

ANTI-TERROR LEGISLATIONS AFTER 9/11: A COMPARATIVE LOOK AT
WESTERN AND TURKISH DEBATES

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ABSTRACT

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This thesis problematizes the main assumptions of civil liberties literature on the debates of anti-terror legislations enacted after 9/11. The main assumption of the civil liberties literature in opposition to anti-terror regime that is based on dichotomy of security and liberties in the politics, and its claim about prioritization of the security led to authoritarianism are examined. Basing on the closer investigation of liberal thinkers in terms of conceptualization of security and historical investigation of the politics of security in liberal state, in the thesis it is argued that rather than any dichotomy, the prioritization of security for protection of market order dominates the history of liberalism, and by liberties and freedoms only the market freedoms are meant. In addition to that, it is also argued that the conceptualization of the authoritarianization by the civil liberties literature is misleading because of its limitation to 9/11 context and shadows the neo-liberal transition of the state. In this context, the debate in Turkey on the revision of the Suppression of Terrorism Law in 2006, and institutional framework of the debate that is based on claim for domination of strong state in Turkey are examined. It is argued that the main concern of civil liberties opposition in Turkish to the revision

was to oppose strong position of the army in politics for promotion of democratization, which is understood as strengthening of civilian government. In the thesis it is argued that, in addition to misleading assumption of the civil liberties literature in terms of conceptualization of authoritarianization, the misleading conceptualization of democratization led to absorption of the arguments of the literature by ruling government, AKP, for support to the legislations of the bill in the way that was opposed by civil liberties literature.

Keywords: Anti-terror legislations, civil liberties literature, dichotomy of security and liberties, authoritarianization, strong state tradition.

ÖZ

11 EYLÜL SONRASI TERÖRLE MÜCADELE KANUNLARI: BATI VE TÜRK TARTIŞMALARINA KARŞILAŞTIRMALI BAKIŞ

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Bu tez temel haklar literatürünün terörle mücadele kanunları hakkındaki tartışmalarındaki temel varsayımlarını sorunsallaştırmakta. Temel haklar literatürünün terörle mücadele rejimine muhalefetteki siyasetteki güvenlik ve özgürlükler ikilemi ve güvenliğe öncelik vermenin otoriterliğe yol açtığı varsayımı incelenmekte. Liberal düşünürlerin güvenliği kavramsallaştırmasına ve liberal devletteki güvenlik siyasetine yakın bir bakış ile tezde ikilemden ziyade liberal devlette piyasa düzeninin korunması amacı ile güvenliğe öncelik verildiği ve özgürlükler ile sadece piyasa özgürlüklerinin kastedildiği savunuldu. Buna ek olarak, temel haklar literatürünün otoriterlik kavramsallaştırmasının otoriterliği 11 Eylül bağlamına sınırlandırması ve devletin neo-liberal dönüşümünü kapsamamasından dolayı yanıltıcı olduğu savunuldu. Bu bağlamda Türkiye’de Terörle Mücadele Kanununun 2006’daki yenilenmesi üzerine yapılan tartışma ve tartışmanın Türkiye’deki güçlü devlet geleneğinin egemenliği iddiasına dayanan kurumsal çerçevesi incelendi. Türkiye’deki temel haklar muhalefetine başlıca

kaygısının sivil h k metin g  lendirilmesi olarak d   n len demokratikle menin savunulması amacıyla ordunun siyasetteki g  cl  pozisyonuna muhalefet etmek oldu u savunuldu. Tezde temel haklar literat r n n otoriterle meyi yanıltıcı kavramsalla tırmasına ek olarak demokratikle menin yanıltıcı kavramsalla tırmasının literat r n arg manlarının AKP h k meti tarafından literat r n ele tirdi i tasarının savunulması amacıyla kullanıldı ı savunuldu.

Anahtar Kelimeler: Ter rle m cadele kanunları, temel haklar literat r , g venlik ve  zg rl kler ikilemi, otoriterle me, g  cl  devlet gelene i.

To the guys I could not meet:

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LIST OF ABBREVIATIONS

AKP	Justice and Development Party(<i>Adalet ve Kalkınma Partisi</i>)
ANAP	Motherland Party (<i>Anavatan Partisi</i>)
ATL	Anti-Terrorism Legislation
CHP	Republican People's Party(<i>Cumhuriyetçi Halk Partisi</i>)
CMUK	Law of Criminal Procedures (<i>Ceza Muhakemeleri Usul Kanunu</i>)
COE-DAT	Center of Excellence Defence Against Terrorism (<i>Terörle Mücadele Mükemmeliyet Merkezi</i>)
DSP	Democratic Left Party (<i>Demokratik Sol Parti</i>)
EAPC/PfP	Euro-Atlantic Partnership Council/Partnership for Peace
ECHR	European Convention of Human Rights
ETIM	East Turkestan Islamic Movement
EU	European Union
İHD	Human Rights Association (<i>İnsan Hakları Derneği</i>)
KCK	Group of Communities in Kurdistan (<i>Koma Civaken Kurdistan</i>)
MHP	Nationalist Movement Party (<i>Milliyetçi Hareket Partisi</i>)
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organizations
PATRIOT	Act Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act
PKK	Kurdistan Worker's Party (<i>Partiya Karkerên Kurdistan</i>)
SHP	Social Democrat Populist Party (<i>Sosyaldemokrat Halkçı Parti</i>)
TCK	Turkish Penal Law (<i>Türk Ceza Kanunu</i>)
TESEV	Turkish Economic and Social Studies Foundation (<i>Türkiye Ekonomik ve Sosyal Etüdler Vakfı</i>)
TMK	Suppression of Terrorism Law (<i>Terörle Mücadele Kanunu</i>)
TSK	Turkish Armed Forces (<i>Türk Silahlı Kuvvetleri</i>)
UK	United Kingdom
USA	United States of America

USAK	International Strategic Research Organization (<i>Uluslararası Stratejik Araştırma Kumumu</i>)
UN	United Nations

CHAPTER 1

INTRODUCTION

Gezi Park protests that started in 28th May of 2013 are interpreted as the sign of new politics in Turkey due to the rejection of the protestors of the old political discourses and techniques through the promotion of new ones. The triggers for such a change have been pointed out as the authoritarian tendencies in the governing party of Turkey, Justice and Development Party (Adalet ve Kalkınma Partisi, AKP), which are exemplified by the AKP's non-participatory policies in city planning, interventions in the people's lifestyles, and polarizing language.

The protestors have not been recognized as legitimate political actors by the AKP on the claim that they don't work through the established political and democratic institutions that had brought the Party into power. Moreover, they have been seen as tools of different centers that cannot stand democracy and prosperity in Turkey. For that reason, rather than engaging in dialogue with the masses, the government attempted to suppress them at all costs. This denial of legitimacy has led the AKP to define the masses as "looters", "marginals", "supporters of military coup", or "vandals" though the makers of new politics in Turkey have managed to redefine and transform these adjectives for their own use by accepting "loitering" as an honorable activity to be proud of.

In addition to these, terrorism has also been used to define the acts of the Gezi protestors, and stand as the most powerful concept to identify the events as provocations against democracy in Turkey by the government. The Minister of the EU, Egemen Bağış, for instance claimed that they identified eleven terrorist organizations in the Gezi Park, which engage in vandal practices, and stated that all the protestors would be treated as terrorists as long as they stayed in the park

(Hürriyet, 06.06.2013). Treatment as terrorists meant the Gezi protestors' facing the repressive measures of the law enforcement agencies and harsher legal treatment. In the operations of the police during the Gezi events, 5 people were killed and over 8000 were injured. After the Gezi protests, many were arrested arguably due to their terrorist engagements, hence 26 protestors in İzmir in 14.06.2013, 25 protestors in İstanbul in 20.06.2013, 23 protestors in Ankara in 23.06.2013, and 13 protestors again in İzmir in 09.07.2013 were reported to courts for engaging in terrorist activities under framework of different leftist organizations (Hürriyet). In July, an operation against the Taksim Solidarity, the framework organization that assumed voice of masses in the protests, was conducted with accusations of establishing an organized crime network to lead masses against the government and law enforcement agencies through the social media, and organizing nation-wide protests in damage of public security. In response, Taksim Solidarity accused the government for applying military rule practices against the Solidarity, which is composed of 124 legal NGOs, political parties and occupational unions, by putting it under the category of terrorism (Radikal, 11.07.2013, Radikal, 19.07.2013).

Accusations against the Gezi protestors for engaging in terrorist activities show how the concept of terrorism, which is codified in the Suppression of Terrorism Law¹ (Terörle Mücadele Kanunu, TMK) in the Turkish legal system, is rather flexibly used to suppress not the terrorists but political masses. Indeed, Gezi has not been the first and the only case in Turkey where the concept of terrorism is exploited for political benefits. Kurdish movement has been facing this problem for a long time due to the civil war going on in the South-East of Turkey, and their trials within the legal framework of TMK are the clearest examples of the Kurds' mass accusations as terrorists. In the case of Group of Communities in Kurdistan (Koma Civaken Kurdistan, KCK), which was initiated in 2009, in total 989 people including politicians, lawyers and journalists were detained for accusation of membership to Kurdistan Worker's Party (Partiya Karkerên Kurdistan, PKK) (Saymaz, 2013: 55).

¹The translation of the TMK to English does not accurate but the translation of the European Union in progress reports of Turkey is adopted in the thesis.

Besides the Kurds, almost all other sections of the population (except those who are close to the AKP) have been affected with accusations of terrorism within the context of the TMK. Numerous people were arrested by claims of being members of the illegal Marxist-Leninist Communist Party (Marksist Leninist Komünist Partisi), Revolutionary Headquarters (Devrimci Karargah), and the Revolutionary People's Liberation Party–Front (Devrimci Halk Kurtuluş Partisi-Cephesi, DHKP-C) recently besides the members of various legal associations such as the Human Rights Association (İnsan Hakları Derneği, İHD), the Progressive Lawyers Association (Çağdaş Hukukçular Derneği, ÇHD) and occupational unions such as the Confederation of Public Workers' Unions (Kamu Emekçileri Sendikaları Konfederasyonu, KESK) and the Confederation of Revolutionary Trade Unions of Turkey (Devrimci İşçi Sendikaları Konfederasyonu, DİSK) (ibid). Islamist organizations such as the Al-Qaida, Hezbollah and Hizbuttahrir have also become targets of accusations of terrorism. In addition to these ordinary terrorists, many military and civilian bureaucrats, politicians and journalists were arrested due to their claimed engagement with the Ergenekon network. In short, 7364 people have been jailed in Turkey by claims of terrorism by July 2013, which ultimately comprised 4953 “terrorists” from the PKK, 897 “terrorists” from leftist organizations, 764 “terrorists” from the KCK, 524 “terrorists” from Islamist organizations, and 226 “terrorists” from the Ergenekon and related organizations (ibid, 58).

Such developments are not unique to Turkey for terrorism has been used extensively for justifications of military and repressive measures across the globe. Recently in the Middle East, in Egypt after the military coup, the Muslim Brotherhood was portrayed as terrorist (Taştekin, Radikal, 19.08.2005) while in Syria Bashar al-Assad announced their list of terror-supporting countries (Radikal, 27.08.2013). These examples show how the concept has been used subjectively and extensively in the recent years.

The definition of terrorism, while being nation-based prior to the 9/11 attacks in the United States of America (USA), has acquired some general international references thereafter, providing states with a new legitimating discourse against their own terrorists. As radical Islamist groups such as the Al-Qaeda were recognized as terrorists universally, other states got the opportunity to force the recognition of their domestic terrorist organizations as terrorists internationally. In other words, as states try to exploit the 9/11 and the War on Terror for the recognition of their enemy as terrorist, the usage of the concept of terrorism has proliferated that it is almost impossible to find a political actor that would not been described as terrorist.

9/11 has provided large-scale reformation in states' security apparatuses to tackle with the threat of terrorism. Among those reformations, revisions of anti-terrorism legislations (ATL) have been the most common step taken by states, especially as an immediate response to terrorist attacks to provide a framework for anti-terrorism policies. The common characteristics of these ATL are the strengthening of the executive units, enhancement of intelligence capabilities through surveillance mechanisms, and the reformation of detention processes.

The revisions of the ATLs have been welcomed by the masses because of the manufactured feeling of insecurity after the attacks of 9/11. This support enabled the parliaments to approve the revisions in the ATLs with great support and in a big rush. The post-9/11 ATLs have still created tensions though due to the increased authority of the law enforcement agencies and the executive branch, and their curbing of liberal rights. The opposition of the liberal circles on the basis of civil liberties has maintained a distinguished place among those criticisms against the ATLs in the West. However, to what extend the civil liberties literature is accurate in terms of the portrayal of the situation in the post-9/11 period needs to be questioned. This thesis will try to answer this question by focusing on the debates in the Western and Turkish cases.

The thesis will problematize this question in three topics in addition to the introduction and the conclusion chapters. Chapter 2 aims to give details about the

legislative developments in the ATLS. Firstly, the legislative developments in the West will be summarized through specific topics that have been stressed by the civil liberties literature. Most of the Western states have revised their ATLS either through revisions or totally new legislations. Among them, the US and the UK cases stand as the most important cases as those states are also the main agents of the War on Terror, so that they will be referred frequently. In the second part of this chapter, the 2006 revisions in the Turkish case will be examined in more detail and comparably. TMK was not a new phenomenon in Turkey because of the Kurdish Question, the short history of the TMK will be given together with the amendments that have been made until 2006.

In Chapter 2, the arguments of the civil liberties literature against the ATLS will be investigated in an attempt to criticize their main assumptions. In this chapter, it will be argued that civil liberties literature is based on a misleading assumption on liberalism's association with the idea of freedom, which stems from the liberal ideology's neglect of class-based dynamics, leading ultimately to interpretations about the non-liberal character of the emergent authoritarianism in the world. For the main topic of this opposition has been Western state's loss of its liberal character, which has claimed to be one of the distinguishing characteristics of this idealized model. For example, F. Rosén underlines the transformation of the judicial system in the West that has reflected itself in the decay of positive law with the inclusion of the emergency rule into the legal framework on a permanent basis, which is conceptualized as institutionalized judicial exceptionalism (2005: 148). S. Herman, who was elected as the president of the American Civil Liberties Union, emphasizes the blurring of the separation of powers that has ultimately been empowering executive branch over judicial and legislative branches (2011: 189). K. Thorne and A. Kouzmin underline the rise of fear politics and argue about the isomorphism of the character of the post-9/11 West to Stalinist and Fascist regimes (2010: 900). In short, it has been claimed that the post-9/11 period witnessed an authoritarian tendency in the West against the ideals of liberalism.

Opposition to the ATIs by the arguments of the civil liberties literature rests on problematic presentation of state-society relations in the liberal societies. Accordingly, it is argued that liberalism is based on a balance between the security considerations of states and demands for individual liberties in the society. Any security measure should hence resolve problems to emerge in individual freedoms if the liberal character of the state is secured. As recent 9/11 related security considerations has included the empowerment of the executive branch over the legislative to ensure a quick decision-making process against terrorist activities, the resultant limitations imposed on individual rights in the name of security, the adoption of the war rhetoric, or the prioritization of security considerations have been problematized as characteristics of non-liberal societies. Prioritization of security as such has been associated more with such non-liberal systems as absolutism or Fascism or Stalinism. Thus, the prioritization of the security considerations in the post-9/11 period is evaluated as the breakdown of the liberal tradition in the West in favor of an authoritarian tendency.

These emphases of the civil liberties literature raise problems in terms of the understanding of the concerned issue properly and comprehensively. For the assumption of the balance between security and liberties, and the prioritization of security as a non-liberal attitude are misleading. For, despite its emphasis on individual freedoms, the intellectual legacy of the liberal ideology shows that the concern for order and the necessity of security for the establishment and protection of order dominate the discussions over freedoms in liberal societies (Neocleous, 2000; 2007). Both the 18th century classical liberalism and 20th century neo-liberalism stress the specific conditions required for individual freedoms in liberal societies and propose the active functioning of the state to sustain order through security measures. If these specific conditions are not ensured at a particular moment in time, extra-ordinary measures are applied with the claim that it is impossible to enjoy individual freedoms in times of crisis. In that sense, the liberal ideology proposes the claimed balance only in normal times though the question of normality needs to be problematized on a class-basis. For instance, the crisis of the

19th century laissez-faire state due to social demands for equality and democracy led to the emergence of the working class as a political actor though this also brought about in response the application state of exception rules by the Western states to ensure order. Neoliberals' interpretation of the post-war institutional inclusion of the working class into the political sphere as totalitarianism also shows that the normality is ensured as long as the rule of capital and domination of capitalist classes without any interruption are maintained (Grew, 1984; Holloway, 1995; Bonefeld, 2010). In that sense, it could be argued that the freedoms in liberal ideology refer indeed to freedoms in the free-market place and this is best ensured when lower classes are excluded from the political structure. Hence, the recent emphasis made by liberal ideologues on the importance of individual liberties would better be read as calls for more restrictive politics that aims to reproduce the domination of capital over society.

In Chapter 4, the arguments of civil liberties literature in Turkey will be investigated within the framework of its opposition to the 2006 revision of the TMK. Together with the specific arguments developed in relation to the revisions, the main intellectual ground of the Turkish civil liberties literature, which can be summarised as the existence of strong state tradition in Turkey, will be problematized in this section. It will be argued that because of the domination of strong state claims, the criticisms directed against the 2006 revisions of the TMK acquired an institutional context, in which the position of the governing party was favored against the position of military bureaucracy. Because of this tendency of civil liberties literature and the latter's domination in TMK debates, the real authoritarian content of the legal text was neglected leading to the effective exploitation of the arguments of civil liberties literature by the AKP to justify the aimed revisions in the TMK.

The TMK in Turkey has always been framed in relation to the Kurdish Question, or more specifically, to the conditions of the armed conflict between the Turkish state and the Kurdish guerilla group PKK. The first the legislation of the TMK had produced a peculiar debate that promoted the law as part of Turkey's

democratization process as far as the Kurdish Question was associated with terrorism. The revisions of it later within the framework of the European Union (EU) accession process overlaps chronologically with the unilaterally announced ceasefire of the PKK, in other words it overlaps with a relatively non-conflictual period. The re-escalation conflicts after the denouncement of the ceasefire led to demands for the revision of TMK to bring back some abolished clauses like the imprisonment of propaganda. In this context, it is hard to suggest that post-9/11 debate over the ATs has directly affected the course of the TMK in Turkey. Still however, the Western liberal debates, especially the arguments of the civil liberties literature, have been utilized by different camps as long as they help reproduce the established political controversies in Turkey. The Chapter will hence underline that the position of civil liberties opposition on the institutional debate has practically shifted the attention from the content of the revisions, curtailing thus of its authoritarian tendencies.

In the concluding chapter, an overview of the main arguments of the thesis about the conceptualization of authoritarianism in the civil liberties literature and its articulation in Turkey with the strong state tradition claims is provided. In the light of the conclusions of Chapter 4, the criticisms of the civil liberties literature will be critically re-evaluated to underline the class character of authoritarianism in general.

CHAPTER 2

REVISIONS OF ANTI-TERRORISM LEGISLATIONS AFTER 9/11: WEST AND TURKEY

2.1 Introduction

It is commonly debated that, 9/11 radically changed the course of the context of international politics as it changed the priorities of the United States and other Western states. The tragic event led to the questioning of the safety of the landmarks of the strongest state in the face of changed forms of terrorism that realized the attack not with bombs or any other arms, but with other means; e.g. hijacking of a plane and changing route to symbolic buildings of the Western world. The attacks in that sense are argued to show the vulnerabilities of the safest places in the world to new techniques of terrorism. Žižek argues that with this rationality, although killings, attacks and bombs are reality of world politics, the attacks are evaluated as alien to US way of life and the question related with the events have been formulated as ‘how these things could happen here?’; Žižek claims that as the US population experienced the *ordinary* event that 3rd world experiences almost every day with HIV or with civil wars; he welcomes US population to *the desert of reality* and calls for prevention of such events in all parts of the world (2009: 70-77).

However, the reaction of the West to terrorism has been exact opposition of what Žižek advises; the protection of safe havens have become the main issue and reformation of security apparatuses have been initiated through legislations of new, or updated, ATs. Almost in all parts of the West, people started to experience the ATs as terrorism has become regular part of daily life with security measures against them. In that context, although ATs have been legislated with surprising rush with great popular support, they have also set in the center of intellectual

discussions over ATLs' threatening civil liberties of citizens as ATLs do not only target the alien terrorists but assume possibility of existence of terrorists within this boundaries. The main concern of those discussions of ATLs has been claimed authoritarianization with absolutist rationality that prioritizes security over liberties. In other words, the main claim of those critical circles is the compromising of liberal democratic character of Western states as 9/11 is claimed to be the turning point in this transformation.

Unlike the West – at least USA – for peoples of Turkey, concept of terrorism and anti-terrorism policies is not a new phenomenon as for long years before 9/11 Kurdish Question and the civil war has been conceptualized as terrorism and anti-terrorism practices. In addition to existence of security measures that are legislated right after 9/11 in the West, 9/11 been evaluated as opportunity for Turkish decision-makers to prove their being right for struggling terrorism in its most repressive form. In that sense, by 9/11 one of the most repeated statements by decision-makers of Turkey was the underlining of the *experience* of Turkey in the struggle against terrorism, and in that context Turkey did not experience legislation of ATL right after 9/11. This situation and Turkey's democratization process with EU accession process has been used to prove immunity of Turkey to War on Terror rhetoric (Aytar, 2006: 4). However, as the civil war, the focus of anti-terrorism policies, escalated in South-Eastern Turkey, after denouncement of PKK's ceasefire, revision of TMK was initiated, and this started an opposition to revision that was supported by arguments voiced against ATLs in West over danger of prioritizing security over liberties. Approximately one year after its announcement, TMK was revised.

In this chapter, the contexts of debates that differentiates the West and from that Turkey are given to prepare the basis for discussions of the civil liberties literature. To do this, developments in Turkey and West will be investigated in two different sections. Firstly, three civil liberties that are claimed to be endangered in the West are given. In the second section, the Turkish case of anti-terrorism policies in terms

of legislations will be given and the provisions of 2006 amendments will be given. The basic objective of this chapter is to allow framework for discussions of arguments of civil liberties literature against ATL.

2.2 Post-9/11 ATLs and Civil Liberties in West

Post-9/11 years have witnessed the extra-ordinary efforts of governments to pass anti-terrorism legislations (ATLs) that are claimed to respond to terrorist actions and prevent further attacks. The most comprehensive of them and arguably the text that has laid the blueprints for the ATLs in other countries was enacted in the US only 6 weeks after the attacks despite the complex legislative process of the USA; Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act Of 2001, in its commonly known abbreviation, the PATRIOT Act. The act is US's most comprehensive anti-terrorism act that unifies different specific acts – like Foreign Intelligence Surveillance Act of 1978, Money Laundering act of 1986, Electronic Privacy Act of 1986 – in a single framework. The bill was passed with an overwhelming majority in the legislature, in the House of Representatives the bill was accepted by 356 to 66 and only one senator rejected the bill in the Senate (NYT, 2001). The PATRIOT Act was followed by further ATLs, like Homeland Security Act of 2002 and the Detainee Treatment Act of 2005, and the Military Commissions Act of 2006 (Thorne & Kouzmin, 2010: 887). Similar rush for legislations could be seen in other Western states; the UK updated her Terrorism Act of 2000 with Anti-Terrorism, Crime and Security Emergency Bill of 2001 after 9/11; Germany enacted two Security Packages – first one in 19 September, and second in 14 December 2001; France updated its ATL with 'Day-to-day Security Law on 31 October 2001 (Haubrich, 2003: 8-10; Lepsius, 2004: 439,441). In addition to those domestic regulations, international organization also engaged in legal response to terrorist attacks: Council of EU announced Framework Decision on combating terrorism in June 2002, United Nations (UN) Security Council Resolution of 1373, adopted in 28 September 2001, called for international

cooperation, and NATO body of Euro-Atlantic Partnership Council announced Partnership Action Plan against Terrorism in November 2002 (EU; UN; NATO).

Although ATLs had massive support mainly because of the tragedy of the 9/11 events, they have become the center of discussion with the concerns about their possibility to evaporate civil rights in Western democratic states. This rush of Western states and international organizations is described as “legislative wildfire that has engulfed governmental bodies the world over” by Joshua D. Zelman while he questions the main target of the ATLs because of the undermined civil liberties (2001: 2). The effectiveness of them was also questioned as measures that have been brought by the legislations are characterized as panicked, exaggerated and draconian by various human rights activists (Haubrich, 2003: 7; Sidel, 2004: 70). In the criticisms of the ATLs, authoritarian tendencies are pointed out. The criticisms on ATLs focus on authoritarian tendencies and voice out concerns for civil liberties. The justification for ATLs, however, underline the necessity of such measures due to the changing form of the threat and the use of brand-new methods, and argues for sacrificing some civil liberties for more security claiming that the democratic environment makes Western states vulnerable to terrorist attacks (Tsoukala, 2006: 622; Walsh and Piazza, 2010: 552).

In this section, the discussions over the post-9/11 ATLs in the western democratic states will be investigated for a general overview of the measures of ATLs and their criticisms. To do this, the civil liberties that are claimed to be affected will be discussed together with the related measures and mechanisms that are enacted and legalized with ATLs. Firstly, the vague definitions of the concept of terrorism and terrorist activities in the legislations are investigated together with the changing immigration policies and detention processes. Secondly, privacy of the individuals and the surveillance mechanisms are discussed. Lastly, freedom of association and repression on dissent groups are discussed; in this section, the effects of the 9/11 regime on Western non-governmental organizations (NGO) that have relations with Middle Eastern peoples – Muslim networks and aid-development focused NGOs –

are discussed together with the anti-terrorism policies in non-Western states in relation to repression on dissent.

Before the discussion it should be underlined that although at some points direct references to articles or sections of legal texts are given, the intention here is not to make a legal review of the legislations, but revealing the rationality behind the legislations and discussions over it. In that sense, the differences of ATLs in different states, which are caused by the experiences of societies, are neglected. In addition to that, the legislative processes, i.e. amendments through time, are also neglected up to a certain point to limit the discussion.

2.2.1 Vague Definition of Terrorism

Some Western countries have had terrorism definitions as a response to a domestic issue, like the Irish question of the United Kingdom (UK), the Basque question in France and Spain, and revolutionary leftist groups in Germany, Italy; and as a result of this situation, ATLs remained specific to countries (den Boer, 2007: 297). The situation in international organizations is not different as they cannot offer general definition of terrorism. Due to the absence of general definition of terrorism in the UN framework prior to 9/11, although there were initiations in the mid-1990s, many countries preferred to prepare list of prohibited acts because of the different perspectives on terrorism (Stiles, 2006: 43). As the problem of *terrorism* is limited with the boundaries and position of sovereigns, each preferred to respond uniquely to their own problem.

Despite the emergence of a global terrorist organization, Al-Qaeda, in other words recognition of an organization as terrorist globally, the problem of the absence of a concrete definition of terrorism has continued after 9/11 despite the legislative wildfire. In that sense, the problem is not about reaching a common sense with the help of common problem, but the subjective nature of the concept – in definition of terrorism. The concept is doomed to remain unclear because of the tendency for

excluding sovereign's actions but including all the actions of the enemy; for example description of N. Mandela as terrorist and Bin Laden as freedom fighter in 1980s, or not describing Nicaraguan Contras as terrorist despite the decision of International Court of Justice (Chomsky & Achar, 2007: 24; Best & Nocella, 2006).

British definition of terrorism is good example of the transformation of the definition from domestic oriented to general. In the UK, before 9/11, the policies of anti-terrorism were concentrated only on conflict in Northern Ireland; the legislations about terrorism, Prevention of Terrorism Acts that are series of legal texts enacted between 1974 and 1989 were about providing emergency powers in the region, and by their very nature they were temporary provisions. The legislation provided for the detainment of 6.932 people of which 6.000 were released without any charge between 1974 and 1990 (Statewatch, 1991). By 2000, it was argued that provisions against terrorism are permanent needs of the UK and Terrorism Act of 2000 was prepared and enacted. The provisions have been extended to any terrorism – domestic and international – as they are held in a uniform framework. Haubrich argues that this regulation neglects that even the of term of terrorism by its nature is open for abuse by political concerns and with a uniform framework the danger of abuse is extended to other fields; as with the Act, terrorism and emergency rule become normalized (2003: 23).

Sovereign law makers preferred leaving it to law enforcement agencies to decide whether an activity is a terrorist action or not, rather than providing a concrete definition (Rosén, 2005: 154). The clearest example of the situation is the definition of international terrorist in US PATRIOT Act. Although the US had much experience with emergency situations and extra-ordinary rule, it had no broad legislation about terrorism that could encompass all terrorist organization, but it had specific issue based legislations like Biological Weapons Anti-Terrorism Act of 1989. The US PATRIOT Act defined two kinds of terrorism; international and domestic. The definition of international terrorism is left to decisions of the Department of State, without specifying which activities would lead to the labeling

of an organization as terrorist (PATRIOT, sec.411). In other words, according to this definition, an organization is terrorist organization if the Department of State decides that they engage in terrorist activity. In that sense, through giving authority to determine who is terrorist and who is not to the executive branch the judicial process is by-passed and any preventive action or retaliation could be undertaken by the state. The definition of domestic terrorism seems to be more concrete; any activity that occur in US territory “to intimidate or coerce a civilian population;...to influence the policy of a government by intimidation or coercion; or...to affect the conduct of a government by mass destruction, assassination, or kidnapping” is domestic terrorism as well as material support to terrorist actions (PATRIOT, sec.411). It is argued that creating the definition of domestic terrorism eased surveillance requirements and more people and NGOs could be put under pressure through surveillance, as it was done to Muslim charities in US like Holy Land, Benevolence, and Global Relief (Sidel, 2004: 102; Joyner; 2004: 246).

The delegation of authority to law enforcer is sustained by the heavy usage of suspicion in the legal texts; in other words given authority to law enforcer to take action on suspicious situations. The usage of the new category of threat, *potential terrorist*, that is born out with the vagueness in the definition of terrorism should be investigated together with the new authorities of the law enforcement agencies in terms of detainment and monitoring processes. It is argued that, the outcome of this way of definition is expansion of authority of law enforcement agencies in the absence of concrete legal texts. In that sense, it is argued that this strengthening of them without clear legal context could lead to arbitrary practices that could be used for repression of specific group (Rosén, 2005: 150).

The most contradictory regulation about taking action on suspicion is made in UK because of the decision of derogation from 5th Article of European Convention of Human Rights (ECHR). With the Anti-Terrorism, Crime and Security Act 2001, law enforcement agencies are given authority to detain any foreigner, who is thought be international terrorist, without trial when option of deportation is not available.

However, 3rd article of ECHR, which UK is a party, prohibits deportation of detained person to a country where the possibility of torture or mistreatment is high, and the remaining option, detention without trial, could only be possible with the derogation from 5th article of ECHR, which is possible only in times of war and emergency situations as derogation from 3rd article is not possible (HRJC, 2009). With this derogation,

“the British government announced an emergency state despite repeated confirmations by politicians to the contrary and despite the assurances, continuously made to citizens by the country’s secret services in the months following the attacks, that there was no indication of an immediate threat to the British public. Out of 41 signatories that ratified the convention, the UK was the only country that deemed it necessary to derogate from the ECHR” (Haubrich, 19)

In the absence of any concrete definition of an international terrorist and with the strengthened powers, the right to determine who is an international terrorist is given to law enforcement agencies, which means possibility of arbitrary practices that associates terrorism with religion, ethnicity, nationality or political ideology increases (Joyner, 245). The statistics shows some clues about arbitrary practices: Between 9/11 and September 2012, 2291 people were arrested for terrorism related offences; 1230 of them were released without any charge, 322 of them were charged with non-terrorism related legislations, 512 of them were charged with terrorism related legislations, 99 of them were found not guilty, 143 of them were convicted with non-ATLs and 169 of them were convicted with ATLs (UK, 2013). In other words, only about 6 percent of arrests have been successful in terms of anti-terrorism policies; or ATLs has been used for repression arbitrarily.

In US, PATRIOT Act regulated similar processes for the detention of suspected terrorists. Section 412 of PATRIOT Act 2001 provides detention of a suspected terrorist until removal from the country. However if Attorney General concludes that alien has engaged in actions that threatens national security or any terrorist action, or in the cases of rejection by country of origin, removal of the alien could

be suspended and he/she could be detained in US as there is no precise guidance for Attorney General's decision making process (US PATRIOT ACT, Sect. 412; Joyner, 2004: 249). Addition to these powers, with the PATRIOT Act II, with the permit and authority of attorney general, detainment could be done secretly up to fifteen days without informing court (Thorne & Kouzmin, 2013: 891; Sidel, 2004: 31). About one month after the enactment of PATRIOT Act and invasion of Afghanistan in 13 November 2001, President Bush signed a military order that also provides trial of non-citizens in US military courts. The order allows for the detainment of the captives that are members of Al-Qaeda or those engaged in terrorist activities directly or indirectly through supporting; detainees do not have the right to judicial review or the right to a lawyer. With this order, it is argued that president have gained extra-ordinary power to detain a US citizen without any meaningful judicial process as the case of Yaser Esam Hamdi² shows (Joyner, 2004: 251). With these powers, US law enforcement agencies detained over "5.000 foreign nationals, mostly those of Arab descent and/or Islamic faith,...for over a year without charges" by 2003 (ibid: 249). On the other hand, those who are captured in Afghanistan and held in Guantanamo Bay Detention Camp are not identified as enemy combatant which necessitates comply with Geneva Conventions; in other words, identification of captures as detainee by-passed international law while Guantanamo is identified as area under US jurisdiction and control rather than US sovereign territory (Sidel, 2004: 18). In that sense, detainment procedures of post-9/11 period is excessively based on vague definitions of terrorism and terrorist activity and legal gaps that allows by-passing judicial reviews, which means strengthening of executive branch through expanding authority and power of law enforcement agencies.

It is argued that, the vague definition of the terrorism mostly affected migrants and asylum-seekers because of the new concept of *potential terrorist* and exclusionist rhetoric of War on Terror on Muslims and Middle Eastern people. Criminalization

² Yaser Esam Hamdi is a US-born national and captured in Afghanistan with Taliban. He was not allowed to Access a lawyer for three years until 2004 (see O'Neill, 2011).

of the immigration is not directly related with the 9/11 especially in the case of EU; putting migration, money laundering, drug traffic and terrorism in the same framework goes back to 1976 when TREVI, police cooperation organization of EU prior to EUROPOL, was established (Bunyan, 1993). However, 9/11 provided more *valid* grounds for governments to take more restrictive measures against migrations. Although there is no valid proof, the main justification of the restrictive policies becomes possibility of terrorist to exploit Western states' asylum policies. It could be read from position paper of Council of EU of 27 December 2001:

“Appropriate measures shall be taken in accordance with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts. The Council notes the Commission's intention to put forward proposals in this area, where appropriate” (2001).

In that sense, migrants and asylum-seekers are demanded to prove their innocence. Similarly, in US, Justice Department started a registration program for non-citizens from 25 countries – mostly Arab and Muslim countries; male immigrants from 16 to 45 are required to give fingerprints, pictures and they were questioned; by April 2003, it is claimed that more than 1.800 immigrants were detained in this process because of the suspicious situations (Sidel, 2004: 17).

As a result of this rhetoric, executive branches gained judicial powers over asylum-seekers and migrants as they are given authority to decide who has potential to be a terrorist; in Denmark Ministry of Justice through Refugee Board could reject an asylum-seeker without any court material; in USA Operation Liberty Shield was established to evaluate situation of asylum seeker and it resulted with decline in the number of accepted asylum seekers and refugees from 90.000 to 27.000 from 2001 to 2003; Australia directly used 9/11 to reject asylum seekers from Afghanistan; in UK, the Special Immigration Appeals Commission that is established for judicial review of results of application for asylum is not available anymore. (Haubrich,

2004: 15; Tujan et.al, 2004: 66; Rosén, 2005: 152; Joyner, 2004: 243; Sidel, 2004: 17).

In discussions of the indefinite detentions of suspected international terrorist, one of the most referred concepts is the *habeas corpus*; the principle, which is part of Anglo-American law system, refers to the right to be brought into court before imprisonment or detainment (Wilkes, 2002: 645). *Habeas corpus* is seen as the one of the main mechanisms that protects individual and his/her rights from arbitrary practices of law enforcement agencies; it could be argued that the principle is seen as part of the separation of powers (Feyzioğlu, 1995: 668). The emergence of the *habeas corpus* is argued to go back to 13th century England as part of common law; however the first written text on the principle is Habeas Corpus Act 1679, which was issued by parliament to find remedy to political detainments of King Charles II during constitutional struggles (Redish & McNamara, 2010: 1367). According to the Act, King's ministers should explain in front of detainee and court the reason of detainment so that court could decide whether it is lawful or not:

“And because many times persons charged with petty treason or felony, or as accessaries thereunto, are committed upon suspicion only, whereupon they areailable, or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county”

As a result of USA's having been under Britain's colonial rule, *habeas corpus* is also part of the US legal system. The constitutional struggles and negotiations between states after the Revolution resulted with incorporation of the principle to US Constitution with a suspension clause that allows suspension in times of rebellion and invasion (Redish & McNamara, 1369 - 1373).

Because of the struggle for the principle against monarchy in England, i.e. executive powers, the principle is seen as Western liberal tradition as it is said to be the protective mechanism of individual against *state*. In that sense, abolishment of the

principle or any practice that undermines it is seen as a step back from Western liberal democratic ideas and values. Detainment procedures for the international terrorists, or the surveillance mechanisms are discussed in this context. To prove the regression of democratic values, references to war time practices or practices of authoritarian and totalitarian regimes are used quite a lot in the literature. For example, Sidel gives infamous examples from US history, like criminalization of political criticism in the early years of USA by Sedition Act of 1798 that was used excessively by A. Lincoln during the Civil war; criminalization of disloyalty to US by Espionage Act of 1917 that was used against refusals of military duty; criminalization of attempt to overthrowing US government by force with Smith Act of 1940 that was used for repression of US Communist Party; detention of Japanese residents of US in World War II; and McCarthy era (2004: 4-8). Like to Sidel, Thorne and Kouzmin also gives examples from US history like demands for suspending habeas corpus for 12.000 disloyal American during Korean War in 1950 and argue that the principle is under threat because of “the authoritarian onslaught of hubris, propaganda, and fear” (2010: 807, 905). Their arguments for *isomorphism* of post-9/11 anti-terrorism policies to Stalinist and Fascist politics of fear, which refers to surveillance mechanisms and repression of dissent, and their being all together state crime against democracy show their concern for the conservation of Western liberal democratic state (ibid: 905, 908-910). Description of 9/11 regime of ATL as authoritarian, fascist, totalitarian or finding similarities of it with infamous historical examples like Nazi Germany, are easy to encounter in the discussions of post-9/11 ATLs; however, their explanatory power and validity is not strong to reveal the special characteristics of ATLs as the main reference point is the ideal liberal democratic state. In that sense, although, those discussions are valuable in themselves in terms of showing the threats of the ATLs to people, they should be taken into account carefully and criticism of those criticisms should be conducted.

2.2.2 Privacy and Surveillance

Surveillance strategies are the most disputed part of new repression mechanisms of ATL. The fact that attackers of 9/11 lived in Western countries, and intelligent services showed their inability³ to prevent attacks provided justification for the new strategies. With that motivation, strengthening the surveillance mechanisms is one of the first measures taken after 9/11; for example, only two days after the attacks US Senator Orrin Hatch “proposed loosening the restrictions on wiretapping of phones and other communications”, in Germany %67 of the population was in favor of video surveillance of streets and squares as Otto Schilly, minister of interior, was proposing measures like “entering finger prints in each German citizen’s passport; legally binding banks to give information to the intelligence services; permitting different branches of police and intelligence services to compare data systematically; empowering the Federal Criminal Office to investigate even where there is no concrete evidence to support the suspicion that a crime has been committed; and forcing telecommunications companies to save data on their customers’ connections for six months” (Sidel, 2004: 9; Zehfuss, 2003: 516).

9/11 attackers’ being *regular* individuals living in Western countries before the attacks, who did not fit the conventional definition of terrorist, provided the basis for the enhanced surveillance mechanisms. In addition to that revealing the surveillance mechanisms of the state is discouraged because those terrorists, who are planning new attacks, could learn techniques used by the state and could produce new ones (Brown & Korff, 2009: 125). Another justification is the organization of global terrorists via internet. Usage of the internet provided leaderless and horizontal organization of radical Islamist terrorist networks; plans could be made via internet by geographically dispersed terrorist networks without needing for support from any state and new recruits could be researched and

³ Chomsky argues that before 9/11 even though the level of threat was known, authorities in USA did not handle the threats seriously and virtually increased the level of threat. The reason for this inattention was the different priorities. For example, the implementation of sanctions on Cuba was much more important in US Office of Foreign Assets Control; between 1990 and 2003, 10.683 investigations were held as 93 investigations were terrorism related. (see Chomsky & Achar, 2007).

accepted through monitoring online forums and establishing direct communication with those who has potential (ibid: 121-123). In that sense, it is argued that monitoring of the internet provided space for state agencies to take preventive actions against terrorism. With these justifications surveillance of the internet and other communication devices proliferated, while the character of the surveillance measures that put general suspicion on the society that could cause harsh treatment of innocent people is the center of the discussion of the post-9/11 surveillance.

With post-9/11 ATLs, standards for engaging in surveillance in forms of wiretapping and interception of web-based data have been lowered to make preventive actions more operational. Lowering of the standards could be observed almost in all Western democratic states; however, US and German cases are critical examples as they show the enthusiasm of the governments for expansion of surveillance mechanisms. With the PATRIOT Act, in the US, the necessity of law enforcers to show probable cause to court for tracking incoming and outgoing phone lines was abolished and expanded to the internet with the amendment of Foreign Intelligence Surveillance Act of 1978, which was enacted against Soviet spies; however the main expansion in the authority is the ability of intelligence services to reach content of the messages and conversations (Joyner, 2004: 246). With this authorization, the infamous ECHELON system, a global satellite network, which is operated with the jurisdiction of secret UKUSA treaty of UK and USA in 1946 to share intelligence on Communist bloc, is legally enabled to track citizens; the system intercepts all communication data incoming to and outgoing from the US and uses a dictionary software to catch national threats (Thorne & Kouzmin, 2010: 893). A similar system, IMSI – international mobile subscriber identity - Catcher, which enables interception and eavesdropping of phone conversation within a limited space, was legalized in Germany although legalization attempts were rejected by the parliament before 9/11 (Haubrich, 2003: 12).

The other pillar of the surveillance system is the storage of daily data. With the ATLs, service providers, like financial institutions, communication companies,

postal offices, transportation companies, etc. are obligated to store their customers' data to be submitted to law enforcement agencies when they are demanded, without any consent of the individual or without any court decision, and any suspicion should be reported to authorities. In US, with the permit of the Department of Justice student and library records could be accessed by law enforcers. US Suspicious Activity Reporting initiative allows citizens to report suspicious activities to the police, the activity resulted with 800.000 reports that have been stored in the FBI. In Britain service providers have to store data *voluntarily* and in the Germany that companies cannot charge for demanded information (Haubrich, 2003: 11-13; Peissl, 2003: 19-21; Joyner, 2004: 247-248; Lepsius, 2004: 446-447; Murray, 8). Added to those *domestic* collections of data is the cooperation of states to share intelligence related with terrorism under the framework of NATO and EU. In November 2002, Euro-Atlantic Partnership Council , a NATO institution, called for the establishment of Euro-Atlantic Partnership Council/Partnership for Peace (EAPC/PfP) Intelligence Liaison Unit to "promote...exchange of intelligence relevant to terrorist threats" and called for further cooperation with other international organizations (NATO, 2002). Under EU framework, 9/11 and terrorist threat is used for further integration of the Union. After 9/11, the Council called for strengthening international coalition against terrorism through "increased cooperation between the operational services responsible for combating terrorism: EUROPOL, Eurojust, the intelligence services, police forces and judicial authorities" (EU, 2001). After Madrid attacks of 2004, EU called for a further integration initiative that will improve the flow of information to EUROPOL and EUROPOL's relations with intelligence agencies (EU, 2004).

Overall, it is easy to see the efforts of the states for obtaining information as much as possible through establishing institutions and abolishment of restrictions on intelligence services to catch terrorist before their attacks. In that sense, the questions are raised about the usage of the massive data for detecting terrorists and terror actions, apart from possibility of usage of those mechanisms against dissents. As in the ECHELON, it is claimed that surveillance devices do not only collect data

but they also inform law enforcers for suspicious situations through using an algorithm similar to internet search engines or dictionaries (Brown and Korff, 2009: 123). In other words, technology, which is said to provide free space for terrorist organizations, is tried to be used against them with much more complex and advanced techniques. However, David Lyon argues that

“[t]he automated, algorithmic systems are poorly equipped, by and large, for the task of identifying or monitoring the actions or messages of previously unknown potential terrorists. Moreover, to the extent that surveillance depends on information technologies, the easier it will be for persons who wish to evade detection to do so, just because human beings are more flexible and imaginative than technologies. Any technology can be outwitted, given time and ingenuity” (2004, 310).

If the technology is not yet enough to catch unknown terrorists with automated processes and human labor is necessary in handling mass information, it could be argued that in the racist War on Terror rhetoric, targeting specific groups is a quite strong possibility among others:

“Law enforcement agencies in Europe now commonly rely on the use of ‘profiles’ to target suspects. Such profiles are increasingly created not by any one national police force (and/or intelligence agency), but as part of international (in particular intra-EU) co-operation. In order to ‘facilitate targeted searches for would-be terrorists’ member states gather data from registers of residents, foreigners, university students and similar information sources. Their aim is to match such data against ‘physical, psychological or behavioural’ characteristics that are thought by law enforcement agencies to indicate a high probability of terrorist activity” (Brown and Korff, 125)

2.2.3 Freedom of Association and Repression of Dissent

The vague definition of terrorism also shows its effect on the workings of the NGOs, as mentioned above. That and the institutionalized general suspicion on Muslim communities, it is argued, have affected the aid networks to the Middle East

and Muslim communities in the West the most with the post-9/11 anti-terrorism policies. As financial relations with any organization can easily be called support to terrorist organizations through the use of vague definitions, in the UK National Council for Voluntary Organizations argued about criminalization of the “humanitarian work in certain areas of the world” because of the problem of “the absence of evidence and the paucity of definition of what constitutes a risk to security and what may be defined as terrorism” (Fowler & Sen, 2010: 9). In this vagueness, in the US, aid-focused NGOs, like Ford Foundation, are obligated to prove their partners’ innocence through signing USAID’s Anti-Terrorism Certificate, which will guarantee that grants will not be received by any terrorist organization nor will be used in material support to terrorist activity within ten years (Howell & Lind, 2010: 282). Besides the conflicting nature of those certificates and conceptualization of the situation in the Muslim geography, financial and administrative burdens on NGOs caused by new conditions make operations and activities costly that could affect the working of networks (Fowler & Sen, 2010: 15).

The debate on the NGOs is not limited with the Muslim networks. It is also underlined that all NGOs become vulnerable to repressive policies as the standard has been lowered for the surveillance of them. The vague definitions and strengthened repressive apparatuses of states are also threat to non-Muslim networks, like Greenpeace (Sidel, 2004: 102). Although there are discussions along this line, initial objections to ATLS are generally raised by Muslim communities and human rights focused organizations. Emphasis on the Muslim networks has two reasons. First one is the obvious reason; with the racist rhetoric of War on Terror, firstly, Muslim networks have been targeted as they were claimed to have financial relations with radical Islamist groups in Middle East. The second reason for the emphasis is the silence of NGOs that are not Muslim networks or not human rights oriented. The atmosphere that War on Terror created have reflected the ATLS as the measures were taken against only radical Islamist groups, especially in the legislation process. In this environment, voice of Muslim NGOs and human right activists could not be heard, and opposition to ATLS remained weak. Howell and

Lind argue that in the US because of the media closure the effects of the ATL on NGOs in terms of surveillance could not be discussed until 2005 as those NGOs that have not been affected directly remained silent. In Kenya, disagreements between churches and Muslim communities left the Muslim communities alone in opposition to the Suppression of Terrorism bill when churches, development focused organizations and welfare groups did not voice up (2010: 286, 287). In this way, opposition to ATLs remained marginal and could not prevent their enactment. Even demands for amendments to expand civil liberties remained weak⁴. Opposition in the USA could not prevent reauthorization of the Act in 2005 in the G. Bush era despite the existence of massive anti-war protests, and in 2011 in the Obama era despite rhetoric of *change*.

In discussions of the NGOs related with the 9/11 ATLs, it is also argued that the nature of the aid has been changed compared to the pre-9/11 period. The long termed development goals and international commitments to human rights have been undermined with the militarized nature of globalization, which refers to the situation that security considerations dominated the globalization process in terms of free trade agreements and financial flows (Tujan et.al, 2004: 63). In addition to inclusion of “non-terrorist clause” to aid programs, the character of the aids flowing from the West to the 3rd World has changed as being in “coalition of the willing” became a condition – support to US’s War on Terror is necessary to get aid from the West in general. ATLs, material and logistical support, and fighting against Radical Islamic groups are expected from states receiving aid as in the Cold War period. However, returns of this support are not related with the humanitarian and human rights oriented goals that were set a decade ago. Military assistance, military

⁴ It could be argued that Kenyan case is an exception in this discussion. Although majority of non-Muslim NGOs remained silent in opposition to Suppression of Terrorism Act, the vision that problem with radical Islamism is an important problem because of the cooperation of Kenya with USA and Israel, vision that hardly-won democratic procedures should not be lost again with repression on minorities provided basis for opposition, and prevented enactment of the bill in 2005. However, it should be noted that, in 2008 twenty-two clauses of SoT bill were enacted with a different bill, Proceeds of Crime and Anti-Money Laundering bill, which has forty six clauses. (see Whitaker, 2008)

material support, abolishment of trade restrictions, abolishment of sanctions that had been set because of human right abuses are the returns that 3rd world states have been enjoying (ibid: 56-60). For example, Kenya received financial aid and military assistance for enactment of Suppression of Terrorism bill in 2005, which claimed to be *inspired* by the US and UK ATs, Philippines has received direct US Army support in war because of the existence of armed Islamic uprising Moro Islamic Liberation Front, Uzbekistan received international support in forms of silence on suppression of Islamic NGOs in return of military base to US, Pakistan enjoyed US's abolishment of trade sanctions and financial aids from the EU and the US after Pakistan's announcement of support for the War on Terror (Whitaker, 2008: 260; Tujan, et.al, 2004: 60, 63; Howell & Lind, 2010; 285). In addition to those material supports, authoritarian regimes and their authoritarian measures have got justification in this period like the Coalition's *silent* appreciation of Hosni Mubarak regime's torture of Islamists in Egypt right after 9/11 (Moorehead, 2005: 36). The result of the policy of allowing 3rd World authoritarianism in the name of War on Terrorism, has been the destruction of 3rd World, as repression on dissent groups in forms of militarily and legally got legitimacy from the so-called international society, and as life conditions have deteriorated by escalated military conflicts (Tujan, et.al, 2004: 67).

The last topic in the discussion of repression of ATs on dissents is about practices in non-Western countries. It is argued that, the changed priorities provided free space for authoritarian practices as argued above. Those regimes, which have Islamic-oriented opposition, got chance to justify their repression in the name of War on Terror, as in the case of Mubarak. Among them, Chinese case is the most obvious one that shows this type of justification. Chinese government was one of the first governments that condemned the attacks of 9/11 and announced their willingness to fight the common threat of radical Islamism. The main motivation of the Chinese government is said to be the problems in Muslim Uyghur region of Xinjiang, and Tibet, which are autonomous regions, but claims of Chinese invasion of these regions are strong among indigenous population. The response of the

Chinese government to uprisings in Xinjiang in 1990s was massive repression and regional cooperation with Central Asian states that resulted with the establishment of Shanghai Five (Gill & Murphy, 2005: 23). The existence of the radical Islamist group, East Turkestan Islamic Movement (ETIM), which could be argued to be the result of repression as was the case with the Middle Eastern radical Islamist groups, provided the basis for the Chinese government to join the bandwagon of War on Terror. To support the War on Terror, Chinese government provided logistical supports to the US Army in invasion of Afghanistan as well as supporting the UN Security Council Resolution of 1386. In return, US recognized ETIM as a terrorist organization in 2002, which means international support to Chinese government in the form of silence (ibid: 26). In this environment, in December 2001, China made amendments in its Criminal Law that enlarged the definition of terrorism and escalated the repression in Xinjiang. Like in the other examples, the concept of terrorism entered to the Chinese legal system with vague definitions and harsh measures that could be used and have been used against dissent groups; for example, only in 2006, over 18.000 people got arrested with references to terrorism (Clarke, 2010).

Similar processes could be observed in other non-Western states like Russia, India, Pakistan, Indonesia, Philippines and Uzbekistan in terms of changed form of repression in accordance with 9/11 and the War on Terror (Russell, 2007; Lyew, 2010; Tujan, et.al, 2004; Fowler & Sen, 2010; Howell & Lind, 2010). Policies of the US, both domestic and international, and legislative wildfire provided opportunity for those repressive policies in other parts of the world to be conceptualized as war or struggle against terrorism. However, the repression because of the War on Terror is not limited with Islamists. As one commentator argues,

‘this is clearly not just a war on terrorism...it is a brazen endeavour to create a neoliberal world order. In this war, the US led power block has chosen the most despotic and corrupt regimes, wherever they govern societies of vital military, strategic or economic interests to it, as their strategic allies’ (cf. Fowler & Sen, 11)

In that sense, repression by ATLs is not only focused on radical Islamism. They provide the basis for suppression of any dissent, ranging from environment-oriented NGOs to protests against urban transformation. However, as argued above in the Western case, the construction of discourse of ATLs on previous conflicts disables the struggle against the repressive character of state.

2.3 The Turkish Case: Suppression of Terrorism Law

In this section, anti-terrorism legislations in Turkey will be investigated. The legislation of the TMK in 1991 as a democratization step, and its revision first within the EU accession process, and then, in 2006 in civil war context will be examined.

2.3.1 Legislation of TMK in 1991

The context of TMK in Turkey is highly interrelated with the Kurdish issue and the civil war that is going on since the early 1980s. Terrorism, in Turkey, refers to the armed resistance of Kurdish people, and as the identity of Muslims in West became the center of the terrorism debate after 9/11, identity of Kurds has been the very center of the debate of terrorism in Turkey. As a result, the repressive character of the TMK, which limits the scope of politics, is hidden in this identity politics.

Ten years before 9/11, an anti-terrorism law was enacted engulfed in democratization rhetoric in Turkey. The bill of TMK included removal of the articles in the Turkish Penal Law (Türk Ceza Kanunu, TCK), related to the penalization of expression (TCK: 140, 141, 142, 163), and amnesty for those who had been penalized with those provisions. Yıldırım Akbulut, prime minister and head of the Motherland Party (Anavatan Partisi, ANAP), claimed that with TMK approximately 43.000 prisoners, who were victim of military coup, would be freed (Milliyet, 14.04.1991). However, members of the opposition party, Social Democrat Populist Party (Sosyaldemokrat Halkçı Parti, SHP), pointed to the undemocratic

character of TMK in the parliamentary discussions complaining about the lack of necessary democratization with TMK. Members of SHP opposed the increase of penalties for those who are convicted for committing terror crime, trial of those who were committed of terror crime as a member of terrorist organization, jurisdiction of State Security Courts, over-protection of law enforcement agencies that could result in abuse of power, and lastly, biased legislation of amnesty in TMK that favors right-wing militants and excludes leftists by non-inclusion of articles of TCK that penalized leftists in the proposed bill. In short, rather than providing necessary powers to law enforcement agencies in the struggle against terrorism, which is the basis of post-9/11 ATs, democratization was the main topic of the legislation of TMK in 1991 in two folds, which shows the peculiarity of discussions of TMK. The governing party supported the bill for elimination of the legacy of the military coup with removal of articles that limit freedom of expression and partial amnesty, whereas opposition party based its arguments on the lack of democratization with TMK. However, despite the democratization rhetoric used in the legislation process, TMK caused mass penalization after its enactment; about 2000 people were accused for abuse of TMK annually between 1991 and 2004 (Zaman, 12.08.2005).

The removed provisions of TCK for penalization of expression were conditioned to the use of force and violence, and the amnesty was for those who were imprisoned with those articles. However, with the TMK, terrorism was defined as the crimes against state, and any propaganda for this was penalized. In the context of civil war, although the law provides amnesty for victims of military coup, it actually is a penalization of Kurdish struggle, which was already being dealt with emergency rule. Emergency rule was declared in 1987 in 8 cities – later increased to 13 – after denouncement of martial law that was issued in 1980 as conflict was going on in the region. As the conflicts decreased, emergency law was denounced step by step starting from 1996 and lastly denounced in Diyarbakır and Şırnak in October 2002 (Hürriyet, 30.11.2002). In this context TMK has been considered as the practice of military bureaucracy. In that sense, by 2000s opposition to TMK has been considered as opposition to the powerful position of Turkish Armed Forces (Türk

Silahlı Kuvvetleri, TSK) within the political structure of Turkey, which is conceptualized as military tutelage, for normalization of politics in Turkey, and the EU process has been discussed as the anti-thesis of TMK for its promotion of civil liberties through harmonization process.

In this chapter limitations of the civil liberties literature will be investigated through examination of the debates over the 2006 amendments of Turkish TMK, which is seen as proof of military tutelage in Turkey. To do this, the legislative process of 2006 revision of TMK is investigated. Firstly, emergence of revision as topic of the political agenda and emerged demands for amendments are given. Secondly, the opposition to possibility of revision is given with its arguments that are based on civil liberties literature. Since the opposition has used arguments from the civil liberties literature, the opposition is referred in this thesis as civil liberties opposition. Lastly, incorporation of the arguments of civil liberties opposition into arguments for favoring revision of TMK by AKP government is investigated.

2.3.2 EU Harmonization Packages and Revisions of TMK

After the capture of its leader, Abdullah Öcalan, in February 1999, PKK encountered disintegration problem and in August 1999 announced a unilateral ceasefire that calls guerillas out of Turkish territory. Armed conflicts, already decreased conflicts after TSK's cross border operation in May 1997, stopped until the denouncement of ceasefire by in 2004 after its re-organization (Bal& Özkan, 2006).

The period between 1999 and 2004 also chronologically coincides with the intensification of Turkey's EU accession period. In December 1999 in Helsinki Summit, European Council granted Turkey the status of candidate state by accepting Turkey's sustaining Copenhagen Criteria that was set as condition for membership in 1993. For full accession Turkey was demanded to engage in reformation of its political structure that was specified in the Accession Partnership documents, which

was signed in March 2001 and revised in March 2003, and adopted by Turkey with the preparation of the National Program in March 2001 (Tocci, 2005: 75). The National Program sets political objectives as: Promotion of freedom of expression, promotion of human rights, promotion of freedom of association, strengthening civil society, reformation of judiciary for effectiveness, reformation of detention process, elimination of torture and mistreatment, and elimination of the role of the military in politics (ABGS, 2001; ABGS 2003).

To comply with the National Programme, nine harmonization packages that amended the majority of the constitution of Turkey were passed in parliament by 2006. Harmonization packages also included amendments related with TMK and provisions about terrorism. With the first harmonization package that became law in February 2002 the detention limit was decreased to 4 days from 7 days with the amendment in 128th article of Law of Criminal Procedures (Ceza Muhakemeleri Usul Kanunu, CMUK), with the amendment in 7th article of TMK, penalization of propaganda was conditioned to encouragement of terror crimes, with amendment in the 8th article of TMK imprisonment for terror crimes via press was replaced with a fine (ABGS, 2007: 48, 50). Another change in TMK was realized in the sixth harmonization package in July 2003. The definitions of terrorism and terror crimes were conditioned to exercise of force and violence with the amendments in the 1st article of TMK that sets the definition of terrorism; the 8th article of TMK that regulates penalization of terror crimes via press was abolished (ibid: 70). With these changes, it is argued that the obstacles for freedom of expression were overcome. However on the other hand, these changes became the target of the opposition as conflict was escalated again in the South-East, and demands for inclusion of imprisonment for propaganda were raised by security forces especially after denouncement of ceasefire by PKK in 2004.

2.3.3 2006 Revision of TMK

Intensification of the civil war after the denouncement of ceasefire by PKK led to discussions for the revision of anti-terrorism policies. As will be investigated in more detail below, among the different policies for combatting terrorism, revision of the TMK was distinguished as policies of AKP for EU harmonization was targeted. In June 2005 a commission gathered with representatives from civilian and military bureaucracy within the framework of Ministry of Justice for preparation of a draft of revision of TMK. After collecting demands from different agencies, draft was presented to the Council of Ministers in September 2005 and was accepted in the parliament in June 2006 with minor changes.

The legislation included critical changes in three important topics: Definition of terrorism and terrorist offenses, change in detention processes, and protection of public employees who took part in anti-terrorism operations. The 2006 revisions expanded the definition of terrorism in three ways: Firstly, definition of terrorism was expanded, secondly, some offenses defined in TCK were redefined as terror offenses, and lastly new terror offenses were defined. In the 1st Article, the definition of terrorism that was formulated in the sixth harmonization package as

“...any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat”

was preserved, but the condition of gathering of two or more people for objectives that are given in the definition was abolished.

With the revision of the 3rd article, TMK was updated with the changes in TCK. Offenses that are defined in ten articles of TCK are labeled as terror crimes: breach of national unity and territorial integrity (TCK: 302); destruction of military plants and treaties in favor of enemy's military actions (TCK: 307); offenses against constitutional order and operation of constitutional rules (TCK: 309); assault or physical attack upon the president (TCK: 310); offenses against legislative organs (TCK: 311); offenses against government (TCK: 312); armed revolt against the government of Turkish Republic (TCK: 313); armed organized criminal groups (TCK: 314); supply of arms (TCK: 315); enlistment of citizens in foreign governments' military service (TCK: 320).

In addition to those direct terror offenses, forty-eight offenses defined in TCK and five offenses that are defined in different laws are labeled as terror offense if it is convinced that the offense is committed for the objectives of a terrorist organization: Unlawful transfer of immigrants to a country and human trade (TCK: 79 & 80); offenses against individuals (TCK: 81, 82, 84, 86, 87, 96); offenses against freedom (TCK: 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118); offenses against property (TCK: 142, 148, 149, 151, 152); offenses against community (TCK: 170, 172, 173, 174, 185, 188); offenses against public confidence (TCK: 199, 200, 202, 204, 210); offenses against public peace (TCK: 213, 214, 215); offenses against transportation vehicles or stationary platforms (TCK: 223, 224); offenses in the field of data processing systems (TCK: 243, 244); offenses against nation and state and final provisions (TCK: 265); offenses against the judicial bodies or court (TCK: 294); offenses against signs of sovereignty and supreme political organs of the state (TCK: 300, 316); offenses against national defense (TCK: 317, 318); causing fire in forest (Forest Law: 110); offenses defined in Law about Firearms, Knives and Other Weapons; offenses defined in Anti-Smuggling Law; offenses that cause declaration of state of emergency (Constitution: 120); smuggling of historical artifacts. With the amendments in this article, forty-two more articles from other legal texts were incorporated to TMK. In that sense, the ground for trial of someone with TMK was enlarged.

Three more crimes are defined in TMK, with 2006 revisions, as terrorist crimes. With the revision of the 7th article of TMK, which was amended in the first harmonization package, conditions for trial for propaganda of terrorist organization was expanded. Carrying emblems and signs belonging to a terrorist organization, and the wearing of uniforms bearing these emblems or signs, carrying of banners and leaflets and the shouting or broadcasting of slogans via sound systems are subject to penalty. If those offenses are committed in a building of association, political party, occupational organization, public institution or educational institutions the penalties would be doubled. With the revision of the 6th article the abolished 8th article of initial TMK was re-introduced: Propaganda via publication is sought to be penalized with imprisonment and public prosecutors got authority to shut down a publication that is related with terrorist organization. Finance of terrorism, a new terror offense, is defined in the new 8th article.

Secondly, amendments changed the detention processes of terror offenders with the changes in the 10th article. As with the harmonization packages, the detainment time is limited to 4 days, and the solution to this problem was found in the extension of powers of the public prosecutor. With the decision of the public prosecutor, detention time could be extended and only one person could be informed about his situation. During the detention period, the detainee could only meet with only one lawyer. The public prosecutor can decide that documents are not to be shared with the suspect's lawyer. If the public prosecutor reaches the conclusion that the offender is sending messages to a terrorist organization via his/her lawyer, meetings could be recorded and access to documents by the lawyer could be limited.

Lastly, 2006 amendments provide broad protection measures to public personnel who are employed in anti-terrorism operations. With the change in the 15th article, attorney fees – up to 3 lawyers – that are hired by public employee, who committed crimes in anti-terrorism operations, would be covered by related public institutions without consideration of the amount. With the change in the 20th article, publication of identity of public employees, who participate in anti-terrorism operations, is

penalized with imprisonment. With the revision of the 2nd additional article, employees in law enforcement agencies are given the right to shoot in anti-terrorism operations if the suspect does not obey the order for surrender.

In that sense, although the draft of TMK revision was opposed strictly by civil liberties opposition, the final form of revisions includes most of the opposed changes. Among them, penalization of propaganda, finance and measures against publications have prevailed in revisions. More importantly, members of the government who opposed the draft for its reminding of the periods in which the army was powerful in political decision-making – especially about Kurdish issue – turned out to be proponents of the revision in 2006. The reason could be given as the events in Diyarbakır in March 2006 that triggered militant and nationalist rhetoric. However, as the arguments of civil liberties literature was carried out by proponents of revision of TMK in the legislation process, the reason for this transformation could also be investigated in the weakness of civil the liberties literature that misleadingly investigates the issue of TMK in the security vs. liberties dichotomy that causes to inability to reject usage of the concept of terrorism in the political discussions.

2.4 Conclusion

In this chapter, to provide background for discussions of arguments of civil liberties literature that is done in the next chapter, the legislative contexts of post-9/11 ATLs in Western democratic states and TMK in Turkey are given.

Firstly, Western post-9/11 ATLs are investigated with concerns over civil liberties that are raised by the civil liberties literature. The measures that are legislated with post-9/11 ATLs are categorized in three topics: Vague definition of terrorism, privacy and surveillance, and freedom of association and repression of dissent. In the West, ATLs are formulated as the new mechanisms that also target citizens and raise concerns over civil liberties. US PATRIOT Act, for example, is a combination

of previously existing legal texts concentrated on foreign threats, and reformulation of them to expand authorities of law enforcement agencies in domestic affairs as external threats stand as the main concern of the legislations.

In the second part of the chapter, the Turkish case of ATL, TMK, is investigated and historical process is given. Unlike many Western states, concept of terrorism in legal texts was not a new phenomenon in Turkey by 9/11 because of the formulation of civil war as an act of terrorism and struggle against terrorism. Because of that, rather than being effected by post-9/11 War on Terror rhetoric, TMK has been shaped by specific contexts that include the military coup in 1980, the civil war and EU accession process. Unlike Western ATLs, TMK has been concentrated on the domestic threats to the state and emphasis on foreign threat has been little or insignificant in the legal texts. In that sense, legislations and revisions of TMK have been transformation of an authoritarian form to another, which could be best exemplified in legislation of it in 1991.

CHAPTER 3

DEBATES OF ATL BY CIVIL LIBERTIES LITERATURE

3.1 Introduction

In this chapter, civil liberties literature's arguments against post-9/11 ATLs will be investigated with its criticism. In the first part of the chapter, those arguments are given. The main concern of the literature is the undermining of the principles of the Western liberal democracy with ATLs and a transformation to an authoritarian regime. Disturbance of the balance of powers with the ATLs' empowerment of the executive branch through law enforcement agencies over the judicial and legislative branches, closure of the political discussions in post-9/11 period with war rhetoric, weakening of the independence of individual with surveillance, and weakening of the liberal tradition of individuals' checking government through different mechanisms are the main topics that the literature is concerned. Those arguments for transition to authoritarian regime are based on the assumption that in liberal societies, unlike absolutist ones, security and liberties are balanced, which in the post-9/11 period is argued to be disturbed.

In the second part of the chapter the liberal assumption for the balance of security and liberties for possibility of liberal state will be challenged. It will be argued that rather than a balance, prioritization of security due to concerns for order is dominated both liberal ideology and experience of liberal state. To argue this, firstly, the 18th century liberalism, classical liberalism, will be investigated to discuss about the context of freedom, which is heavily used, and it will be argued that the emphasized freedom is only limited to market place freedoms. Together with this discussion the experience of 19th century laissez-faire state in Europe, which could be argued to be application of ideals of classical liberalism, will be

given to show how non-liberal interventions to idea of freedom led to crisis of liberal state. From that point, the experience of Keynesian state will be discussed both as solution to crisis of laissez-faire state and as break to liberal conceptualization of freedom. Lastly, the context of freedom in neo-liberal ideology, which emerged as a reaction to Keynesian state, will be investigated to show the emphasis on strong state, which is the reason for its being “neo”. With this investigation of liberal and neo-liberal ideology, it will be argued that the concerned authoritarian tendencies should not be limited to post-9/11 politics over ATLs and the need for emphasis on class relations is necessary for conceptualization of authoritarianization.

3.2 Criticisms of ATLs by Civil Liberties Literature

The discussion of the ATLs in terms of civil liberties that are given in this thesis mainly concentrated on the discussions on the effected civil liberties in Western democracies. In these discussions, criticisms are centered on the repressions – or at least possibility of repression – on individual and civil society through using ATLs. On the other hand, 9/11 is taken as turning point in emergence of this kind of repression as Western democracies’ transformation to an authoritarian regime is explained with the response of governments to 9/11 in legal form; blurring lines between three branches – executive, legislation and judiciary – in favor of executive branch with great popular support is concerned. In that sense, main concern of writers that are investigated is the deviation from liberal democracy with post-9/11 policies. In other words, post-9/11 policies are evaluated as being the anti-thesis of liberal democracy. In this part of the chapter, this way of discussing the subject through giving extensive references to the ideal liberal state is examined.

The initial questions arise about the ATL is the immediate legislation of anti-terrorism acts. It is argued that in normal conditions, enactment of those legislations that strictly restricts individual and collective rights would take years. However, for

example, British Anti-Terrorism, Crime and Security Emergency Bill 2001, which includes 129 sections, passed in 3 days of parliamentary discussion that took 16 hours in December 2001 (Haubrich, 2003: 9). In Germany two packages of ATL has passed; the first one about immediate repressive security provisions was passed in only one week after the attacks, and the second one about preventive security provisions was passed with two weeks of negotiation of coalition government and a few hours of parliamentary debate; in total over one hundred laws was amended (Leipss, 2004: 439, 441). In normal conditions it is impossible to make changes in such a rush because of the effected civil rights; however,

Whether a need for legislative regulation existed was never in doubt; the question of the 'if' had been answered by the evidence and needed no justification. The question of the "how" was determined by the immediate presentation of the two "security packages" by the department of the interior. An analysis of which measures could possibly have prevented the attacks and which legislative changes would have been necessary to create these measures, was never attempted, not the least because of the urgency to act quickly. (ibid: 437)

The rush for comprehensive amendments on counter-terrorism legislation, which is concerned to effect civil liberties, has had mass popular support. Weak parliamentary discussions are itself an indicator of the problem as they blocked socialization of the discussion. In that environment, any opposition against ATL remained silent or marginal. M. Zehfuss discusses this problem with moral causes established by 9/11, as she claims that with the attacks of ATL against civil liberties West becomes the threat that it claims to fight; ATLs themselves attack Western way of life as they limit the liberties of the citizens and disturbs the balance of powers and rule of law (2003: 517, 519). The fact that most of the surveillance regulations on US PATRIOT Act are actually abolishment of the limitations on intelligence services that had been enacted after surveillance abuses, like Nixon's Watergate scandal, strengthens Zehfuss's argument; the taken rights are actually acquisitions of the people (Thorne & Kouzmin, 2010: 890). Similarly, legalization

of IMSI Catcher in Germany that was rejected by parliamentary decision waited post-9/11 ATL (Haubrich, 2003: 12).

Zehfuss discusses the role of the memory in the emergence of moral cause that prevents anti-terrorism policies. Firstly, she discusses the war rhetoric of anti-terrorism policies; she claims that “identification of the events of September 11 as ‘an act of war’ provides the basis for the USA’s military response to Afghanistan; the memory of the dead of 9/11 for the justification of the war in Afghanistan prevents the discussion on whether a military response could provide the security at home (2003: 515). Whether or not, description of the actions as war provides a state of emergency for the states. In the international level, it provides portrayal of the violent actions abroad as self-defense as it provides legality in international law; and at the domestic level it provides the basis for “militarization of the polity, and a reduction in civil liberties” (Mégret, 2002: 368). In that sense, together with the shock that US population lived with the attacks, which showed vulnerability of safe places, war rhetoric contributes to the situation that fear and feeling of insecurity plays important role in politics; supports to restrictive policies sustains a mass support without any interruption (Zehfuss, 2003: 516).

To explain usage of 9/11 as justification, Zehfuss uses James Der Derian’s concept of *exceptional ahistoricity*. According to Derian the attacks have been discussed as an exceptional case because of its nature; the attacks from network of evil did not happened in conventional ways by militant people, but through unconventional way by normal educated people (2009: 273). Because of this and because of the moral costs, trying to put the issue on political discourse is not acceptable because “explanation is identified as exoneration”;

“Under such forced circumstances, of being beyond experience, outside of history and between wars, 9/11 does not easily yield to philosophical, political or social enquiry. The best one can do is to thickly describe, robustly interrogate and directly challenge the authorized truths and official actions of all parties who posit a world view of absolute differences in need of final solutions” (ibid: 265).

Expecting historical or political analysis to put event in a context that could show the relations between imperialistic policies of US in Middle East or defeat of the leftist or anti-colonial politicians in the region in Cold War or rejecting the follow-on policies of US are not acceptable as it exonerates; only option is to accept militarized retaliations (Zehfuss, 2003: 521; McLaren, 2003: 115). In that sense, to make alternative discussion of 9/11 impossible, Zehfuss claims that Mr. Bush did not want citizens to forget 9/11 for justification of war as Bin Laden did not want so to show his network's ability (514).

The outcome of the usage of memory and moral cause is implementation of the War on Terror policies without serious interruption. Zehfuss claims that usage of the memory provided reshaping of the political:

“Bush recommended the following in his address to the joint session of congress and the American people on 20 September 2001: ‘I ask you to live your lives, and hug your children’. Only weeks later the USA went to war against the Taliban in Afghanistan. What might at first have appeared to be an alternative approach to dealing with the experience of an inevitable insecurity, turned out in fact to be a deeply patronising comment, the ultimate closure of debate. Concentrate on your families. Do not concern yourselves with the difficult business of politics. The state will provide security. This is a deeply troubling attitude, not only to the question of how we should react to the events of September 11, but to the role of citizens in politics” (ibid: 525).

In the newly reshaped politics of post-9/11 era, citizens are excluded from decision-making process, which is evaluated as the core of the Western democratic culture. With this concern she argues about West's becoming threat to itself in post-9/11 era; ability of citizens to check and balance government through actively participating in decision-making process is eroded in this era with the usage of memory and moral costs of opposing draconian state response to 9/11. To overcome this problem Zehfuss calls for forgetting 9/11 to re-establishment of Western democratic culture.

A related question is held by R. Nakhaie and W. de Lint with references to limitation of privacy, which are claimed to be fundamental to protection of individual liberties and liberal democracy, with surveillance mechanisms of post-9/11 anti-terrorism policies (2013: 150). They try to explain the situation through examination of the relation between state and society in terms of trust. Using Tilly's concept of institutional trust, it is argued that the role of citizens' institutional trust in government provided tolerance to limitation of civil liberties for a short-term; for example, the changed power structure in Quebec, Canada, which provided control of state apparatuses by French Canadians, changed citizens' perceptions on government and provided social trust in government that resulted with more support to ATLs compared to USA (ibid: 161). According to this argument, as Tilly also shares, exchange of civil liberties in return for more security is based heavily on success of government in promises; any failure – fiscal or security related – could lead to withdrawal of the support to government; thus, USA's problems in Iraq and Afghanistan could be problem for US administration (ibid: 162). However, the surprising result of the conducted research is argued to be real challenge for civil liberties. The educated population, who are thought to be the guarantee of ideals of enlightenment and civil liberties, are more supportive of restriction of civil liberties. Two explanations are given for this unexpected finding. The first one explains it as the result of the education system, which helps constitute the opinion that it is necessary to restrict civil liberties for security. The second finds the cause in the vested interests of the educated population in the system (ibid: 161). In that sense, very basic characteristic of the Western liberal democracy – population's ability to withdraw support to government's policies – is being threatened by the citizens themselves.

Apart from the support to anti-terrorism policies, the measures are also criticized in the context of erosion of Western liberal democratic state as it is given in the previous section. The main topics of these discussions are surveillance mechanisms over individual privacy, weakening of separation of powers in favor of executive branch, repression on dissent groups and weakening meaningful judicial processes.

They are seen as principles of the liberal democratic state, and it is argued that post-9/11 ATLs have affected them negatively; ATLs are criticized for undermining civil liberties and the principles of the liberal democratic state. Furthermore, there are arguments that ATLs have led to a transition of liberal democratic state towards authoritarian or totalitarian regime; Thorne and Kouzmin, for example clearly claim about a transition in the USA to a totalitarian regime that has strong similarities with Stalinist or Nazi regime in terms of fear politics (2010: 900). However, peculiarity of the civil liberties literature shows itself in these discussions quite strongly; rejections and oppositions to ATLs that are said to be done for protection of liberties are generally based on abstract discussions of liberal democracy rather than showing concrete loss of liberties. Indeed, the existence of liberal democratic state that is said to be protective of liberties of citizens is not clear: Although there are references to previous repressive policies of Western liberal democracies, there is no clear reference point for liberties that are said to be lost in post-9/11 era. In other words, it is not clear that to what extent pre-9/11 liberal democratic state differs from post-9/11 almost authoritarian state. On the other hand, the efforts for showing the isomorphism of post-9/11 era to totalitarian regimes that have existed in a different historical context, hinders the specific historical conditions of issue of concern.

To overcome these problems and misleading analyses, the peculiarity of the post-9/11 period should be searched in its own historical context, which is mostly neglected in civil liberties literature. In that sense, the conditions of neo-liberalism should be investigated. However, before discussing it, firstly, the claim for the decaying liberal democracy with the increasing concerns over security is investigated through ideological grounds of liberalism; to what extent the security concerns are anti-thesis of the liberal democratic ideal? To do this, in the next section, liberal conceptualization of the state-society relations will be investigated.

3.3 Criticism of Civil Liberties Literature

The abstract references of writers to liberal democratic state stands as the main problem of the civil liberties literature. The historical references to past experiences of Western liberal democratic state, like Sidel's example of detainment of Japanese population in US in World War 2 or repression on Communist Party (2004: 6) or Thorne and Kouzmin's example of judgment of disloyal Americans during Korean War (2010:905) raises questions about the historical existence of idealized – abstracted – Western liberal democratic state. Is there really any transition from democratic conditions towards authoritarian ones with 9/11 or the authoritarian – or repressive – character deeply rooted condition of western liberal democratic state that shows itself in different forms?

M. Neocleous challenges this way of discussing post-9/11 period – construction of security vs. liberties dichotomy – as he claims repression in the name of security is a very central characteristic of liberal ideology and liberal state; rather than challenging the idea of security, liberal ideology prioritizes security as pre-condition for liberties. He claims the arguments for security vs. liberty within the liberal ideology hinders the real history of liberalism (2007: 133). Security is prioritized in liberalism through legitimization of the absolutist doctrine of order with liberalization of the state-society relations, which is done through separation of economics and politics (ibid: 139). From that point of view, in this section, the arguments for balance of security and liberty in liberalism as a condition for liberal society will be discussed to reveal the deadlock in liberal arguments against post-9/11 ATLs. The place of coercion in liberal ideology will be discussed with references to specific historical contexts. To do this firstly, the idea of freedom in the 18th century liberalism and place of coercion and security with references to arguments of Neocleous and the conditions of the 19th century liberal state that witnessed the socialization of working class will be discussed. In the second part, 20th century liberalism that was reformed after the crisis of 19th century liberal state to include lower classes into consideration will be discussed. Lastly, the emergence of neo-liberalism, which attacked inclusion of lower classes into political

considerations, with the strong emphasis on freedom will be discussed. With these discussions, it will be tried to underline that over centuries the emphasized idea of freedom by liberal thinkers does not refer to the expansion of political space towards lower classes but to the condition of the free market economy.

3.3.1 Liberty and Security in Liberalism: 18th Century Liberalism and Laissez-Faire State

Neocleous investigates J. Locke in detail to show the prioritizing of security in liberal ideology; the reason for this investigation is the fact that Locke is his opposition to absolutism. Arguing against the absolutist T. Hobbes, who claims liberties can be exercised best under the rule of an absolute sovereign – the Leviathan –, Locke advocates the constitution of authority of the people through limiting the absolute sovereign and arbitrary exercise of power (Neocleous, 2007: 139). Although Locke argues for supremacy of legislation – power of the people – the necessity of immediate action for protection of public good – protection of life, liberty and property – brings lawful prerogatives for the executive branch because of the slow action of legislation in his picturing of liberal society. The intention of Locke for problematizing immediate action, which could not be taken by legislation, is foreign affairs: powers to be given to the executive is

“‘the Power every Man naturally had before he entred into Society’, and thus somehow retains the very power that man was expected to forego in establishing the contract, namely the right to defend oneself and enforce the law of nature” (ibid: 136).

Obscure distinction of the foreign and domestic affairs in Locke’s analysis because of the concept of public good means giving pre-contract power to executive that could also be exercised domestically especially in times of state of emergency; and according to Neocleous, this means using of a concept from non-liberal tradition, reason of state that attains exercise of immoral actions by state for the sake of its existence:

“The doctrine thus identifies security — simultaneously of the people and the state (since these are always ideologically conflated) — as the definitive aspect of state power. Security becomes the overriding interest and the principle above all other principles. As such, the doctrine would therefore appear to be antithetical to liberalism if liberalism is identified as a doctrine which aims to tip the balance of power towards liberty rather than security” (ibid: 137).

Security for the public good as reason of the state is prioritized in Locke’s conceptualization, and it is echoed in different liberal thinkers according to Neocleous. Rather than challenging security for liberties, the non-liberal concept of reason of state – absolute sovereign – is legitimized in liberal tradition: A. Smith argues for sacrifice of ordinary laws of justice in times of necessity as he claims for standing army’s providing ‘favourable liberty’; Bentham argues for primacy of security’s being ‘pre-eminent object’ of civil law; utilitarian J.S. Mill describes security as “the most vital of all interests” of individual (ibid: 140-142). Liberal thinkers of enlightenment shared same vision of security with absolutist thinkers and prioritize authoritarian state power for promotion of liberty through sustaining public good; security is identified as precondition of liberty, which is constructed with legislation. Rather than doing it directly as absolutists do, liberals promote strong state through promotion of protection of rule of law.

As liberals and absolutists of 18th century share same grounds about the protection of public good, opposition of liberalism to absolutism was realized on the ground of the conceptualization of liberty. Liberalism challenged the absolutist ideals about the direct action of the state in economic affairs for perfection of state power, and promoted the separation of the economic sphere to be run through its own logic, the market order, for prosperity. In that sense, Neocleous underlines change in A. Smith’s usage of police with *Wealth of Nations*: In previous writings (*Lectures on Jurisprudence*) police is underlined as a condition of prosperity for its role of decreasing crime, but in *Wealth of Nations* police got meaning for foolish rules on economy that limits movement of labor (2000: 24 - 25). According to Neocleous, the reason for this turn is the debate in France, which Smith encountered in his trip

in 1764, on the liberalization of the grain trade that was under state control and described as police of economy: “a battle between the ‘police’ or the ‘liberty’ of the grain trade” (ibid: 27). In that sense, the bad connotations of police (state) in Smith’s writings was for the promotion of the market rule in economics through separating it from direct state control; in other words the arguments for the transition from police to political economy (ibid: 28). Through market, liberty of the individual is sustained as he/she freed from the direction of state and could follow own interest, which is the basis for prosperity. In other words, liberty of the individual is defined in his being rational self-interest seeker in market place, without any interruption of this behavior by the state. However, this argument does not mean that police (state) is rejected totally, but it was sought to be placed out of economic sphere for perfection of police; just like Locke admits the role of *illegal* actions of executive in times of emergency, Smith admits necessity of interruption of individual market activity in times of emergency:

“to hinder...the farmer from sending his goods at all times to the best market, is evidently to sacrifice the ordinary laws of justice...to a sort of reasons of state’. Yet he immediately comments that such a sacrifice is acceptable ‘in cases of the most urgent necessity’ (Cited in Neocleous, 2007: 139).

This reformulation of the role of the state by 18th century liberal thinkers was a result of the transformation of the subordination relations according to Neocleous: the rule of the king was transformed to rule of capital in that period (2000: 40). Possibility of liberalism to construct the concepts of rational individual and the rule of law was realized with the changing forms of subordination of lower classes, as control of them now was based on *technical* economic rules like hiring and setting wages. In other words, 18th century liberalism conceptualized the detachment of the economy from politics. In that sense, the rule of law as a concept refers to the depoliticization of social space, in which labor relations are subordinated to the bourgeois class through constitution of the social politically (ibid: 40).

18th century liberal thinkers seek the ways for emancipation from an oppressive and authoritarian regime – absolutist state – with a strong emphasis on freedom, however, as Neocleous argues they end up with a new authoritarian system that is centered on the rule of capital. At that point, it should be understood that the strongly emphasized freedom is limited only to the individual's being free in the market space as a self-interest seeker, and does not refer to political freedom that could enable representation of demands for a radical change of the structure, which is dealt as *crisis* or *emergency* in liberal discussions. The experience of 19th century Europe with expansion of the political system towards lower classes that led to a deeply rooted crisis at the end of the century shows this limitation of the idea of freedom in liberal ideology and its authoritarian tendencies.

As underlined above, the idea of freedom was limited to the freedom of market according to 18th century liberal thinkers; the emphasis on freedom was limited to freedom from direct intervention of the state in interactions in the market place. In this perspective, the political space is not considered excessively, mainly because its domination by the bourgeoisie. However, the 19th century witnessed the mass inclusion of the working class to political space through different ways as a result of socialization. The work of R. Grew on the 19th century liberal state investigates this situation and underlines state's becoming central position (1984). He claims that in the 19th century Europe witnessed the growth of the state both in terms of quantity and quality; as functions of the state was differentiated compared to the absolutist state – preparing conditions for capitalist reproduction, infrastructural responsibilities, regulation of urban life and provision of social policies – the budget and personnel of the state increased dramatically in relation with the increased functions of the state (ibid: 85-90). Parallel to this process, according to Grew, the state gained central position in the objectives of the political communities – liberals, conservatives, socialists, etc. – and interest groups – industrialist and farmers – as the benefits of state was realized (ibid: 93-94). In this context a new responsibility for the state emerged; responding to social demands. The most important response of the state, and achievement of social movements, was the universal (male)

suffrage, in other words the establishment and proliferation of the parliamentary system. The ways of response was not limited to representative democracy, as social movements of 19th century Europe innovated new mechanisms of affecting the state, the most important of which being the trade unionism, which was not foreseen by liberal thinkers (ibid: 96).

In that environment, according to Grew, as 19th century liberal state faced with unforeseen social movements from lower classes and social movements got more powerful, the liberal state encountered a political crisis due to the loss of neutral vision, which was well established with the replacement of the rule of local lords with universal rules (ibid: 101). Socialization of political struggles and the state's becoming the center of it led to the reveal of homogeneous relations between the bourgeoisie and the state, which in turn give more impetus to demands for revolutionary change. At that environment prevention of revolutions for the sake of market order became the central function of the state. Apart from violent military repressions, establishment – socialization – of police force and judicial processes happened in that era (ibid: 91). G. Agamben also underlines that first experiences of state of exception – abolition of the rule of law – were in this century. Declaration of it in French Revolution, legal inclusion to the Napoleon Code and Bismarckian Constitution, declarations in 1848, and five year of state of exception after the Paris Commune are examples the subject of violent character of 19th century liberal state (2005: 11-22).

As the laissez-faire state was not structured according to representation of interests and demands of lower classes but capitalist classes, which could be seen in thoughts of liberal thinkers, 19th century liberal state faced with structural crisis with the socialization of the working class. The responses to structural crisis were varied from militarism to syndicalism at the end of the century. According to Grew, at the beginning of 1910s, a new balance was set that would lead to destruction; as working class entered the political system with recognized rights for trade unions and strikes, and the state started to take more direct actions in the economic field

through subsidies, tariffs and welfare programs, the profitability of the capital was sought with the imperialist policies that led to international competition and destruction (ibid: 111). As laissez-faire state yielded its space to this different *balance*, the new balance showed its inability to survive with the destruction of World War I, authoritarianization of political structure, 1917 Bolshevik Revolution and the Great Depression. In that sense, it could be argued that the structural crisis of the 19th century liberal state shows the limitation of the idea of freedom in liberal ideology as it excludes interests of the working class, which is seen as mere input in the production process. On the other hand, as interests of the working class were represented in the state structure, political structure was radicalized and became more repressive in Europe as the proletariat threat to the capitalist order became more visible.

Radicalization of the political structure as a reaction to the rise of the working class as a political community could be followed from Agamben's works on state of exception even though he examined the issue from the perspective of bio-politics that does not stress class relations directly. The arguments of Agamben are based on the idea that modern politics are based on bio-politics and that forms of care, control and use of human body – bare life – are constantly redefined by the sovereign (1998: 122). Modern sovereign controls not only a specific territory but also life to direct population to a specific political objective and specify which life is worthy and which life is not: The crudest example given by Agamben is the race politics and concentration camps in Nazi Germany (1998). From this point of view, Agamben argues that modern politics have witnessed the intensification and perfection of the governing techniques of the sovereign on human life, and Nazi camps and state of exceptions are crucial in this process. He explains this argument as proliferation or globalization of the state of exception. Abolishment of judicial system and gradual erosion of powers of parliament that give full power to sovereign to exercise power over bare life without any limitation is the main characteristic of state of exception, which is best experienced in camps (2005: 1-10). From that point, he argues that modern politics is a constant state of exception if in

state of exception the sovereign is able to decide who will live or die without limitation of legal framework, and if modern politics is based on the constant definitions of threshold of life (1998: 153). He claims that the partial examples of state of exception were experienced in the 19th century and started to be expanded through Europe with World War I; in the inter-war period and during World War II state of exception was used heavily that led to institutionalization of it in modern politics. In Agamben's conceptualization this period served as a laboratory for those practices that led state of exception to be the paradigm of government in modern politics (2005: 7).

Although Agamben does not directly refer to a specific group or class as responsible for radicalization but rather argues around basic characteristics of modern politics, his discussions on state of exception provides helpful insight about how capitalist order responded to the entry of the working class to political space. The initial examples of state of exception could be observed in the 19th century as it got universalized when the working class was allowed to be part of the political structure. In that context, W. Bonefeld argues that this radicalization refers to liberal state's crisis in the face of proletariat threat and shows the limits of bourgeois democracy (2010: 242). Although Agamben does not voice it directly, his examples and arguments are supportive of this argument with his emphasis on state of exception's being directly related with the revolutionary changes or civil wars; he also underlines that German communists' being first victims of concentration camps in 1930s prior to Nazi era and state of exception after Paris Commune provided for the generalization of the practice (2005: 12, 15). In that sense, rather than a totalizing language for whole two or three centuries, the differences of those centuries should be taken into consideration for a better understanding of the role of coercion in liberal ideology and in capitalist order. From that point of view, it could be argued that the proliferation and intensification of repressive apparatuses of the state in the late 19th century and early 20th century is directly related with the power of the working class that was thought to be just a silent input in production.

3.3.2 Keynesian Break in Capitalism

At the beginning of the 20th century, as a response to the failure of the laissez-faire state, which became visible mostly with the 1917 Bolshevik Revolution and the rise of Fascism, arguments for inclusion of the working class into political processes for protection of the capitalist relations were raised together with the arguments for institutionalization of state of exception for protection of freedoms (Bonefeld, 2010; Holloway, 1995; Agamben, 2005). According to J. Holloway the assumption of labor power as simple commodity in the market place lost its validity and organizational power of the working class, which proved itself with trade unionism and strikes, was proposed to be integrated into capitalist mode of production (1995: 14). In the same period, as a reaction to rise of the Fascism, which is seen as a wrong strategy against the crisis of laissez-faire state, the ways for constitutionality of dictatorship to respond to crisis of liberalism without falling into the fascist trap were also sought after (Bonefeld, 2010: 250; Agamben, 2005: 9). With the fall of Fascism, in the post-war era the idea of integration of collective power of the working class to capitalist production process gained domination in the capitalist world, as the idea of constitutional dictatorship remained strong within liberal ideology that reemerged right after the former idea's crisis.

The approval and integration of the organizational power of the working class by capitalism to prevent its choosing to other alternatives was conceptualized by J. M. Keynes and this strategy was called Keynesianism, which includes central planning and welfare programs. Holloway underlines that Keynesianism is “a strategy that would openly defeat, but contain and redefine the power of the working class” according to the needs of capitalist development. In other words Keynesianism is a strategy against working class as it provides a new discipline over workers through welfare programs and wage bargaining (1995: 14). From Holloway's perspective, Keynesianism was a class project to respond to the crisis of 19th century laissez-faire state that excluded working class and promoted imperialism as a response. However, Keynesianism also refers to the concessions that capitalist classes gave to

the working class as trade unions became more effective in management of production. In other words, it could be argued to be the success of the working class against laissez-faire state even though systemic change was not realized. From this perspective, Burnham argues this situation as politicization of the economic management (2006: 98-101). Politicized economic management, which is based on discretion, includes government's taking direct action in economic management, and direct intervention to management of labor, capital and finance. This way of management, Burnham argues, is based on a contradictory effort to restore the profitability of the capital through management of labor institutionally that empowers the representatives of the working class. This contradiction of the Keynesian system led to structural crisis that showed itself with increased unemployment and fiscal crises in 1970s (ibid: 99-100). In that sense, Keynesianism shows the concessions granted by the working class after long struggles started with the socialization of working class, and impossibility of co-representation of interests of working class and capitalist classes together at state structure as it led to structural problems in capitalist order. Holloway explains the crisis of Keynesianism with the contradiction that is raised by Burnham. The institutional power of the working class sets limits to profitability of capital with wage politics rather than restoring it; in short, containment of the working class becomes costly for capital. On the other hand, the channels of containment that is set in state structure become costly as institutionalized power of the working class is socialized and directed into social issues like housing or health care. All those costs were projected to be compensated in international credit system that was regulated by Bretton Woods institutions; however, rising costs led to instable monetary structure (Holloway, 1995: 22-33). Holloway's discussions show that the fiscal problems emerged in 1970s that showed the structural problems were caused by the contradictory assumption of Keynesianism for approving power of the working class. In that sense, it is not a surprise that neo-liberal thinkers attacked initially to the organizational power of the working class.

3.3.3 The Neo-liberal Authoritarianization and Neo-Liberal Emphasis on Freedom

The response of capital to crisis of Keynesianism was rectifying the market order, which was distorted with the intervention of working class, through restructuring of the state. In 1978, in his book *State, Power and Socialism*, Poulantzas points out the transformation in the state form as a result of efforts for resolving the contradiction within the power block by additional roles for the state to expand “the space for reproduction of and accumulation of capital” in previously marginal spaces like urban-planning, transportation, health, education that cause political confrontations of masses with the state directly. He argues this effort led to transformation from democratic bourgeoisie republic towards authoritarian statism, which was observed with empowerment of the executive branch, political parties’ loosening ties with masses, parliament’s becoming meaningless in terms of representation, administration’s subordination to executive with legal reformations and concentration and centralization of power in administration, as a response of the crisis of dominant classes (Poulantzas, 2000: 203-247). Based on Poulantzas’ arguments, it could be argued that the concerned transformation, the neo-liberal transformation after the crisis of Keynesianism, targeted the working class and its gains that had been granted in the previous period to restore the profitability of capital. In that sense, the neo-liberal transformation refers to the end of the *democratic* break to capitalist order. However, the peculiarity of this period is the strong emphasis on freedom despite authoritarianization that resembles 18th century liberalism, which was discussed with arguments of Neocleous in the previous section. Similar moment could be observed in the neo-liberal emphasis on freedom in criticism of collectivist policies while a strong state for capitalist order is necessitated intellectually.

The background of emphasis on freedom in neo-liberal ideology could be understood with an investigation of the conservative thinker M. Oakeshott’s criticism of enterprise association, a term that Oakeshott uses for politics based on

collectivities. Oakeshott is a British thinker who follows individualist tradition and his ideas are claimed to be ground for policies of M. Thatcher (AP, 22.12.1990). His writings against collectivist politics go back to inter-war period in which laissez-faire state was in structural crisis as underlined above; his writings targeted Nazism, Marxism and Keynesianism. Naturally, his ideas could not get attention in the first half of the 20th century in which liberal individualist claims were overwhelmed by the active working class; his becoming influential was realized with the crisis of Keynesianism, when gains of the working class was being attacked. In that sense, his ideas on freedom shows what kind of freedom is meant in neo-liberalism – authoritarian attack on the democratic gains of the working class.

As underlined above, Oakeshott's main target is politics based on collectivism. According to him collectivist politics are based on the solution of a single problem like that of distribution of wealth or production and based on positivist epistemology, which in turn is based on technical knowledge. Collectivist politics manifests the solution as the only reality and directs all structure according to this solution and all individuals are expected to contribute to the solution of this problem, which stands as the main obstacle for freedom of the individual. This way of politics is conceptualized as enterprise association, which Europe follows wrongly for centuries. His rejection starts from claimed dependence on technical knowledge. Politics cannot be limited to the solution of a single problem; politics is not technology but "the art of knowing where to go next in the exploration of an already existing traditional kind of society" (Eccleshall, 1992: 177). From that point of view, he proposes for *traditional* way of engaging in politics that does not direct the population to a specific goal, but rather one that would set individual free: This way of politics is conceptualized as civil association. The inspiration for the civil association comes from T. Hobbes's Leviathan; Hobbes's Leviathan does not offer wealth or prosperity to its subjects but it offers a peaceful and secure environment for individuals to follow their self-interest and for this, Leviathan only demands recognition of his authority (Franco, 2004: 162). However, the authority is replaced with morality in Oakeshott's conceptualization. Politics should not be based on

technical knowledge as it would exclude *human conduct* outside of the political space; but morality should be as it does not direct individuals to do something and it is flexible enough to conform to the instant needs of society. The necessity of morality to be the base of politics is explained with the metaphor of language: Language is the precondition for human conduct, and it shows itself in every action of a human; without it he cannot experience anything, but it does not mean that language commands individuals to do or think a specific thing (ibid: 150-156).

Oakeshott's criticism to enterprise association that mainly refers to collectivist politics and promotion of civil association for freedom of the individual provided intellectual base for promotion of market order on the basis of freedom as it also provided criticism of Keynesianism on the same ground. From the arguments, although he rarely refers to economic debates and tries to limit himself with *political* discussions and he distances himself from liberalism, it could be understood that the individual that is emphasized is the self-interest seeker market agent, same as the one in the 18th century liberalism. On the other hand, even though he argues for flexibility of the state according to the needs of society and limitation of it, it could be understood that Oakeshott is also a supporter of a state that maintains autonomy from society to resist collectivist demands. Oakeshott's discomfort with the collectivist politics reminds Bonefeld's arguments for neo-liberal thinkers' criticism for ungovernability because of the state's being socialized – to restore order and liberties, which is conceptualized as limited state, a strong state that governs over society is demanded to limit the social relations to market relations like exchange and competition (2010: 242-243; 2012: 160). This tendency, which is very implicit in Oakeshott's arguments, is much clearer in Hayek's arguments against the rule of majority to promote the rule of law.

Similar to Oakeshott, Hayek started writing against non-liberal politics in the inter-war period and became influential in the crisis of Keynesianism; however, unlike Oakeshott he was more aggressive about criticism of non-liberal ideologies and strongly supported market order. On the other hand, even though he shares a similar

assumption with Oakeshott on the conditions of society in terms of basing arguments on rule of morality for promotion of individualism against collectivism with the emphasis on freedom (Gray, 1998; Gamble, 1996; Shearmur, 1997), he differs in terms of the proposed role for the state for sustainment of market order as he has no hesitation to support the state that is ideologically liberal. For example he has no hesitation, to praise Pinochet's military coup in Chile for contributions to transition to liberal order as he intellectually argues for necessity of *constitutional dictatorship* in times of crisis of liberal order (Hayek, 2011: 103-117; Madenci, 2010: 100; Bonefeld, 2010: 243). His way of argumentation could be observed clearly in his discussion on coercion.

Hayek defines coercion as forcing man to act out of his will: "Coercion occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose"; violence and threat of force are the common forms of coercion (2011: 199, 202). For example, arbitrary firing of a worker by owner, in other words, depriving one from entering workplace is coercion, and complete monopoly on employment by state, which could be observed in socialist states, is the most violent coercion because it is mainly based on arbitrary actions (ibid: 204). However, that does not mean that monopoly is necessarily evil. Hayek supports monopoly when there is no other possibility of running a specific sector as long as monopoly treats customers anonymously, especially in terms of pricing (ibid, 203). The key concept that determines what is coercion and what is necessity is anonymity.

The biggest achievement of modern society, according to Hayek, is elimination of one man's coercion to another. It is achieved by recognition of private property, which gives one his own castle as a general principle; however the real achievement is sustained with protection of all men, including those who have no property except personal cloths from coercion (ibid, 207). This is sustained through state's monopolization of coercion in itself with regular standards. In this way, the practice of coercion is held at minimum level. Taxing and compulsory military service are

very basic examples of the legitimate anonymous practice of coercion by the state. In that sense, Hayek argues about predictability of coercion as a part of the rule of law; in which situations the state will use coercion should be clear in general principles. “The interference of the coercive power of government with our lives is most disturbing when it is neither avoidable nor predictable” (ibid, 210).

Monopoly of state on coercion should also serve the protection of society and its functioning. Firstly, Hayek argues that coercion should be practiced on fraud and deception as they manipulate the division of knowledge in society and leads to malfunctioning of institutions. Secondly, the state should use coercion to prevent coercion among individuals; as private property is used as the castle of individual, the thing that should be protected with coercion is private property (ibid, 211). Such principles for the usage of coercion are needed to avoid usage of coercion by majority that could become the tool of oppression. Coercion is only limited when it is directed to the protection of spontaneous order (Hayek, 1979: 7).

The very basic moral of Hayek’s discussion on coercion is that coercion is harmful on the individual when it is decided arbitrarily; however, its usage by the state is normal and necessary to protect the market order and the rule of law, which are conditions of freedom in society. This argument is by its nature de-politicizing: the very basics of the society could not be challenged; principles and institutions of free – market – like the right to have private property – cannot be opposed but only improved and re-arranged according to new needs of the spontaneous order; the rule of law is state’s duty for protection of the existing system; and argument for individual’s being sovereign is only for determination of goals of him/her in market order as seeker of self-interest. When individuals demand for re-distributive policies or abolishment of private property, which fundamentally threatens freedoms in Hayek’s society, coercion is necessary.

In the discussions of neo-liberal thinkers, as tried to be underlined above, the stress for order dominates the criticisms against collectivist politics. As collectivist politics are seen as oppressive and totalitarian, the limited politics for the sake of well-

functioning market economy are praised. In this sense, it could be argued that neo-liberal discussions on society and freedom follow the tradition of de-politicized idea of freedom, which means exclusion of class in political space and discussions. However, the main difference of neo-liberal ideology compared to classical liberalism, reason for being *neo*, is the insistence on the containment of the working class with state power. As it is tried to be given above, this stress is directly related with the liberal discussions in the first half the 20th century on the solution of the crisis of laissez-faire state, which was between a proposal for oppression of the strong working class with constitutional dictatorship and a proposal for inclusion of it to the political system that led to Keynesian state in the capitalist West. In that sense, the neo-liberal ideology represents the former idea that is not only against non-liberal alternatives but also to alternatives that respects working class as political agent. From this point of view, it could be concluded with references to arguments of civil liberties that stress the rise of the state and authoritarianization: Firstly, the liberal ideology and liberal state have never had a concern for any balance between security and liberties as security of market order against non-capitalist forms of political alternatives with active usage of coercive power of the state is prioritized. Secondly, the authoritarian tendencies of state in contemporary period is not just a reaction of the state to 9/11, but rooted in the neo-liberal response of capital to the crisis of Keynesianism with attack to working class's powerful position in state structure.

3.4 Conclusion

In this chapter, the dominant criticism of ATLs made by civil liberties literature that argues it as transformation to authoritarianism with prioritizing security over liberties with ATLs is discussed. The main arguments of the literature are given and criticism of them are done through arguments of Neocleous's against civil liberties literature's assumption for balance of security and liberties in free societies with the claim for primacy for concern over order and security in liberal ideology; this

argument is furthered with the discussion over 19th century laissez-faire state, its crisis that led to rise of Keynesian state and justification of authoritarianism with idea of freedom by neo-liberal thinkers, Oakeshott and Hayek, after crisis of Keynesian state.

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In this way, it is tried to be argued that civil liberties literature misconceptualize the authoritarian tendencies in capitalist world as it neglects class character of authoritarianism.

CHAPTER 4

DISCUSSION OF 2006 REVISION OF TMK

4.1 Introduction

In the second chapter, it was underlined that concept of terrorism was not new in Turkey by 9/11 as the concept of terrorism and the context of the TMK has been shaped by the Kurdish Question in the previous decade. In 1991, the legacy of the military coup was washed away with the partial amnesty that was realized with legislation of TMK, which targeted the solution of Kurdish question by repression through emergency rule that had been the order in South-Eastern Turkey. In that sense, legislation of TMK refers to transition of authoritarian practices from that under the military junta to one under a more democratic regime. On the other hand, it should be also noted that, such an transition was realized with the rhetoric of democratization as infamous articles of TCK, 140, 141, 142, 163, which were used to penalize expression of ideas especially in rule of military junta, were abolished with TMK.

The discussions in 1991 over legislation of TMK could be argued to be at the core of the TMK debates, rather than 9/11 as it is in Western cases. In that sense, concept of terrorism in Turkey has been produced and developed within specific domestic condition of Turkey. Kurdish Question stands as the core of the TMK as it is underlined in the second chapter. In addition to that, unlike post-9/11 ATLs that enable external threat oriented security forces to engage in activities in domestic space and led to authoritarianization debate, TMK, it has always concentrated on domestic affairs and represents the transformation of repression from one

authoritarian form – military coup – to another with democratization rhetoric of elimination of legacy of coup or strengthening rule of law.

Despite these differences in scopes of ATs and TMK, in discussions of TMK it could be observed that context of TMK discussions have been dominated by civil liberties literature. Supporters of strong state tradition arguments, who are the supporters of civil liberties literature in TMK debates, formulated the liberal assumption of security vs. liberties dichotomy in an institutional form that puts TSK and AKP in a dichotomy with a claim that revision of TMK is demand of TSK, and elimination of role of TSK in Turkish politics has been favored. AKP has been placed against TSK as AKP favored Europeanization process, which is believed to be the only way for democratization in Turkey; and EU harmonization process and rule of AKP becomes what is argued to be threatened in Turkish debates of TMK as Zaman, a daily newspaper known for support to AKP, carried the civil liberties literature. In this way of discussion, democratization has been reduced to support for institutional arrangements that makes civilian government dominant in the political area. This reduction showed its weakness when in the last phase of the debates civil liberties literature lost its validity as an opposition when AKP and TSK favored similar changes. Indeed rather than justification of TMK with emphasis on the needs of security forces in struggle against terrorism, which has been carried by TSK and War on Terror rhetoric, AKP favored TMK with arguments of civil liberties literature with a claim for necessity of strong security structure to protect liberties.

In addition to AKP's favoring arguments of civil liberties literature in legislation of TMK, despite existence of other groups that opposed revision of TMK and demanded abolishment of it, like trade unions, İHD, Kurdish groups and socialist circles, the only voice was raised in mainstream discussions was the those who was close to government. In this context, this chapter questions the role of civil liberties arguments in legislation of the TMK as protector of liberties in 2006. To do this, firstly, the intellectual grounds of civil liberties opposition, the strong state tradition literature, will be investigated. Then, the debates in the legislation process of 2006

revisions of TMK will be given with the produced arguments. Firstly, the initial demands for revision of TMK and their justification, then arguments for opposition to those demands on the basis of civil liberties literature, and lastly the reproduction of arguments of civil liberties literature for justification of amendments by AKP will be investigated.

4.2 The Intellectual Grounds of Turkish Civil Liberties Opposition

Opposition to TMK through arguments based on protection of civil liberties had been carried by the liberal arguments that are based on the arguments that claim about the domination of strong state tradition in Turkish politics. Although the opposition to 2006 revisions of TMK emerged from different sections like leftists and Kurds, the strong state tradition was the main reference point in criticisms of revision as members of governing party, AKP, contributed this opposition, which will be discussed below. The main reason for promotion of this literature was the claimed pro-active role of military bureaucracy for revision of TMK, which blamed EU accession process for escalation of conflicts in the region, and the portrayal of AKP as a challenge to the claimed tradition of Turkish politics that have provided justification grounds for AKP's reforms. In that context, the debate over revision turned into a debate over roles of institutions in specific political issue, the terrorism issue that is organically related with Kurdish question. The literature was promoted to support AKP against TSK for its claimed alternative policy towards Kurdish question.

Strong state tradition literature is based on the discussion of the characteristics of modernization in Turkey in terms of state-society relations, and society's failure to separate itself from directions of state elites. As a legacy of Ottoman empire, top-down characteristic of Europeanization reforms in Turkey created state's absolute domination over society and blocked society to be motor of promotion of liberties and rights. In this conceptualization of state-society relations, responsibility of all

problems – social, economic or political – is state's (Dinler, 2002: 17). In this literature, which is based on liberal individualist and statist institutionalist assumptions that put state as an ontologically distinct thing, public policies are instruments of state elites to repress society for their own benefits (Yalman, 2002: 7-10). In other words, the state is a thing that has been used by specific elite group, Kemalist elites who occupy positions in civilian and military bureaucracy, for modernization project, which is for their own benefits. In that context, for example, Turkey's Europeanization process, i.e. accession to EU, was an elite project (Yalman, 2007: 235).

Carriers of modernization project, owners of state, sustained their rule with repression of Islamic and Kurdish identity through exclusionary ideologies like secularism and nationalism (Aydın & Keyman, 2004: 3-5). Domestically, the state is so powerful in terms of repressing the any opposition from civil society that could mobilize society against domination of the state the only viable option for democratization is the role of international anchors that is played by conditionality (Yalman, 2007: 235). In this closed context, C. Bakır and Z. Öniş argue for the beneficial character of twin crisis in 2001 for breaking the resistance for protection of statist status-quo and opened doors for reform process; Turkey benefitted conditionality of IMF, EU and World Bank in terms of structural reforms as they stand as external anchors for democratization and rationalization of economics (2007: 149). In addition to conditionality of international organizations, a government that is committed to reformation is seen important in terms of lowering the social costs of reforms; election of AKP in 2002 and electoral punishment of nationalist coalition – Democratic Left Party (Demokratik Sol Parti, DSP), Nationalist Movement Party (Milliyetçi Hareket Partisi, MHP) and ANAP – is seen as the condition of democratization – the breakdown of status-quo (Uğur & Yankaya, 2008: 590; Aydın & Keyman, 2004: 11).

Yalman, in his criticism of this literature, claims the dissent but hegemonic position of this rhetoric: The reason for this rhetoric to be dissent is its opposition to the

strong state that ignores demands from society and dominates society; and the reason for being hegemonic is the success to represent this image of state-society relations as reality, and to point civil society and market place as the sphere that civil liberties are enjoyed (2002: 7). The rhetoric of AKP could be given as an example of this situation. The arguments of AKP has based on the political rhetoric that successfully represents itself as a civilian challenge to Kemalist status-quo and represents. In party program of AKP, in which criticism of *old ways of politics* in Turkey and call for revision of it are dominated, the revisionist character of the party is underlined with the emphasis on lack of relations of confidence between the people and the state:

“AK PARTI is not and shall not be a party forcing ideologies or distributing favors. Our Party is a party of masses, which considers serving Turkey as in the framework of this program. We refuse segregations borne by the Cold War period, based on the old political ideology. Everyone who believes in democracy, respects human rights and freedoms, adopts pluralistic values, possesses ethical and human emotions, is attached to the market economy, and has a place under the roof of this Party.

It is among AK PARTI's most important objectives to move to the center of politics the masses the respectful of republican of Turkey a respectful of national, spiritual and universal values.”

AKP's distance to military bureaucracy and commitment to Europeanization process have contributed to this rhetoric, and AKP has been successful to represent itself as motor of democratization in Turkey. In addition to AKP's commitment to Europeanization process and opposition to traditional ways of political engagements in Turkey, its having Islamist roots, which had been excluded from political sphere by Kemalist elites, have been welcomed by those liberal circles for showing the consolidation of democratic values in Turkey (Bedirhanoğlu & Yalman, 2010: 121).

As bureaucracy, especially military one, is criticized for dominating the political sphere and oppressing the civil society, AKP had been promoted and supported by liberal circles for opposition to strong state tradition and for commitment to

Europeanization by the time when revision of TMK became the center of political agenda. In this context, the Western civil liberties opposition was translated into Turkish debate as an institutional context. The opposition to revision of TMK was grounded on the opposition to strong position of TSK in Turkish political structure as AKP was supported by liberal circles for desire for civilian politics. In other words, the assumption of security vs. liberties dichotomy was taken as TSK vs. AKP. Within this context, content of the revision was remained in the background of the debate that could be proved with the support of members of AKP who opposed revision initially after AKP's undertaking the responsibility of revisions in the last period of legislation. In this process, the civil liberties opposition in Turkey contributed to intellectual grounds for of the phenomenon in an institutional context that resulted with the overlook of the critical problems in Turkish politics like Kurdish question and repression of dissent groups.

4.3 Emergence of Revision Process for TMK and Pro-Revision Arguments

History of TMK is directly related with the Kurdish question and the civil war that has been going since 1984. The reason for this concentration is the conceptualization of the civil war by Turkish politicians and bureaucrats as actions of terrorism, and TMK's being a response to this question. As in the West, Muslim identity and question of migration are centers of terrorism debate, Kurdish identity and problems with Turkish nation state are the centers of terrorism debate in Turkey. In that sense, because of the differences in terms of gravity centers, the scope of the terrorism debates are different: In West terrorism is related with apocalyptic goals – total destruction of Western world, while in Turkey terrorism is related with the separatist desires of Kurdistan Worker's Party (Partiya Karkerên Kurdistan, PKK) that would change the characteristics of Republic of Turkey. In this context, while concerns over public security or lifestyle have dominated the context of terrorism debate in the West, the main topic that is concerned in terrorism debates in Turkey is territorial unity and character of Turkish nation state. Due to

this difference in context, Turkish definition of terrorism has been failed to be recognized by different actors in international scale unlike West's *universal* definition of terrorism that is based on radical Islamism. Despite this difference in scope, the common point is to exclude the defined group from scope of political considerations through making them illegitimate by defining them as terrorists, which is the basic function of concept of terrorism.

Unlike the expectation of Turkish decision-makers for recognition of conceptualization of Kurdish question as terrorism, international pressures – especially from EU – on Turkey have been concentrated on the definition of Kurdish question as political question. To overcome this problem, Turkish decision-makers have welcomed cooperation with Western world, especially in security issues, as it has provided softening of these kinds of pressures. In this context, the rhetoric of War on Terror has been welcomed in Turkey. Right after the attacks in 2001, Turkey's prime minister, Bülent Ecevit, announced their support to US in all terms and underlined their *experience* in terrorism as a nation; as he pointed out Turkey's support to NATO's implementation of 5th article, he also called allies to take action against members of PKK living in the West, (Hurriyet, 15.09.2001). Similarly, the chief commander of TSK, Hüseyin Kıvrıkoğlu, claimed that Turkish army was the best in terms of struggle against terrorism, and warned other states not to focus only on Islamic terrorism but to have common ground for all kinds of terrorism (Hurriyet, 03.10.2001). In that sense, 9/11 and War on Terror have been used by decision-makers in Turkey to exploit *opportunities* of 9/11 for getting support from international actors in struggle against PKK by providing support to global War on Terror. In this context, it is not surprise that terrorism-related publications of NATO are dominated by Turkish bureaucratic intellectuals⁵.

⁵ The examples for Turkish scholars, who participated in NATO Science for Peace and Security Programme and contributed as editors in publications, could be given as Uğur Gürbüz (Capacity Building in the Fight against Terrorism, 2013; Future Trends and New Approaches in Defeating the Terrorism Threat, 2013;); Adil Duyan (Analyzing Different Dimensions and New Threats in Defence against Terrorism, 2012); Mustafa Kibaroglu (Analysis and Strategies to Counter the Terrorism

With this conceptualization of Kurdish question, the context of TMK has been shaped by the conditions of civil war. The amendments of TMK with EU harmonization were realized within ceasefire period that was announced in 1999, and the process that ended up with 2006 revisions started with PKK's denouncement of ceasefire in 2004. After capturing of PKK's leader, Abdullah Öcalan, PKK announced a unilateral ceasefire in 1999 and experienced a disintegration process; after re-organization of the party and restoration of power, PKK announced end of unilateral ceasefire in June 2004 (Bal& Özkan, 2006:154). PKK's restarting the operations and intensification of conflict provided the basis for debate for update of TMK as a part of discussion of revision of anti-terrorism policies; however, although the reform was in the agenda, initially focus was not on TMK, but on the possibilities of effective international cooperation against terrorism. Based on the arguments for strategic partnership, US, which got the control of Iraq after invasion in 2003, was expected to take military action against PKK's camps in Northern Iraq, where it was estimated that over 3.000 members of PKK was in. However, the expectations were not realized as Hilmi Özkök, in his speech for opening of Center of Excellence Defence Against Terrorism (COE-DAT), which is a NATO institution founded in 2005 on Turkey's proposal, complained of NATO and allies for taking action, yet ineffective, against PKK only after 9/11 (Hürriyet, 29.06.2005).

International cooperation in the way Turkish decision makers desired has never realized. In addition to *failure* – or inability – to get direct military support from the US for *cleaning* Northern Iraq, and failed efforts for restrictions of Kurdish NGOs and institutions that are claimed to have direct linkages with PKK are the main reasons for distrust of Turkish decision-makers on international actors. The most evident example is the efforts for banning broadcasting of ROJ TV, which was based in Denmark. Although Turkish agencies' demand for closure of channel has been sympathized by some Danish politicians, it was not met due to the legal

Threat, 2011; Defence Against Terrorism, 2011; Response to Nuclear and Radiological Terrorism, 2011; Bioterrorism: Threats and Deterrents, 2010).

limitations in Denmark, which prevent the courts from stopping broadcasts, and only allow fines. The channel, which started broadcasting in 2004, was closed in August 2013 because of the financial problems that were caused by fine (Radikal, 20.08.2013). The case of ROJ TV has been one of the examples for the reason that decision-makers' claim for Turkey's lack of international support in struggle against terrorism.

The lack of international support has been one of the most underlined arguments by Turkish military officials in the discussions for anti-terrorism debate. In 2006, Hilmi Özkök pointed out the lack of common international definition of terrorism that causes duality of definition of terrorist differently by states as terrorists or freedom fighters (XII). In 2008, chief commander of TSK, Yaşar Büyükanıt, accused foreign states for supporting terrorist organizations in the name of freedom by referring to ROJ TV case (10). General Ergin Saygun points to the lack of national legal regulations to realize international commitments in the struggle against terrorism, which provides terrorists free space for action (2010: 207). The criticisms of Western states for providing free space to terrorism resembles the arguments for terrorism's ability to exploit civil liberties in democratic states. In the symposium of COE-DAT in 2006, Bassam Tibi argued that democratic mechanisms are becoming mechanisms of terrorist in Europe, which means Europe's becoming threat to itself (203). In that sense, arguments for lack of international support have provided the basis for consideration of anti-terrorism policies domestically. On the other hand, the reactions to democratic procedure abroad also show suspicion of democracy in discussions of terrorism. In that context, it could be argued that the members of TSK have voiced up against any arrangements that handles the Kurdish question and activities of PKK together with related organizations in the limits of political sphere, and insisted for perfection of security arrangements as solution. In that sense, this attitude provided liberal circles in Turkey to place TSK as representative of *security* in the security vs. liberties dichotomy of civil liberties literature.

Anti-terrorism policies became center of political agenda after PKK's activities in the region in spring of 2005 and bombings in civilian areas in Western parts of Turkey. However it should be noted that although there were ongoing operations of army against PKK in the region, the number of activities of PKK remained low compared to operations of army. In addition to that, anti-terrorism policies were started to be discussed publicly in July 2005, after PKK's bombing in Aydın, Kuşadası, even though the conflict was started to be intensified in the south-eastern Turkey much earlier. In other words, although there had been conflicts (army operations and PKK attacks) and deaths in conflicts, revision of anti-terrorism was started to be discussed after *failure* of Turkish security forces to repress armed activities of PKK. For almost one year of continuing conflict, revision of anti-terrorism policies was not central topic until July 2005 when TSK opened the discussion through announcing their expectations. In a briefing, the second commander of TSK, İlker Başbuğ, in his evaluation of PKK's capture of soldiers, offered establishment of a new institution that would coordinate and plan anti-terrorism policies under jurisdiction of prime minister's office, argued possibilities of cross-border operation with the jurisdiction of UN Charter, and declared army's opposition to any amnesty for terrorists (Hürriyet, 20.07.2005). The reaction from government was positive as prime minister Recep Tayyip Erdoğan rejected the possibility of declaration of state of emergency in the region or a general pardon for terrorists, and approved the necessity of revision of policies and institutions; Minister of Justice, Cemil Çiçek stated that the necessary steps for needed institutions would be taken and announced that a commission, which would be composed of representatives from TSK, gendarme, Turkish national police, high courts, ministry of justice and ministry of interior, and some scholars, had gathered to discuss possibilities of amendments in TMK to rectify problems caused by legal framework; the deadline for legislation of revision of TMK was set to September 2005 (Hurriyet, 20.07.2005; Zaman, 26.07.2005; Zaman, 29.08.2005). The commission was claimed to update TMK in EU style and to re-penalize propaganda as terrorist offense. The efforts in UK for amendments of ATL after London

bombings in 7/7⁶ was highly referred to in efforts for update in Turkish TMK, and that raised discussion over viability of UK ATL in Turkey. In these days, related with the TMK, the only statement was given by Hilmi Özkök about the necessity of establishment of scientific commission to reach a definition of terrorism as politicians fail to do this (Hürriyet, 29.07.2005). However, although the possibility of revision of TMK was brought into political agenda, the focus of the anti-terrorism debate remained as lack of international support to cause of Turkey. In this period, the immediate after the announcement of the commission for the revision of anti-terrorism policies, in which TSK and civilian government, AKP, had common – or at least similar – vision, it is hard to argue that the civil liberties opposition voiced up against increased *security* in the discourse of politics.

TMK's becoming center of the revision agenda was realized with the Hilmi Özkök's complaining about the lack of authorities in struggle against terrorism (Hürriyet, 06.08.2005). This statement provided base for the arguments for 2006 TMK amendments as a government's unwilling correspondence to demands of army and other security institutions, and proof of militant tutelage in Turkey. Volkan Aytar, a liberal intellectual who has studies for the democratization of security governance in Turkey, claims that with the statement of Özkök, the government was pushed for withdrawing from democratic attitude towards Kurdish question that was favored by Erdoğan (2006: 2). Statement of Özkök also provided rise of opposition to workings for amendments as an opposition to role of army in Turkish politics. However, it should be noted that as a reaction to escalated conflicts, members of *civilian* government did not use a different language that excludes use of repression and violence that could verify the argument; usage of terrorism rhetoric sustained its position among government too and there had been no signs from government about

⁶ After the attacks, British minister of interior, Charles Clarke, announced their will to revise ATL, and demanded cooperation of political parties in the parliament. The discussions in UK were centered on extension of detention limit and prohibition of propaganda or praise of terrorism (Hürriyet, 22.08.2005).

rejection of the armed suppression of PKK⁷. Further, the reactions of members of government is also counter-argument for military tutelage claims: Minister of Justice, Çiçek, criticized Özkök for his unnecessary statement as they were already working on amendments of TMK, and as TSK could express their demands for authority via representatives in related commission, which started their mission in June 2005 and had already met five times up to that day (Hürriyet, 09.08.2005). In that sense, rather than being victim of military tutelage, members of government underlined the cooperation of government with army, and they were active carriers of terrorism rhetoric. In other words, there was no real difference to argue for AKP's victimization by military tutelage as there had been no different attitude towards PKK.

After Özkök's statements, the center became the works of commission and demands that were voiced in commission. Although, there had been speculations about army's demands for authorities that could be enjoyed in state of emergency – like abolishment of army's obligation to get permission from civilian bureaucracy – (Hürriyet, 09.08.2005) there had been no official public statement about the content of the amendments; furthermore the speculated demands were not included in the draft of TMK or in legislation. Only in January 2006 Özkök claimed EU harmonization package was creating free space for terrorists for propaganda as terrorists use democracy to hide their evil intentions; however, this statement should be understood as a support to draft of commission for revision which was announced in September 2005 (Hürriyet, 03.01.2006). However, criticisms for abolishment of propaganda as terror crime with EU harmonization were not monopolized by TSK. Erdoğan, much before Özkök's related statement, pointed harmonization and stated that although with EU process many liberties and freedoms had been enjoyed by citizens, it also provided environment for terrorists to cause destruction as terrorists understand destruction by freedom; revision of TMK

⁷ Erdoğan's statement for his and government's acceptance of problem as Kurdish problem, and his statement for giving up the wrong policies against it are the bases of those arguments. However, as it is underlined below, extensive usage of terrorism has been prevailed as Erdoğan also tried to separate Kurdish question and PKK question (Hürriyet, 21.08.2005).

would provide fixation of problems of law enforcement agencies in terms of authorities as commitment to Copenhagen criteria would be prevailed (Zaman, 14.09.2005). In addition to that, rather than army, police had been active agent of revision process. The demands of police that were voiced in the commission were published in press: Extension of arrest time limitation; extension of detention time without detainee's meeting with lawyer and family member; definition of propaganda, in verbal and published forms, as crime in TMK; re-interrogation of detainee with court decision (Hürriyet, 20.08.2005). Later, after the announcement of draft of amendment package of TMK, Celalettin Cerrah, the chief of Istanbul Police, announced their expectations from the revision in terms of authority and investigation: Abolishment of necessity of obtaining search warrant in times of necessity; investigation of proofs prior to public prosecutors; seizure without permission of prosecutor by police; establishment of data bank for collection of DNAs and fingerprints of offenders; strengthened border security through surveillance mechanisms; and providing legal framework for establishment of MOBESE system for surveillance (2006: 103-105).

After collection of these demands and working on them, in September 2005 the commission announced a draft for amendments of TMK. The drafted amendments included: Imprisonment to terror crimes committed through publication; trial of offender as member of terrorist organization if crimes are committed for the objectives of terrorist organization; measures against finance of terrorism; protection of public official who participate in anti-terrorism operations through penalization of publication of his/her identity; definition of propaganda as terrorist crime; 12-hour preventive detention without information; 24-hour limitation to access to lawyer; witness protection programs; reward to who supports anti-terrorist operations; right to shoot in situation of disobey of suspected to warnings for stop; trial of public officials who abuse their influence; definition of crimes against foreign state or an international organization as terrorist crime (Hürriyet, 10.09.2005). About the draft, Çiçek claimed that the effort of commission was to adjust anti-terrorism policies to conditions of rule of law as the effort was for

harmonization of TMK with TCK, which was reformed in 2004, and pointed out that the final form of TMK would be settled with parliamentary debate (Hürriyet, 13.09.2005). Similarly, member of government, Mehmet Ali Şahin, underlined the necessity to update TMK according to new conditions as this necessity also was felt in UK (Zaman, 11.09.2005). In that sense, statements from members of government were to claim that reform of TMK was part of strengthening rule of law in Turkey, which reminds the claims for democratization with TMK in 1991.

For justification of the draft amendments of TMK by security forces, re-penalization of propaganda and the detention process, which was limited with four days of detention time with the first harmonization package in 2002, were used centrally as they were shown as the causes for inability of security forces against terrorist offenses. Spokesman of Turkish National Police, İsmail Çalışkan stated their inability to challenge organized crimes with 4-day detention limit and announced their demand for extending it by decision of court or public prosecutor (Zaman, 07.01.2006). For justification of extension of detention time and penalization of propaganda, addition to inability of law enforcement in terms of lacking authority, the UK's anti-terrorism agenda had been referred extensively, which was the base of arguments for new TMK's being EU-style. While in Turkey amendments were being debated, in UK in October 2005, detention limit was extended to 28 days – demand of government and police for extension to 90 days were rejected with House of Lords – and encouragement and glorification of terrorism was penalized as a reaction to 7/7 attacks (Balzacq & Ensaroğlu, 2008: 10). In this context, debates over ATL in UK were followed in debates of Turkish TMK, and UK example was given as TMK's non-contradiction with EU process. For example, three months before legislation of amendments in Turkey, representative from anti-terrorism branch of UK police, SO13, John Mc Dowall, was invited for a speech in symposium of COE-DAT in 2006 to share their experiences in investigation of 7/7 and their authority demands. He stated that for investigations they considered search of only four houses but it became necessary to search a total fifteen houses within forty hours – demand for abolishment of necessity to get search warrant; because of

the huge amount of data to investigate, both material conditions and legal authority – 28 days of detention – were not enough for effective investigation – demand for extending detention limit to 90 days – and underlined the surprise support of close circuit television in investigation – demand for further surveillance mechanisms (2006: 115-143). In that sense, expansion of authorities of law enforcement agencies in European countries helped to construction of arguments against EU harmonization from West as European character of TMK provided justification.

In short, plan for revision of TMK, criticism of EU harmonization packages and complaining about lack of international cooperation were not monopolized by TSK that civil liberties opposition claims as the members of civilian government, especially Prime Minister Recep Tayyip Erdoğan and Minister of Justice Cemil Çiçek, had participated the debate for supporting the efforts for revision. Rather than TSK's dictating demands for revision, the commission that was gathered within framework of Ministry of Justice ran the mission of revision of TMK, which was used for emphasis on democratic procedure taken in the revision process later. The prepared draft of revision included: Penalization of propaganda, protection of security forces, revision of detention process with extended detention periods and limitation of detainee's communication, expansion of authorities of law enforcement agencies in investigations. The initial justifications of the revision, on the other hand, were concentrated on inability of law enforcement agencies in struggle against terrorism and similar processes in Western states, which were often voiced by security agencies. As it is tried to be explained above, unlike the claim of civil liberties arguments for victimization of civilian government by military tutelage, the members of AKP shared similar vision for revision of TMK that was voiced in different tone, which underlines liberties and rule of law.

4.4 Opposition to TMK and Its Representation in Government: Civil Liberties Literature in Turkey

With the conceptualization of state-society relations in Turkey on the basis of strong state tradition, correspondence of AKP government to security bureaucrats, who are *owners* of state, in terms of expansion of authority with has been evaluated as the backwards in democratization and reform process for EU membership. In other words, from the liberal perspective, revision of TMK is proof of the military tutelage in Turkish politics that blocks activities of civilian government. In that sense, it is not surprise that the opposition to demands for revision of TMK emerged only after chief commander Hilmi Özkök's statements about lack of authority in the struggle against the terrorism, although commission for the amendments gathered weeks before the statement. As bureaucrats criticized EU harmonization for sustaining free space to terrorists, the arguments against revision were centered on the protection of EU accession process that is seen as the only possible option for democratization of Turkish state society relations.

Immediately after the statement of Özkök, the response of architect of reform of TCK, Adem Sözüer, could be given as summary of the core topics in terms of opposition to attempt for revision. He claimed that the existing legal framework is enough for anti-terrorism policies and warned that any attempt for revision of legal framework that could limit freedom of expression could cause problems with ECHR, which means transfer of money to terrorists (Zaman, 07.08.2005). As it could be read from statement of Sözüer, main points of opposition were EU process, repression being the wrong strategy, and existence of adequate measures in the existing legal context.

As it is underlined above, EU has been considered as helping the breakdown of exclusionary status-quo and bureaucrats – especially military bureaucrats – have been portrayed as obstacle to democratization process. In this rationality, as one of the bases for support to AKP government has been its struggle against status-quo and commitment to EU process, in the debates for the amendments, majority of

arguments against it was raised by circles that support AKP government. As it could be seen below, Zaman, a daily newspaper known for representation of ideas of Islamic Gülen Community that is a strong supporter of AKP, was the center of the arguments against TMK in this period. In that sense, TMK debate became the area for the protection of government against TSK on rhetorical bases.

Volkan Aydar, in a report that was prepared for Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı, TESEV), which is known for commitment to opposition to TSK on liberal arguments, argues that revision of TMK, which is defined as *re-securitization* of TMK, was a result of lobby activities of security bureaucracy that was critical and suspicious of the EU process (2006). Mehmet Altan, a liberal columnist, commented that with the abolishment of propaganda as terror offense with harmonization, enthusiasm for EU was captured, but demands for revision means losing it and a return to militarized politics and abolishment of liberties (Zaman, 19.08.2005). Representative of Association for Human Rights and Solidarity with Oppressed, which has Islamic orientations (İnsan Hakları ve Mazlumlarla Dayanışma Derneği, Mazlum-Der), Şakir Çalışkan, in a press conference, as spokesman of Platform of Voluntary Organization, which is composed of 50 organizations including Independent Industrialists and Businessmen's Association (Müstakil Sanayici ve İşadamları Derneği, MÜSİAD) and Confederation of Unions of Public Employees (Memur Sendikaları Konfederasyonu, Memur-Sen), which have Islamic orientations too, criticized efforts for revision of TMK for possibility to cause evaporation of liberties, and questioned the actors that demanded this revision (Zaman, 09.05.2006). Association of Lawyers (Hukukçular Derneği), which defines their position against military tutelage that showed itself with military interventions to political spare, and announces its commitment to principles of pluralism and democracy, issued a report that evaluates draft of revision: The report claimed that provisions in the draft contradicts with EU harmonization packages, the press law and TCK, and could cause problems in terms of freedom of expression and legal contradictions (Zaman, 14.10.2005).

The initial opposition to TMK with references to EU seems to be successful in terms of affecting the agenda of decision-makers. In its report, Ministry of Foreign Affairs warned commission on possible consequences of penalization of propaganda as terror law in ECHR because of the 10th article of the Convention that protects freedom of expression (Zaman, 26.08.2005). Later Minister of Foreign Affairs, Abdullah Gül, expressed his position for protection of liberties and for avoidance to regulations that are similar those in state of emergency (Zaman, 07.09.2005). On the other side, as another member of government, Cemil Çiçek, supported the revision, it could be argued that within EU context TMK debate caused a crack in the government, which was observed by co-head of EU-Turkey Joint Parliamentary Committee, Joost Lagendijk, who writes column in Zaman since 2010, after meetings in Turkey before preparation of progress report of Turkey, he claimed that Gül was not ease with possibility of revision whereas Çiçek acts like representative of the status-quo in government (Zaman, 25.10.2005).

As it could be seen, the debate over tension of EU and revision of TMK – even between Çiçek and Gül – was coded for protection of *breakdown* of status-quo. In that sense, pre-AKP policies related with Kurdish question – based on repression through state of emergency and martial law – were referred as failure of status-quo's dealing with the question, and it is claimed that re-introduction of these policies would not bring solution to problem of terrorism. Sedat Laçiner, head of International Strategic Research Organization (Uluslararası Stratejik Araştırma Kumumu, USAK), stated that even though he was strong supporter of codification of British ATL completely in Turkish legal system, because of the large authorities given to security agents and because of lack of democracy in Turkey unlike the UK, the TMK like UK ATL, he claimed, could lead to severe abuses of human rights; solution should be based on decisions of civilians through making parliament effective in struggle against terrorism, and military bureaucracy should be excluded from decision-making process (Zaman, 20.08.2005). Similar argument against modeling UK ATL was raised Vahit Bıçak, who assumed presidency of Human Rights Institution of Prime Ministry between 2003 and 2005, and claimed that

unlike UK, Turkey has an authoritarian tradition, and any expansion of authorities of law enforcement agencies would not damage the democratic character of UK, but in Turkey it could lead to authoritarianism (Zaman, 08.11.2005). Head of Law and Life Association, Hayrettin Açıkgöz, underlines misinterpretation of UK ATL: In UK ATL the focus is on international terrorism and threats coming from aliens, but not their own citizens; however, in TMK focus is on the civil liberties of citizens (Zaman, 08.09.2005). In that sense, rather than British ATL and practices in abroad, interpretation of it is criticized on the basis of structural differences of those two states. As pro-TMK arguments focus on UK ATL for justification of revision in Turkey and UK ATL was becoming center of discussions of revision process, civil liberties opposition handled it on the bases of comparison of those two countries that is based on strong state tradition arguments and underlined absence of check and balance mechanisms against security bureaucracy in Turkey unlike UK. With this rationality, arguments for the legacy of authoritarianism and necessity to resist return of it through strengthening military bureaucracy became the center of civil liberties opposition to TMK.

Vahap Coşkun, a Kurdish liberal scholar, argued that the agenda for revision of TMK emerged with pressure of military bureaucracy on AKP government. Such repressive revision of TMK would hinder government's democratic attitude towards region that gave biggest damage to PKK. Coşkun claims the best practice against terrorism is democratization, but not militarization of the political agenda (Zaman, 22.08.2005). Similarly, Vedat Ahsen Coşar, president of Ankara Bar, claimed that practices in state of emergency in 1990s in the region did not solve the problem; return to this strategy through announcing national civilian state of emergency with revision of TMK that would restrict civil liberties would throw population in the region to influence of PKK (Zaman, 10.12.2005). Ahmet İnsel claims one of the reasons for escalation of conflict in the region was the practices of security forces in state of emergency, which strengthens popular support of and participation to PKK; with the re-escalation of conflicts in the region, he claims, security forces demanded authorities to monopolize the solution of Kurdish question through limiting the issue

to struggle against terrorism although they are aware of the fact that sole militarized measures are not enough for solution; the intentions of security forces were to restore their position that was damaged with democratization process (Radikal 2, 14.08.2005). Similarly Mümtaz'er Türköne in his column claimed that restriction of civil liberties and exclusion of democratic procedure in Turkey is the objective of PKK for escalating the conflict in the region; the revision of TMK would realize the objectives of PKK; to avoid it although militarized and criminal measures are part of the solution to problem, focus should be given to perfection of democratic measures as the root of problem is itself political (Zaman, 06.04.2006).

For those against the process of revision, the problem was seen in the expansion of the authorities of the military bureaucracy and the need for protection of the democratization process that was initiated with EU accession process. With this concern, democratization was proposed for struggle against terrorism. In that sense, arguments for democratic struggle against terrorism could be argued to be non-related with Kurdish question and civil war, but related to the limitation of military bureaucracy as usage of terrorism, which is the main concept that blocks discussion of the issue on political bases, is prevailed in the discussions of civil liberties literature. In a report of USAK for democratization of the struggle against terrorism, the anti-terrorism policies after 2002 criticized for not supplementing the democratic reforms, which is seen important in terms of cutting resources of PKK through maintaining trust of people in the region, with strengthened security measures; sole democratic or sole security measures are not enough for elimination of terrorism as balance between them is favored, and balance is said to be perfected with strengthening civilian representation in the decision-making process of security policies through increasing institutional capacity of Ministry of Interior (2008). Insel argues against the terror activities of PKK and its support by civilian politicians from region with rhetoric peace, which calls stopping of military operations, for contributing the deadlock in solution of question, which strengthens arguments of status-quo for conceptualization of Kurdish question as a terror

question; to break the deadlock, firstly PKK question should be overcome by breaking the hegemony of PKK in the region (Radikal 2, 21.08.2005).

As tried to be explained, the main motive of opposition to TMK was the opposition to the re-empowerment of military bureaucracy in politics, especially to military bureaucracy's monopolization of Kurdish question. EU harmonization packages were discussed to be a limitation of army's role in politics, and civil liberties opposition advocate for continuation of this trend. As this opposition cannot refuse usage of concept of terrorism, the alternative policy option against terrorism that was advocated as an alternative to revision was the preservation of existing legal framework to sustain limitation of army. In that sense, TCK was one of the legal texts that was referred to the most, and security agencies were criticized for not taking TCK seriously in implementation. Aydın Erdoğan, who was a member in the commission that prepared TCK, argued that with the legislation of TCK, TMK was not needed anymore as all the terror offenses were penalized in TCK (Zaman, 08.09.2005) The architect of TCK, Adem Sözüöz, argued that TCK provided enough authority for law enforcement agencies for struggle through penalization of terrorists; propaganda could be penalized with TCK and any revision in TMK for further penalization would be limitation of freedom of expression that means turning back to worst practice for anti-terrorism policies; he stated that the reason for their exclusion of concept of terrorism or terrorist organization in TCK was to prevent sustaining legal status to those organizations; if there was a problem in terms of punishment of terrorist, it was due to non-implementation of TCK (Zaman, 07.08.2005). Cüneyt Toraman argued for providing space for terrorists with criminalization of legal civilian practices, and also agreed with the idea of the necessity of limitation of some civil liberties in times of emergency, however he conditioned it with democratic civilian control of this limitation, which reminds the arguments for the constitutional democracy in 1930s in Europe that was given above; he claimed the adequacy of legal framework with existing TMK and TCK for such a practice of anti-terrorism policy (Zaman, 13.09.2005). In a report about draft of TMK revision, Lawyers Association criticized security agencies for

complaining of the lack of authorities on hypothetical grounds; the exact shortcomings of TCK should be specified and the solution should be sought in the weakness of TCK; the provisions for revision were claimed to be contradictory with TCK as it punishes one without realization of offense (Zaman, 14.09.2005).

In short, TCK's claimed adequacy in the struggle against terrorism was used to prove opportunist attitude of security agencies, which claimed to be negatively affected with democratization and desired to turn back to their good-old-times, as the real problem was sought in the ineffective usage of TCK. This way of – immediate – opposition to TMK, that reminds criticisms of Western post-9/11 ATIs, which are claimed to be legislated without consideration of existing legal framework for responding terrorism. In those discussions, it is argued that through using pre-9/11 legal framework and not legislating new draconian measures, the attacks to civil liberties and rights of citizens and society could be avoided; furthermore, in 9/11 context it is argued that there had been no such a discussions as it would be considered as justification of terrorism (Zehfuss, 2003). However, thanks to specific context in Turkey, the civil liberties opposition to revision of TMK pointed out this issue in the context of opposition to strong state tradition in Turkey. The revision was seen as re-empowerment of status-quo, which was damaged with reforms of AKP.

The opposition placed the issue on institutional grounds with their assumption on the existence of strong state tradition and criticized the revision as a support to AKP government. In this context, the argumentations of civil liberties opposition were represented by some of the members of AKP. The emphasis in the statements of members of AKP was given most to the need for intervention of civilian government for preservation of claimed democratization. After publication of the draft revision, the immediate response of politicians from AKP was underlining revision's being not yet discussed by civilian authorities – by government and by parliament – and its being just a draft. Member of government, Mehmet Ali Şahin, was one of the first politicians that voiced these arguments; he stated that the

demands for revisions was normal as conditions of terrorism changed, but he announced their expectations from revision to be respecting of freedoms and liberties, especially freedom of expression (Zaman, 11.09.2005). Parliament's vice president, Nevzat Pakdil, announced government's position as not letting any provision that would damage democratic character of Turkey with revision of TMK; problem of anarchy and terrorism could be overcome within democratic framework (Zaman, 13.09.2005). Zeynep Tekin Börü, a member of the parliament from AKP, underlined draft's being product of bureaucrats, and stated that they could not accept such a draft in the absence of parliamentary debate (09.10.2005). Bekir Bozdağ, a member of commission of justice in parliament, criticized expansion of definition of terrorism that could target non-related citizens with this legal framework, and criticized commission for not considering TCK, which provides enough opportunities, properly in their work for revision of TMK; the solution that is based on sole security provisions proved to be wrong in the past (Zaman, 10.12.2005).

These individual oppositions within AKP were institutionalized with gathering of a commission within AKP to scrutinize the draft and process of revision in terms of compatibility to EU process, TCK and party program of AKP. Dengir Mir Fırat, who was the head of this commission, stated that as a civilian government, they would not let legislation of any provision that would endanger civilian liberties; with Turkey's deeper experience of terrorism compared to Europe and USA, Turkey had capacity to struggle with terrorism without endangering civil liberties (Zaman, 17.09.2005). Fırat, when he was announcing the report of AKP's commission claimed that their work was for sustaining anti-terrorism policies' compatibility with principle of rule of law: The commission demanded to add force and violence as condition for definition as terror offence, to remove offenses against foreign state and international organization from definition of terrorism, which was claimed to affect foreign policy of Turkey in Caucasus by Cemil Çiçek (Zaman, 19.10.2005), to remove provision for treating individual who acted for objectives of terrorist organization as member of terrorist organization, to remove provisions for

penalization of propaganda, and to remove provisions for penalization of finance of terrorism, which was claimed to effect non-related individuals. On the other hand, the commission found it unnecessary to change some of provisions in the draft: Imprisonment for offenses via publication, pre-emptive provisions, and references to TCK in the draft were preserved (Zaman, 30.09.2005).

The draft was taken under scrutiny by parliament's human rights commission too, and members from different parties criticized draft of TMK. Commission's spokesman, Atilla Maraş (AKP), underlined efforts for elimination of undemocratic provisions from Turkish legal framework, and demanded continuation of this trend within the revision of TMK; Resul Tosun (AKP) demanded for avoiding any provisions that could affect normal citizens; Hakan Taşçı (AKP) approved affords for rectifying legal deficiencies that effect security forces but criticized vague statements in the draft; Ahmet Ersin (Republican People's Party, Cumhuriyetçi Halk Partisi, CHP) underlined importance of importation of expansion of democratic liberties and rights of citizens within the ATL in different states; Ahmet Yılmazkaya (CHP) underlined importance of effective usage of existing legal framework before engaging any legal reformation (Zaman, 06.10.2005).

The civil liberties opposition to revision of TMK could be argued to be successful compared to Western discussions in terms of dropping the issue from agenda through effecting members of government as the draft could not be legislated in September 2005 as the commission planned in the beginning of the mission. The arguments against TMK are based on the rejection of expansion of authorities of law enforcement agencies as they are seen as threat to civil liberties of individuals, which refers to enjoying freedoms without intervention of state. The stress for freedom of speech and threat of penalization of non-related individuals were distinguished as the main stresses. In that sense it could be argued that those arguments show similarities with the Western discussion of ATLs. However, in the domination of AKP vs. TSK dichotomy in the debates over TMK these points were shadowed.

The other point of the opposition in Turkey was the protection of Europeanization that is seen as escape route from military domination in politics. The revision plan was argued to be demand – or dictation – of military bureaucracy that is said to be strictly opposes EU ideal. In this formulation of politics in Turkey, civilian members of politics that committed EU project are seen to be representatives of liberties, whereas the military bureaucracy as the enemy of liberties for prioritizing security over liberty. In that sense, it could be said that the idealized liberal democratic state and its decay in Western discussions were translated in political debates of Turkey as decay of Europeanization process. In other words, civil liberties opposition in Turkey managed to show what it means to losing civil liberties with TMK: The threat was re-empowerment of military bureaucracy in politics and break down of power of reformist civilian government, AKP, with TMK. The liberal measures are defined with the EU harmonization packages, and TMK was criticized with references to extra-judiciary practices – state of emergency – of army in civil war in 1990s.

On the other hand, as TSK was placed in the liberal security vs. liberties dichotomy as representative of the security in the arguments of civil liberties literature, the literature failed to reject the usage of concept of terrorism in discussions of the issues. The role of TSK in Kurdish Question, fighting PKK, was never questioned but only its place in the political sphere was stressed. In that sense, the literature in Turkey, as underlined above, was stuck within the institutional debates and could not reach a de-securitizing language even though claim was that. This failure to attract the attention to core problem led to absorption of arguments of the civil liberties opposition – respect to democratic ideals and promotion of liberties – to pro-TMK arguments. This weakness showed itself when TMK was civilized with AKP's *reshaping* the draft with commissions, and legislation of it in 2006.

4.5 March 2006, Return of Demands for Amendments and Legislation

Despite the pressure for the revision of TMK after escalation of civil war after PKK's denouncement of ceasefire in 2004, civil liberties opposition managed to delay legislation of it in 2005. As it is tried to be underlined above the main weakness of the arguments of opposition was inability to refuse usage of concept of terrorism, which justifies repressive security measures for maintaining of order in society. With this inability, civil liberties opposition loses its voice in discussions of anti-terrorism topic when a crisis emerges. The re-employment of discussion for revision of TMK in 2006, after a several months delay with civil liberties arguments, shows this weakness.

As the war escalated, funerals of soldiers and guerillas become center of the political agenda. Funerals of soldiers become center for pro-TMK and anti-EU arguments. General Hurşit Tolon directly blamed human-rights activists for death of soldier in May 2005, as he later claimed that EU tried to break-down Lausanne order and to set up Sevres order in Turkey (Hürriyet, 19.05.2005; Hürriyet, 10.03.2006). On the other side, funerals of guerrillas were subjected to violent repression by police for preventing PKK propaganda. In late March, funerals of 14 guerillas that were claimed to be killed by chemical weapons led to region-wide uprising, and to re-deployment of TMK in political agenda (İHD, 06.04.2006). In the funeral for 4 of those guerillas in Diyarbakır, clashes erupted and led to a region-wide uprising for about one week that led to military intervention. In the first day of events 2 protestors died, and Osman Baydemir, mayor of Diyarbakır, stated that their 14 loses rose to 16 and they hope for end of clashes (Hürriyet, 10.03.2006). National Police's spokesman, İsmail Çalışkan, claimed that events were erupted after provocative broadcasting of ROJ TV that was claimed to call masses for uprising in the funerals; however, Çalışkan claimed that although terrorists desired to damage democratic structure of Turkey, police responded within democratic principles and the rules set by laws (Hürriyet, 31.03.2006). Prime Minister Recep Tayyip Erdoğan claimed that the reason for the events was terrorists' discomfort with democratization as they desire for bloodshed; he stated their desire for

protection of liberties and rights against violence of terrorists and called parents for taking back their children from street, if not they should bare the results - protestors' being woman or child did not matter (Radikal, 01.04.2006). Minister of Foreign Affairs, Abdullah Gül, rejected any weakness in struggle against terrorism and reminded their effort for revision of TMK; referring Osman Baydemir's statement, he accused politicians that acted irresponsibly during the events (Hürriyet, 01.04.2006). The results of the events were deaths of 12 civilian, 7 of them were children, injury of around 300 civilians, arrest of 543 civilian, of which 199 were children, and detention of 354 civilian, 91 of them were children (Hürriyet, 03.04.2006; Özgür Gündem, 28.03.2013).

As the events, which were discussed as weakness of government in the face of terrorism, brought back of TMK into political agenda, the civil liberties opposition to TMK seemed to evaporate and became marginalized compared to initial responses. However, the effects of civil liberties opposition could be observed in the government's justification base, which was transformed from sustaining necessary authorities to law enforcement agencies for struggle to protection of civil liberties and rights in the society against terrorism. In other words, as agents that were enthusiastic for revision were *civilized*, because of the oppositions' stance for rejecting TMK for its being demands of military bureaucracy, civil liberties opposition remained without arguments in the wake of re-deployment of debate for revision of TMK with uprisings in Diyarbakır. Furthermore, the justifications of the civilized TMK were based on civil liberties opposition as terrorists were given as threat to civil liberties. Cemil Çiçek argued that TMK would be revised for better sustainment of public order for citizens better enjoying their liberties; he emphasized the attacks of PKK and claimed that as government they should consider the security problems, since without security the liberties would be meaningless as Iraq case showed best; he stated that government consider the balance between security and liberties as TMK targets terrorists but not citizens (Hürriyet, 17.04.2006; Zaman, 26.04.2006). Erdoğan on the other hand underlined the process of commission adopted; he claimed that revision of TMK was not an

example of top-down politics as the commission adopted democratic procedures with gathering all demands from different sections of population, bureaucracy and politicians (Hürriyet, 29.04.2006). At this point, related with the statements of Çiçek and Erdoğan, two points should be underlined. First, the liberal argumentation for the balance of security and balance has no validity as the public security is put as the pre-condition of exercise of freedoms. Second, the arguments for strong state tradition are reproduced by Erdoğan for support to revision of TMK, which was claimed to be product of strong state tradition.

The weakness of civil liberties opposition could be read from the transformation of arguments of Abdullah Gül, who had concerns about the possible damage of TMK to EU process. He announced that government's position was for favoring citizens' enjoying civil liberties and rights as peoples in EU and USA did; however, they should consider the specific domestic conditions about security; referring to revision of TMK, he stated that if security agents could not function effectively for maintaining public security, the stress on liberties and rights would be meaningless; security and liberties should not be taken as contradictory but complementary to each other as security is pre-condition for liberties, as revision would help differentiation of terrorist and citizens (Zaman, 13.04.2006; Zaman, 19.04.2006). Later, he criticized those who oppose revision of TMK for acting like there had been no TMK before, and stated that the revision was a continuation of the legal reform process (Zaman, 18.04.2006). Gül's changed position related with TMK could be best read with his statements about EU. He claimed that democratization process would be AKP's mission even if there had been no EU membership process; as democratization, terrorism was also domestic concern of government and they possessed much more knowledge and experience with terrorism that they could manage to know what would be the results of any revision; for this consideration, EU should not be a concern in Turkey if the issue is anti-terrorism policies (Zaman, 19.04.2006). In that sense, Gül's changing position about relationship between EU process and TMK process reflects civil liberties opposition's weakness in the face of rising demands for revision within the

government after clashes in Diyarbakır. As it is tried to be underlined, the reason for this weakness was the inability to reject concept of terrorism that was used to define street politics in Diyarbakır. Clashes in Diyarbakır, definition of all protestors as terrorists and discussing terrorism as the real threat to civil liberties led to usage of civil liberties literature for justification of TMK that was opposed by civil liberties literature. EU process, as it could be seen in arguments of Gül, was sought to be excluded from discussions of TMK. At this point it is hard to suggest that the transformation of the arguments of members of AKP, who were not ease with the revision before the clashes in Diyarbakır, is a sign of those politicians' leaving liberal grounds. As it is discussed in the 3rd Chapter, the arguments for necessity of coercion and strong security apparatuses in liberal society are deeply rooted in liberal ideology, and the repressive face of the state could be observed nakedly in the times of crisis. In that sense, the response of liberal AKP's to clashes in Diyarbakır is clear example of the prioritization of security in liberal ideology. In other words, rather than basing the arguments about revision of AKP on claims about the dictation of TSK or decay of liberal ideals in AKP's policies, the reasons should be investigated in the liberalism's prioritization of order.

Another development that shows the failure of civil liberties literature in terms of losing its validity as opposition was the change in the topics that was used for opposing revision of TMK. As the justifications were based on arguments of civil liberties literature, a new way for opposition to TMK was raised by CHP. In the discussions of TMK in the parliamentary subcommittee for EU harmonization, CHP pointed the revision in the 6th article of TMK that enables usage of repentance law, conditions of which are specified in TCK, only one time by executors and members of terrorist organization, and claimed that this provision could be used by Abdullah Öcalan, leader of PKK, for amnesty (Zaman, 27.04.2006). As a response to CHP's arguments for opening gates for Öcalan, member of TMK commission, İzzet Özgenç, argued that the concerned provision was for non-proved offense that Öcalan cannot enjoy as his offense had been penalized (Hürriyet, 27.04.2006). As a reaction to opposition of CHP, Cemil Çiçek and Abdullah Gül underlined the

parliamentary process for legalization of TMK as both of them claimed that final form of the revision would be determined in the parliament that reminds the previous response to civil liberties opposition. Gül criticized opposition, CHP, for engaging in low-level quality of politics although a national unity was needed for struggle against terrorism (Hürriyet, 02.05.2006; Zaman, 04.05.2006; Zaman, 11.05.2006). Eyüp Fatsa, vice president of AKP, claimed that the provisions that AKP set in the 6th article in the draft were not new, but result of commission mission that was running for almost one year (Zaman, 29.04.2006). Similar to civil liberties opposition's representation in AKP, opposition related with 6th article was also represented in AKP: İrfan Gündüz, vice president of AKP, stated that they cannot let amnesty for Öcalan, and if there was any concern about this, the government would remove such a provision (Zaman, 08.05.2006). As a result the draft was dropped from the agenda of subcommittee for rectification, and presented to parliamentary discussion again after removal of 6th article about provision of amnesty for terrorists in June 2006.

In this context, bill of TMK was presented to parliament almost without any opposition in 29th June 2006; within a one session the bill that has 19 articles and revises TMK in general was accepted almost with unanimity. As the pre-voting period showed the arguments of civil liberties opposition were incorporated into pro-TMK arguments that united arguments for changing nature of terrorism and lack of authority of law enforcement agencies to respond it together with protection of civil liberties with TMK as terrorism is the biggest threat to liberties. Against those arguments of government, the other parties raised their voice for government's causing insecurity for letting terrorism rise again in their period. In that sense, civil liberties were not used as strong reference point of opposition unlike the discussions in the previous year when Hilmi Özkök raised army's complaints of the lack of authority in struggle against terrorism.

In the parliamentary debate, as representative of AKP, Haluk İpek stated that the basic duty of state in democratic societies is to protect civil liberties of citizens; and

the biggest threat to liberties is terrorism as it violates citizens basic rights and freedoms like right to live, to have physical integrity, to have security, freedom from fear, and freedom of expression. To response to terrorism, which uses any means necessary to achieve its objectives including use of violence, the government engaged in the revision of TMK, which remains outdated with recent developments and allows the terrorists to use new techniques, to fulfill the duty of the democratic state and to support anti-terrorism units of the state. To do this İpek stated that revised TMK listed acts of terrorism derived from international treaties, which Turkey is a party – like European examples of Portugal, Spain, UK, Italy – and conditioned it to engagement in activities for the objectives of terrorist organization to be evaluated as terrorist offenses. In addition to external examples for detecting terrorist offenses, İpek stated that their mission also took EU harmonization process and decisions of Constitutional Court into consideration. In short, İpek claims that TMK, which is fully constitutional, was for protection of liberties and based on international standards. As terrorism is national problem of Turkey, he stated that by referring to debate of 6th article, political parties should not engage in low-level calculations and should support the bill.

Cemil Çiçek claimed the non-political character of TMK that balances security and liberties. The bill was a result of security agents' demands for further authority but they, as commission tried to preserve the liberties through giving authorities with respect to legal framework. He repeated the argument for necessity of protection public peace for practicing civil liberties effectively. In that sense, although the bill was opposed politically, as the bill was for legal fixation, the bill should not be considered with political motivations. At the end, the bill is nothing more than legal – not political – update of authorities of security agencies against terrorism that gained new techniques as they cannot be responded with outdated authorities.

Bekir Bozdağ, who previously opposed expansion of definition of terrorism and claimed the adequacy of existing legal framework, in the parliamentary debate claimed that the bill targeted only terrorists and there was no need for those who are

loyal to the state and nation to be concerned. As a response to criticism for expansion of authorities of public prosecutors that enables them to ban publications, he emphasized that the expanded authorities of law enforcement agencies are same authorities that are enjoyed by European law enforcement agencies. Lastly, he responded to criticisms related with the possibility of amnesty with emphasis for the limitation of the rights of terrorists to use repentance, was specified in TCK and not a new provision, only for one time, as they are for offense that are not yet penalized yet.

The so-called opposition⁸ to bill was based on AKP's inability to repress the terrorism effectively. The most comprehensive opposition raised by Orhan Eraslan, member of commission of justice from CHP, criticized government for considering side-effects of the provisions excessively that showed their lack of will to suppress terrorism; he claimed with such considerations struggle against terrorism could not be sustained and so rule of law cannot be implemented. He proposed removal of the condition of use of violence and force to be defined legally a terrorist; he claims any actions against basic principles of Republic that are specified in the constitution should be defined as terrorist act. In addition to that, he criticized the bill for not including any provisions related with preventive actions.

The opposition based on considerations of civil liberties was barely raised in the debate. Süleyman Savaş, from ANAP, emphasized the potential for effects of TMK for limitation of liberties and penalization of non-related citizens, but claimed that this problem could be overcome with law enforcement agencies' implementation of TMK strictly to terrorists but loosely to non-terrorists. More broadly, Ersönmez Yarbay, member of AKP, who demanded cancelation of revision before parliamentary debate in party the meeting (Zaman, 17.05.2006), criticized prioritizing security over liberties with TMK in the parliament. He voiced the arguments of civil liberties literature for failure of basing whole struggle against terrorism on security measure in the past. However, his arguments were far from

⁸ Most of the articles of the bill was passed without any parliamentary debate.

affecting the way of discussion of TMK as he managed to raise his voice only at the end of the session, as the 15th article of the bill was being voted, when articles were voted on and accepted without any debate.

4.6 Conclusion

In this chapter, the position of civil liberties literature in Turkey when TMK was amended in 2006 is investigated by their response. Initially, TMK, which was demanded to be revised because of its shortcoming in the struggle against terrorism, was evaluated as evaporation of civil liberties that have been granted after breakdown of strong state tradition with Europeanization. This way of opposing got its public influence especially after Özkök's statements for demand for further authorities for anti-terrorism units. With this argument, which was supported with Europeanization arguments, context of discussion of revision of TMK focused on the role of military units in Turkish politics, and opposition to TMK got character of opposing military tutelage in Turkey. This way of argumentation led to superficial focus on the institutional arrangements and failed to argue about the possible effects of provisions of revision on political life in Turkey. These arguments were represented by politicians from government party, AKP, and succeeded to affect legislation process that was postponed for several months.

The misleading character of the dichotomy that Neocleous underlines showed itself in the opposition's inability to concentrate concept of terrorism as the main problem. Civil liberties literature in Turkey conceptualized security vs. liberties dichotomy with TSK vs. civilian government, which implicitly assumes *goodness* in all practices of civilian government: What is good is civilian and what is civilian is good. However, military is not excluded totally but sought to be excluded from decision-making process as their function in fighting against terrorism has been appreciated. This way of arguments reminds Neocleous's claim for central position of desire for order in the liberal ideology that prioritize security. In that sense, as

long as civil liberties opposition commits to usage of terrorism, its arguments are doomed to be used for justification for intensification of repressive apparatuses of state.

Deadlock of civil liberties literature showed itself clearly in the usage of civil liberties literature in justifications of revision of TMK in 2006 by government. Although there are no significant differences in the draft of revision and the bill that was presented and accepted in the parliament, the scope of civil liberties literature was changed. The arguments that were produced for opposition against the possible empowerment of TSK in political sphere with revision of TMK and for protection of Europeanization process, those arguments were used by members of AKP for justification of TMK when AKP assumed all responsibility for the revision. This change in the camps of debate shows how the democratization was reduced to superficial institutional arrangements, and shadows the content of the revision. In that sense, in discussions of anti-terrorism, together with the content of the ATLs, the deadlock of civil liberties literature that shows itself in the weak and absorbed opposition should also be problematized.

CHAPTER 5

CONCLUSION

In this thesis, the arguments of the civil liberties literature on the post-9/11 ATLs, which is dominated by the claim of the breakdown of liberal democratic regimes have been investigated together with the Turkish debates over the revisions of the TMK in 2006, where within the latter the arguments of the civil liberties literature have merged originally with the arguments for strong state tradition in Turkey. It is argued that the misleading assumptions of civil liberties literature on conditions of the promotion of liberties have led to the superficial conceptualization of authoritarianism that shadowed the class character of it. In this concluding chapter, the main arguments of the thesis on the Western and Turkish cases of debates on post-9/11 ATLs will be given again and the possibilities for further research will be questioned.

In Chapter 3, the main assumptions of the civil liberties literature in opposition to post-9/11 ATLs were discussed. The civil liberties literature is dominated with the assumption over the condition of the civil liberties that puts security and liberties in a dichotomy. According to that assumption, the promotion of liberties is conditioned with the security considerations of decision makers. On a scale of rationality, if security is prioritized in a society, the role of the state in that society grows and the civil liberties of individuals are threatened. However, the stress for the maintenance order in argumentations of liberal thinkers – both classical and neo-liberal – and the historical examination of liberal state show that security of the public order is the pre-condition of civil liberties and in times of crisis and emergency, for example the crisis of 19th century laissez-faire state, the effective usage of coercion is proposed rather than its limitation. Furthermore, historical investigation also shows that the claimed non-liberal practices like the state of exception is an innovation of liberal

state. In that sense, the thesis has argued that unlike the claims of the civil liberties literature, security considerations are prioritized in the liberal ideology vis-a-vis individual liberties.

In the Turkish case of debate, the translation of the arguments of the civil liberties literature together with the assumption of the domination of strong state in Turkey resulted in the problematization of the revisions on TMK in 2006 in an institutional context. Strong state literature argues about the lack of effective civil society for the promotion of liberties due to the repression of it by strong state that is owned by Kemalist state elites – mainly military elites – as a legacy from Ottoman Empire. The EU accession process and the election of the AKP in 2002 as break in this status-quo, and rule of AKP have been favored as steps for democratization in Turkey by these liberal circles. In that context, the debates for the revision of the TMK were evaluated as the counter-attack of Kemalist elites to re-establish their power. The revision was opposed on the basis of the rejection of re-empowerment of the army in political space. The weakness of the argumentation could be observed in the absorption of the civil liberties opposition by the AKP for the justification of liberty- based arguments. In that sense, the thesis has argued that superficial evaluations of the revision by liberal circles, which concentrated on the institutional arrangements and idealization of the civilian government as the motor of democratization, have led to justifications for a new form of authoritarianism, which is consolidated under the rule of civilian government, with a strange emphasis on democratization.

TMK debates in Turkey, which were made within an institutional context, have two problems. Firstly, the conceptualization of the role of army in the Turkish politics stands problematic as it is constructed on a superficial military vs. civilian dichotomy. In this context, the role of the 1980 military coup in paving the way to neo-liberal transition in Turkey has been neglected, and AKP's limitation of the army is argued to be success in terms of democratization. However, as Bedirhanoglu and Yalman argue on the military coup, the main target of the military coup was to

restore the hegemonic crisis of the late 1970s by restructuring the state form to put an end to class based-politics, and the change in the regime, return to civilian rule in 1983, did not bring an end to this trend as the democratic rights of working classes were not returned (2010: 117-119). In that sense, military coup and military tutelage in Turkey should be considered within framework of neo-liberal restructuring. From that point of view, as the TMK debate concentrated on the institutional designs and excluded class-related topics, it could be argued that as a neo-liberal party, the AKP represents the continuation of the 1980's success in terms of putting an end to class based politics.

Secondly, the stress on the role of army and limitation of it by the EU accession process in the AKP era fails to stress on the fact that the government has also initiated broad reformation of repressive apparatuses that started with the reformation of TCK in 2004 and continued with TMK in 2006 and The Law of Police Powers and Duties (Polis Vazife ve Salahiyet Kanunu, PVSK) in 2007. This reformation resulted in the expansion of the authorities of law enforcement agencies, leading to serious problems in terms of repression of dissent groups that through popular trials like Ergenekon and KCK. The AKP period also witnessed the penalization of the society: the number of cases and detained and sentenced increased dramatically after the reformation: The total number of cases that are related with organized crime increased from 23.994 in 2003 to 38.295 in 2012; number of accused increased from 12.547 in 2004 to 75.687 in 2011; the number of people in prisons as detainee or sentenced increased from 55.609 in 2002 to 128.604 in 2011 (Saymaz, 2013: 57-58). In addition to that, enhanced authority to the police, for example, has resulted in the proliferation of the incidents that police killed suspects. After the enactment of PVSK by 2012 in 5 years in total 127 people was killed by the police (Saymaz: 2012: 39). Despite this proliferation, the protective measures for law enforcement agencies have proved its effectiveness. Between 2006 and 2008, for accusation of abuse of authority, in total 922 police was subjected to investigation while only 12 of them were penalized with minor fines (ibid: 43). In that environment, rather than concentration on the institutional arrangements related

with the role of army in the politics, the perfection of repressive apparatuses in this period should be taken into account more seriously.

The common problem in the Western and Turkish debates on ATLs is the misleading conceptualization of the authoritarianism. In the Western discussions, the concept of authoritarianism is limited to the politics of post-9/11 security politics that is referred as the prioritization of security. From that point of view, increasing role of the security agencies in the politics and decreasing roles of legislative and judiciary branches are explained with the responses of the states to 9/11. Similarly in Turkish debate, authoritarianism is discussed as the domination of the army in the political sphere as 1980 military coup is strong reference point. However, because of the neglect of the class relations in the society methodologically leads to misconceptualization of the authoritarian tendencies of post-Keynesian era, i.e. neo-liberal authoritarianism that is prior to 9/11. This neglect led to conceptualization of the post-9/11 as a surprise and single turning point in terms of decay of the democratic procedures. However, concentration on the class character of the authoritarianism would reveal that the process is not unique to this era and the phenomenon should be investigated with the reaction of the capital to crisis of Keynesianism. The attacks of capital to gains of working class and transformation of the bourgeois democratic regime for restoration of the profitability that is pointed out by Poulantzas in 1978 should be the basis of the examination of the authoritarianization.

Critical look at the liberal ideology is also important in terms of revealing the true meaning of the emphasized freedom in liberal ideology. As underlined in the Chapter 3, liberal ideologies underlined the importance of elimination of the political considerations and state in the economic sphere for the perfection of the freedom of the individuals. To achieve this level of freedom economy should be left to its own rule through liberalization of the market, and state should be protector of this freedom with its dominance over society. On the other side, domination of the political considerations, that could be caused by strong centralist state or by

demands of majority, is given as the sign of the authoritarianism, which is much clearer in the arguments of neo-liberal thinkers. In that sense, the freedom of individual represents to freedom in the market place as self-interest seeker, but not the political discussion on the role of the state in economy as it is fixed for protection of freedom of market place that could also be sustained with dictator in times of crisis. At that point, the de-politicizing nature of the capitalism and understanding of the freedom in liberal ideology should be stressed more to underline that liberal ideology is not supporter of freedoms in society as it is idealized by civil liberties literature.

In that sense, the de-politicizing nature of capitalism with promotion of market order, role of state in capitalism for controlling class contradictions that could sustain reproduction of capitalist accumulation and the attacks of the capital to working class in neo-liberalism that was intellectually grounded by liberal thinkers with emphasis on freedom should be base of discussions of authoritarianism. Within this context, ATLS could be argued to be one branch of transformation of repressive apparatuses according to neo-liberal order.

In this thesis, some topics are excluded consciously for concentration on the place of the civil liberties literature in opposition to ATLS and its shortcomings because of the misleading assumptions on the state-society relations. Firstly, the Foucauldian literature was excluded for this objective even though the literature proposes beneficial insights about the post-9/11 politics, especially in the topics like migration, and role of the security personnel in the anti-terrorism policies and legislations of ATLS. Secondly, the structural effects of 9/11 and War on Terror on the security governance are excluded. Thirdly, for the Turkish case, broad discussion on the reformation of coercive apparatuses, reforms in TCK, TMK and PVSK especially, is avoided to focus on the exploitation of arguments of liberal circles by AKP government in TMK debate. Lastly, the examination of the implementation of the revised TMK to political oppositions is avoided with the same concern. In that sense, further researches on these excluded topics could be

engaged for deeper understanding of the repression in neo-liberal era and neo-liberal authoritarianization.

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