. After more than a decade in power, however, the Kurdish question is still the most critical issue in Turkey's democratic transformation. To what extent AKP's last moves to solve this issue have been conducted within the framework of Europeanization? In other words, how can one evaluate the '2009 Kurdish Opening' and the ongoing 'Solution Process' in terms of Europeanization?

The Kurdish opening of 2009 came surprisingly in an atmosphere of escalated violence and intensified PKK attacks. As stated before, it was not a step to accelerate the EU accession process. On the contrary, it was the result of AKP's strategic thinking to recover the Kurdish votes in the coming local elections.³⁴ The government gave weight to symbolic steps which would create fast repercussions in Kurdish populated regions, like the lifting of the ban over the public use of Kurdish letters and Kurdish local names, the establishment of Kurdish language

³⁴ Kirişçi, "The Kurdish Issue..", p.345-346; Hale, "Human rights and Turkey's...", p.120.

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departments in public universities and the beginning of Kurdish broadcasting in a state-owned TV channel. However, as the most critical decision, in October 2009, the government allowed the entry of a small group of PKK fighters to the county and then released them. This occasion turned into a massive demonstration in support of the PKK and created strong criticisms against the AKP. The process came to a halt as mutual provocations coming from the nationalists of both sides reached its apogee. The PKK attacks restarted and in December 2009, the Constitutional Court decided to close down pro-Kurdish Democratic Society Party (DTP) on the grounds that the party had become a focus of illegal activities that targeted the integrity of the state. Several party members including the co-chairs of the party, Ahmet Türk and Aysel Tuğluk who were removed from office as deputies, were also banned from political activity for a period of five years. Furthermore, a wave of operations and investigations was launched against the KCK. These investigations continued throughout 2010 and 2011 and led to the arrest of more than 3000 people including mayors, former deputies, local administrators of DTP and of the Peace and Democracy Party (BDP) -which was established after DTP-, the journalists, academicians, civil societal activists, students, trade unionists, lawyers and young party activists. The 2009 opening resulted in a drastic failure. According to Kirişçi, there were several EU related factors in the failure of this initiative. First, the weakening of EU's engagement empowered the anti-EU circles in Turkey and weakened the government's hand. Second, the absence of the EU Acquis defining minority rights beyond cultural rights created an uncertainty in policymaking. And finally, the declining EU commitment also weakened the non-PKK Kurdish civil elements and made political dialogue between the parties more difficult.³⁵

³⁵ Kirişçi, "The Kurdish Issue..", p.354.

Among the more specific reasons of the failure, its ill-prepared nature comes first. At the very beginning of the opening, the gap between the government's perspective and the expectations of the Kurdish side became apparent.³⁶ The PKK leader and DTP demanded greater autonomy, which would be attached to the constitutional recognition of Kurdish identity as a separate nation and its right of regional self-governance. Such an understanding was exceeding AKP's approach to the question, which has been centered on the extension of individual –not collective- cultural rights and on the disarmament of PKK parallel to the enhanced social-economic welfare of the region. In a sense, leading figures in policy making in AKP underestimated the power of Kurdish nationalism, which could be eliminated with the elimination of PKK.³⁷ The AKP made clear that demands like education in Kurdish and general amnesty were not on their agenda.

The gap between Kurdish demands and the AKP's perspective has been the reflection of a deep ambiguity on the part of the AKP elite concerning the issue of citizenship.³⁸ On the one hand, they have declared that the state views the Kurds as equal and free citizens of Turkey and the assimilation policies of the Kemalist era have been finally abandoned. On the other hand, they have opposed collective cultural rights specifically education in mother tongue which is the main instrument for a minority group to live and develop its cultural identity. They view such demands as the "politicization of a cultural identity", which they are strongly against whether they come from Circassians, from Laz people or

³⁶ Cuma Çiçek, "Elimination or integration of pro-Kurdish politics: Limits of the AKP's democratic initiative", *Turkish Studies*, Vol.12, No.1, 2011, p.20.

³⁷ Updegraff, "The Kurdish Question", p.124.

³⁸ Updegraff, "The Kurdish Question", p.125, Çiçek, "Elimination or integration of ", p.22.

from Kurds. In this respect, AKP's evaluation about the very origin of the question seems not so much different from the mainstream understanding of the state elite in Turkey that is, it is a matter of socio-economic underdevelopment which was used to create a nationality-illusion on the part of the Kurds. In the long run, this problem may well be solved with an increase in welfare level and improved cultural rights within a discourse of religious brotherhood. Before 2011 elections, as reflecting this perspective, Prime Minister said that '(after their reforms) from now on, there is no such thing as Kurdish Problem' but there are 'problems of our Kurdish brothers'.³⁹ They see their position as very consistent with the idea that Turkishness is the supra- identity of one nation, one language and one flag.⁴⁰ As will be discussed below, in the ongoing "Solution Process", the government has made clear that they would not take a different attitude, which would meet the Kurdish demands for broader autonomy.⁴¹

Concerning its fit with Europeanization, 2009 opening had two problems: First, the government launched the process without establishing a consensus among the main political actors in the society.⁴² As a matter of fact, the party tried to create an atmosphere of fraternity by using the populist slogan of "mothers

³⁹ Erdoğan's speech in Muş mass meeting, 29 April 2011, <http://www.haberturk.com/gundem/haber/626064-bu-ulkede-artik-kurt-sorunu-yoktur> (access date: 5 May 2013).

⁴⁰ T. Bahçeli and S. Noel, "The Justice and Development Party and the Kurdish question." In *Nationalism and Politics in Turkey: Political Islam, Kemalism and the Kurdish issue*, eds. Marlies Casier and Joost Jorgerden, New York, Routledge, 2011, p. 107 and p.116.

⁴¹ See Erdoğan's speech at the Brookings Institute, during his visit to USA after the process began. Washington D.C, on 17 May 2013, <http://www.akparti.org.tr/site/haberler/kategori/genel-baskandan/1/P50>, (access date: 30 May 2013).

⁴² Kirişçi, "The Kurdish Issue..", p.354; Çiçek, "Elimination or integration of", p.23.

will not cry anymore". The AKP found sufficient to generate a superficial public support rather than to initiate an open and fruitful debate, which would lead to a new political convention in the society. The EU Commission's 2010 and 2011 progress reports consistently stated the lack of a genuine political participation in such a vital process as a problem and made clear that 2009 opening apparently fell short of the European standards of a healthy and functioning democratic deliberation.⁴³

Secondly, more than being a political failure, this attempt brought the narrowing of the political space not only for the Kurds but also for the whole society. The closing down of pro-Kurdish party became the manifestation of a beginning of an era of democratic regression for Turkey. The basic political values of Europeanization that is the freedom of expression and assembly and the right to fair trial became much more contestable as the military operations restarted and as the KCK investigations were widened. Throughout 2010-2012, more and more journalists, academics, local politicians, students and activists were accused of being the members of terrorist organizations. As the democratic atmosphere has waned, the pressure on the media especially on columnists who have criticized the ruling party's inability in the process has mounted. Instead of reformism, the authoritarian tendencies of the ruling party have been discussed with an emphasis on the danger of civil tutelage.⁴⁴ Under such conditions, the EU Reports after 2010 made explicit that a number of basic rights and freedoms have been severely impaired in Turkey and the

⁴³ Commission Reports 2010 and 2011.

⁴⁴ The 2012 Report of the Committee to Protect Journalists, <http://www.cpj.org/tr/Turkey2012.Turkish.pdf>, (access date: 5 May 2013).

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country has been breaking away from progressing towards a liberal democracy.⁴⁵

Although it is too early to have a comprehensive idea about the ongoing Solution Process, still it is possible to observe the continuation of the above-mentioned pattern of nodus in Turkey. Similar to the 2009 process, the current Solution Process cannot be counted as being carried out within the framework of Europeanization. It is neither developed with the support of EU bodies nor is it inspired by EU's values of democratic development. Rather, the widespread idea in Turkish public opinion and in the media is that it is much more related with the AKP's objective to enter into the election year of 2014 –in which both the municipal elections and the election of the next President will be held- by ensuring a permanent ceasefire at least or the total withdrawal of PKK fighters at best. As of fall 2013, nearly ten months have passed after its first announcement, the Turkish public has had no idea of the content of the “Solution” especially concerning the critical issues of citizenship and regional autonomy. As will be discussed below, the long awaited democratization package, which has been announced on September 30th 2013, did not include any provisions related with regional self-administration. Specifically, the government has not made any preparation to lift out the reservations that Turkey put to the European Charter of Local Self Government before. In this respect, what the government has put forward is not a substantive “Solution” or a specific political project but just a perspective for solution.

The announcement of the current process has become surprising for the society similar to 2009 opening. After the violent

⁴⁵ In the 2012 Democracy Index of the Economist Intelligence Unit, Turkey was categorized as a hybrid regime and placed below Bangladesh and Ecuador.

summer of 2012, the political tension has been very high between pro-Kurdish BDP and the AKP government because of the KCK operations and the hunger strikes that the KCK detainees began in September 2012. The government has not refrained from harshening its tone against the BDP and there have been no signs of even a dialogue between the parties.⁴⁶ The Prime Minister himself has made the announcement of the mutual agreement between the government and the leader of the PKK on a live TV program on 27 December 2012. Three stages have been envisioned in the process.⁴⁷ At the first stage, actual clashes will be stopped and the withdrawal of the PKK fighters will be accomplished. All the Kurdish actors, namely, PKK leader Öcalan, BDP, the rulers of the PKK in the Kandil Mountain of northern Iraq and the Kurdish Diaspora have seemed collaborating with the government. However, as of the fall 2013, there has been a widespread debate in the media that there is a problem of transparency since the government has effectively restrained itself from making an official explanation about the withdrawal. Therefore, after May 2013, the picture was that the PKK decided to withdraw by itself and it was withdrawing.

At the second stage, the government has elected several groups of Wise Men from the leading figures of the academia, the media, and the arts and from various civil societal groups who would travel around the country. Reactions and criticisms have followed their activities since they are doing nothing other than the public promotion of the process without entering into any deeper

⁴⁶ International Crises Group. 2013. "Turkey's Kurdish Impasse: The View from Diyarbakır." 30 November 2012. <http://www.crisisgroup.org/en/regions/europe/turkey-cyprus/turkey/222-turkeys-kurdish-impasse-the-view-from-diyarbakir.aspx> (accessed date: 22 April 2013).

⁴⁷ K. Tayız, "Masada üç mühürlü mektup" (Three sealed letters on the table), *Taraf*, 25 February 2013.

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discussions about to content of the solution. The election of these people from popular academic and media figures whose ideas are already well known has created dissatisfaction in the society. Moreover, their position as being responsible only to the Prime Minister has indicated that a unilateralist not an interactional stance is valid in their workings. In these respects, their activities cannot be accounted as a true public deliberation. On the contrary, they reflect the government's intention to create grass root support similar to the populist approach of the 2009 opening. At this very early stage, the need for building the widest possible consensus in the society has been once again bypassed by the government. For the time being, the leaders are carrying out the process and the parliament is not a party to the "Solution" either through a functioning commission or through its general assembly.⁴⁸ As a response to this initiative, leading political figures from political parties, the civil society, the media and academia came together in a well-attended 'Conference of Peace and Democracy' held in Ankara, on 25-26 May 2013 and urged the government that the voices of all cultural, ethnic, religious and sectarian groups should be heard in such a critical moment of history. The government's attitude, which has ignored the heightened social demands for participation, has made evident that the Solution Process has not been carried out within the ideals and values of Europeanization.

The third stage, which is called as normalization, refers to a new reform process, which would eventually align Turkish democracy with the European standards. The AKP government has quickly completed "Human Rights Action Plan" which has been accepted as the Fourth Judicial Reform Package in the parliament in April 2013. The reform package has effectively narrowed the scope of propaganda crimes. Since on the legal grounds of these regulations, there are constant references to

⁴⁸ Two opposition parties, CHP and MHP refused to participate to the commission established in May 2013.

ECtHR decisions, this package is certainly a move of Europeanization at the first glance. Apparently, the package has aimed to ease the pressure on pro-Kurdish politics as a step within the Solution Process. Soon after the passage of the reform package, some of the journalists, academicians, politicians and students who were accused of making the propaganda of the terrorist organization have been released. However, the Human Rights Action Plan has not brought freedom to the people who have been accused of being members of an illegal organization since the article has not defined 'what an illegal organization is' as it did not before. It has been that feature of anti-terror law that is the lack of the definition of the illegal organization has been effectively limiting the political freedoms in Turkey. Furthermore, the criterion of 'an apparent and immediate danger' has not been used in a way as to extent also the freedom of expression.⁴⁹ Therefore, the government has seemed to be very careful not to widen the political rights and freedoms beyond a certain limit. The package certainly has not expanded the limits of political participation since it has not brought freedom to the people who had been accused of being members of an illegal organization while participating political activities about collective cultural rights. In this respect, the Human Rights Action Plan has been a very balanced and calculated move, which has not brought Turkish democracy closer to ECtHR standards as expected. It can be accounted only as a very limited move of Europeanization. Similarly, the most recent democratization package, which was announced in September 2013, has fallen short of the great expectations that the government would take specific steps to concretely democratize the anti-terror law in a way as to release the remaining political detainees. It seems that the government will

⁴⁹ A. İnsel, "Yargı reformu: gene iki ileri bir geri." (Judicial reform: Again two steps forward one step back) *Radikal*, 12 March 2013; Tarhan Erdem "Açık ve yakın tehlike." (Apparent and immediate danger) *Radikal*, 8 March 2013.

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continue to make new reforms especially parallel to the withdrawal of the PKK fighters. However, the tendency to take very balanced steps in accordance with the day-to-day negotiations with the PKK seems to prevail. Rather than developing comprehensive political reform packages with the participation of all actors in the society, the AKP seems to prefer to make the reforms single-handedly.

Concerning much more substantive issues of citizenship, of the right to education in mother tongue and of local self-government, the gap between the AKP's perspective and the Kurdish demands have been apparent once again. The proposals brought by the AKP to the Constitution Conciliation Committee have been progressive but far from being consistent. Its proposal on citizenship, which does not have any references to ethnic roots, has certainly been a democratic move. However, this does not mean that they are recognizing collective cultural rights in a way as to treat different ethnicities as equal members of the society. AKP has not proposed any changes in the article on the right to education to include education in mother tongue or in a preferred language in the Constitutional Conciliation Committee. The leading figures of the party consistently underlined that the right to education in mother tongue in public schools would not be recognized. Therefore, the party made do with the previous change, which lifted just the ban over the education in languages other than the official language.⁵⁰ In the last democratization package of September 2013, the right to education in the languages other than Turkish was recognized only in private schools. Again,

⁵⁰ TESEV Report (The Turkish Economic and Social Studies Foundation), "Making of a New Constitution in Turkey Monitoring Report: What sort of a constitution are we heading towards?" March 2013, <http://www.tesev.org.tr/Upload/Publication/8055b0a8-cbe3-442a-abbe-3959d7c470bc/3%20AnayasaIzlemeRaporu%20ENG%20webson.pdf> (access date: 22 April 2013).

the government has been very careful not to give any message towards the society that Turkish citizenship would be radically transformed. As to the regulations about local self-government, AKP's constitutional proposal has reflected the mentality that places local units as decision-making bodies hierarchically below the central government. It is clearly in contradiction with European Charter of Local Self-government in this respect.⁵¹ As stated above, this critical issue of regional self-governance has not found a place in the long awaited, last democratization package. Apparently, the government did not want to deal with this issue in the election period. Therefore, Kurdish demands for more egalitarian citizenship and regional self-governance seem to continue to be the subjects of fierce negotiations for a foreseeable future.

Constitution Making and Europeanization in Turkey

The making of a civil constitution has long been the most critical issue regarding the consolidation of democracy in Turkey. A new constitution has been long awaited by the minorities as well as by various political and cultural groups demanding more freedom and rights in the society. Since 2002, under the guidance of EU conditionality, the AKP government initiated several constitutional amendments. Up until today, the 1982 constitution was amended 17 times; its preamble and more than half of the articles were changed.⁵²

⁵¹ *ibid.*

⁵² Ersin Kalaycıoğlu, "Kulturkampf in Turkey: The Constitutional referendum of 12 September 2010." *South European Society and Politics*, Vol.17, No. 1, 2012, p.1.

The point is that, the amendments that were made by the AKP governments between 2004-2010 were different from the amendments done in 2001 in the process of EU candidacy. In 2001, the coalition government of the period formed the widest possible consensus in the parliament under the shadow of the capturing of the PKK leader and on the eve of a severe financial crisis.⁵³ According to Kalaycıoğlu, however, in none of the constitutional amendments made after 2002, the AKP government tried to generate a consensus neither in the parliament nor in the society. On the contrary, the constitutional amendments of AKP period were made without formal and informal negotiations with the other parties in the parliament. Similarly, the representatives of various respondent groups in the civil society were not included in the process of drafting and adoption of those amendments.⁵⁴ In all of the instances, the constitution, which is supposed to be the reflection of the widest consensus reached in the society, was amended in an atmosphere of political tension and social polarization.

Especially in the last amendment, which was realized through a public referendum in September 2010, both opposition parties, CHP and MHP strongly opposed the content of the package while the pro-Kurdish BDP totally boycotted it. Let alone creating a political compromise among the demands that had been raised for years, the September 2010 referendum made the cultural-political cleavage in the Turkish society what Kalaycıoğlu refers to the "Kulturkampf" more visible than ever.⁵⁵ Accordingly,

⁵³ Ergun Özbudun and Ö.F. Gençkaya, *Democratization and the Politics of Constitution-making in Turkey*. Budapest, Central European University Press, 2009.

⁵⁴ E. Kalaycıoğlu, "The Turkish-EU odyssey and political regime change in Turkey." *Turkey and the EU: Accession and Reform* eds. G.Avcı and A. Çarkoğlu, New York, Routledge. 2013, p.64.

⁵⁵ Kalaycıoğlu, "Kulturkampf in Turkey..." , p. 16

in successive progress reports after 2010 referendum, the EU Commission paid attention to the lack of public consultation in drafting and adoption of the constitutional reforms that should certainly involve all political parties and the civil society with their full engagement.⁵⁶ Judging from the methods employed, according to these reports, AKP's constitutional reform moves fell short of the basic standards of Europeanization.

As to the substance of particularly the 2010 amendment, the EU's criticisms mainly focused on the persistence of Turkey's most critical democratic deficits in the areas of the rights of political participation and of the expansion of political space. First and the foremost, it has been consistently stated that, the 2010 amendment did not bring any changes either to the procedures or to the grounds for closing political parties (particularly 68th and 69th articles of the existing constitution).⁵⁷ As a matter of fact, initially the proposal was including such a provision, which makes party closure more difficult. However, it was dropped with the votes of the AKP's own MPs in the parliament before its submission to the public referendum. This was also a sign of a divergence within the AKP since some effective groups have been strongly against to the opening of the political space to the political activities of minorities with such regulations. Specifically, they thought that pro-Kurdish parties would benefit from this law. They would not feel the fear of closing down and in their view, such a regulation might open the way for disintegrative political activities. The related articles of the constitution and the law of political parties as a whole still constitute the most important impediment on the way of a genuine participatory democracy in Turkey. Accordingly, the EU Commission Progress Reports of the last three years have steadily emphasized that the lack of progress in this issue has been a serious problem concerning the alignment of the country's

⁵⁶ Commission Reports 2010 and 2011.

⁵⁷ Commission Reports 2010 and 2011.

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democratic standards with that of the EU. In other words, the constitutional amendments of 2010 fell short of the requirements of Europeanization in this definitive issue of opening the ways of political participation.

The 2010 amendment did not touch upon the problems related with the fundamental rights and freedoms that were paid attention to by the constitution committee established by the AKP itself before in 2007.⁵⁸ The clauses regulating the composition and structure of the Constitutional Court and the High Council of Judges and Prosecutors were more crucial for the AKP especially after the closure case prosecuted against it. The persistence on 10% national threshold vote that is currently required for representation in the parliament was cited as another critical issue, which has been avoiding Turkish democracy from becoming a democracy in European standards in successive EU Reports.⁵⁹ For years, this high ratio has provided an enormous advantage especially for the center-right parties in their competition with pro-Kurdish parties in the eastern provinces. Since 2002, AKP could have made this critical reform but successive AKP governments preferred not to include this issue in the reform packages and benefited from the status quo. During the debate on the constitutional referendum in 2010, the government did not envision such change in the existing constitution that would open the way for changes in the election law.

What about AKP's recent initiative of making a totally new, civil constitution, which has appeared as a point of a general consensus in the society, especially after June 2011 elections in Turkey? The ongoing constitution making process in fact, made a very prosperous start. The parliament spokesman Cemil Çiçek consulted with the constitutional lawyers and initiated a very

⁵⁸ Hale, "Human rights and Turkey's..", p.121-122.

⁵⁹ Commission Reports 2011 and 2012.

democratic and participatory procedure, which was open to public and to civil societal contributions. The Constitution Conciliation Committee, which would prepare a draft text, was set up on the basis of equal representation from all parties present in the parliament in October 2011. The members of the Committee agreed that there would not be any pre-conditions for the content of the new text. Therefore, at the beginning the picture was as such: All the parties present in the parliament came together for a genuine compromise for the new political order of the country. Between November 2011 and April 2012, the Committee held public consultations, received the views of the parties that are not in the parliament and of the professional associations, civil societal organizations, universities, and trade unions. For a year, the Committee worked very efficiently and negotiated more than half of the articles. In principle, they agreed on the fundamental rights and freedoms, but in practice, every party put some reservations on every article regarding the fundamental rights and freedoms. Nonetheless, this did not stop the process; the Committee continued its work with very positive repercussions in the society.

However, the Committee's smooth functioning halted in November 2012 when the AKP introduced its proposal on the presidential system, which had long been the talk of the town in Turkey. The opposition parties right away declared their objection and argued that it is a move to guarantee Erdoğan's political future as the first president of Turkey.⁶⁰ Since the articles on legislation, execution and judiciary of the proposal are directly related with the political system, it became impossible to progress on the draft text. At the end, in order to continue to work, in January 2013, the

⁶⁰ İlder Turan, "2012 goes, problems remain..", *The German Marshall Fund Analysis, On Turkey Series*, 7 January 2013, <http://www.gmfus.org/archives/2012-goes-problems-remain/>, (Access date: 22 May 2013).

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Committee decided to enclose the proposal in parenthesis and restarted to work on the basis of the parliamentary system.

The proposal has been widely criticized especially by the leftists and the liberals. The AKP's model of presidential system has been found as authoritarian since the president of the country would have a definite superiority over legislation and more critically over the judiciary.⁶¹ In other words, the proposal has been neglecting the basic principles of a liberal democratic order that is the principles of the separation of powers and the complete independence of the judiciary. According to the proposal, the president would be elected directly by the people for five years who could be from a political party but would not be an MP. The president would establish the government by appointing ministers outside of the parliament. The ministers would be responsible only to the president, which means that they would not be inspected by the parliament. In this way, the parliamentary control of the execution has been made impossible. This extraordinarily empowered position of the president coupled with the complete immunity of the government from parliamentary supervision has created concerns about the lack of checks and balances mechanism, which is the *sine qua non* of a stable democracy.⁶²

As to the principle of judicial impartiality, the capacity of the president to appoint the majority of the high courts' judges and the members of the High Council of Judges and the Prosecutors and the lack of any parliamentary supervision over these appointments have been the indications of nonconformity with the

⁶¹ Taha Akyol, "Başkan ve yargı" (The President and the judiciary), *Hürriyet*, 15 April 2013; Ahmet İnsel, "Başkanlık sistemi ve güç fetişizmi." (Presidential system and power fetishism) *Birikim*, (Turkish journal) April, No.288, (April), 2013; PP. 8-14.

⁶² Ali Bayramoğlu, "AK parti yanlış yapıyor" (AK Party is doing wrong), *Yeni Şafak*, 8 February 2013.

standards of the Venice Commission of the EU. According to the AKP's proposal for the presidential system, the president is a representative of a political party, which means that his/her impartiality will always be questioned. This means complete control of the ruling party over the judiciary. In a sense, with this proposal, the AKP has materialized the accusations against itself that Turkey's regime would become more and more authoritarian if the AKP has remained in power.

Furthermore, after the launching of the Solution Process, a polemic on an alleged deal between the AKP and the BDP has begun. According to some columnists, AKP has been negotiating with the BDP over the issue of presidential system.⁶³ Mainly because of this polemic, within a few months, the optimistic atmosphere of compromise has been replaced by a widespread disappointment in the country.⁶⁴ The leaders of the opposition parties have declared that although they decided not to leave the Committee, nevertheless they believed that the real intent of AKP was to force the country for the presidential system. Coupled with the uncertainties surrounding the question of "what has persuaded the PKK leader to give up the armed struggle of thirty years", the tension in the society has escalated. In May 2013, AKP's spokesman, Hüseyin Çelik has announced their election schedule, which dates the referendum for constitution in November 2014. This move has aggravated the doubts that government's intention is to put its own constitutional proposal into the referendum without the consent of the other parties.⁶⁵

⁶³ Kadri Gürsel, "AKP-BDP Anayasası: Henüz vakit varken" (AKP-BDP Constitution: When there is still time) *Milliyet*, 10 February 2013.

⁶⁴ Turan, "2012 goes, problems remain".

⁶⁵ Mehmet Tezkan, "Üç seçimin startı verildi" (The start of the three elections has been given), *Milliyet*, 20 May 2013.

Although there have been intense criticisms, the proposal for the presidential system has not been withdrawn. It has been apparent that it is impossible to reach a consensus on a new constitution under these conditions. President Gül himself has announced his feelings of despair without making reference to the point that it has been the AKP's insistence on the proposal that has brought the process to a *de facto* halt. Towards the end of the 2013, the picture in Turkey is that the presidential system has seemed to be put as the main term for the settlement of the Kurdish question and for the new constitution. In other words, strategically, the AKP has seemed to anchor both projects of democratization in the realization of the presidential system. In essence there is nothing wrong with the presidential system in terms of Europeanization. However, the AKP's stubborn stance attributing these two democratization processes to its political project has made the current picture very undemocratic and unilateral. More substantial issues like the articles 68 and 69 of the existing constitution, which have been used as the grounds for party closures, and the problem of 10% national threshold have fallen back in the debate.⁶⁶ In the last democratization package of September 2013, the government has preferred to open a debate over the issue of national threshold rather than to lower it directly. The improvements related with the law on the political parties remained limited with financial provision, which expand state aid to minor parties. No changes have been made related with the regulations on party closures. As of fall 2013, the efforts for a new constitution have not been totally run out, but the process has successfully been detached from the Solution process by the government.

⁶⁶ TESEV Report.

Conclusion: The Rising Popular Discontent in Turkey and the Relations with the EU

During the time of writing, (spring/summer 2013), Turkey has become the scene of unprecedented popular protests against the government. The protests began as peaceful demonstrations of the environmentalist groups who have demanded the withdrawal of a renovation project of the Gezi Park of the famous Taksim Square in İstanbul. The extraordinarily disproportionate use of violence by the police against the protestors fuelled huge rallies against the government in more than 70 big cities across Turkey. During the protests some of which have turned into street fights with the police, violence has erupted, five young men have died, more than thousands of people have been injured and hundreds of people have been taken into custody. The protestors have targeted not only the AKP government, but also the mainstream media, which has consciously and deliberately disguised the actual scale of the demonstrations.

The protests have united various opposition groups under the banner of protecting the fundamental rights and freedoms against the interventions of the government. Apparently, these unexpectedly widespread demonstrations is the explosion of the last years' culminated tension in the society, especially related with the government's neglect of civil participation in policy making, with the rising pressures over the media, with unlawful accusations and detentions as well as with the lack of respect to life preferences of the individuals. Before the outbreak of the demonstrations, Turkey has been discussing ten-month suspended prison sentence given to Fazıl Say, a famous piano virtuoso who was accused of hurting people's religious beliefs with a twitter message. Another flaming debate has been going around the "alcohol regulation" passed by the AKP majority in the parliament, which has been perceived as an intervention in individual

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freedoms. Both these incidents have triggered the already existing concerns as to AKP's authoritarian tendencies. The repercussions of the Gezi events have become very negative on the part of the EU. The EU Commission and the EU Parliament condemned the government's attitude in the events and argued that the basic rights and freedoms were severely limited in Turkey and the government's approach caused self-censorship in the media. The strained relations between Turkey and the EU caused the postponement of the opening of the negotiations after the intergovernmental conference that will be held in autumn 2013. The opening of the negotiations coincided with the announcement of the last democratization package in September 2013, which was found as insufficient by the EU.⁶⁷ The repercussions of the Gezi events and the Kurdish disappointment about the last democratization package seem to continue to be the main issues of between Turkey and the EU.

The above mentioned "Democracy and Peace Conference" which was gathered before the outbreak of the Gezi protests was a reaction against the government's attitude, which in their view, restricted public consultation with the works of Wise Men for the Solution Process and with the works of Constitution Committee in constitution making. The conference was the reflection of AKP's failure in creating a healthy and participatory ground for democratic deliberation, on which the new political order of the country would be negotiated. The declaration of the conference was almost the balance sheet of the AKP government's recent democratization performance.⁶⁸ It stated that the hegemony of the AKP government should not impede the healthy progress of the

⁶⁷ <http://www.hurriyet.com.tr/planet/24820160.asp> (access date: 2 October 2013).

⁶⁸ <http://t24.com.tr/haber/demokrasi-ve-baris-konferansi-sonuc-bildirgesinin-tam-metni/230766>(access date:15 June 2013).

Solution Process. For this objective, the Conference urged for the “socialization of the process”, which meant the opening up of the channels of participation and public deliberation as quickly as possible. The participants of the Conference called that time is up for Turkey, for the establishment of a genuinely pluralist, egalitarian and libertarian democracy with all its institutions and principles. These calls have constituted the domestic ground for further Europeanization in Turkey.

However, the objective of presidential system has continued to be the main framework of political action for the AKP. As a matter of fact, as discussed above, it has been this priority that has distanced the country from Europeanization. The proposal for the presidential system and the previous steps that were taken within the judicial reforms have made clear that the basic ideals and values of Europeanization have been put aside by the AKP government. Although in every reform package, there have been constant references to the *EU acquis*, Europeanization as the internalization of the of European values of liberty, democracy, the rule of law and the human rights, has not been the main framework of reform in the recent democratization moves. AKP’s calculated reform moves have apparently prioritized its political future. The coming period will show us whether the government will continue with that priority or will give weight to the new constitution which should meet the expectations especially concerning citizenship, local self-government and fundamental rights and freedoms which will more genuinely contribute to the peaceful solution of the Kurdish question.