

**T.R.**  
**YILDIZ TECHNICAL UNIVERSITY**  
**GRADUATE SCHOOL OF SOCIAL SCIENCES**  
**DEPARTMENT OF POLITICAL SCIENCE AND**  
**INTERNATIONAL RELATIONS**  
**MASTER OF ARTS PROGRAMME IN POLITICAL SCIENCE**  
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**MASTER’S THESIS**

**EUROPEAN UNION’S LEVERAGE IN TURKEY’S**  
**FREEDOM OF PRESS DEBATE: A CASE IN**  
**EUROPEANIZATION OR INTERNAL**  
**DYNAMICS MATTER?**

**BURCU CEREN GÖYNÜ**

**11716005**

**Assoc. Prof. Dr. ÇİĞDEM NAS**

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BURCU CEREN GÖYNÜ

11716005

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Thesis is found successful by unanimity / plurality.

Thesis Advisor: Assoc. Prof. Dr. Çiğdem Nas

Members of the Jury: Prof. Dr. Özden Zeynep Oktav

Assoc. Prof. Dr. Yonca Özer



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## **ABSTRACT**

### **EUROPEAN UNION’S LEVERAGE IN TURKEY’S FREEDOM OF PRESS DEBATE: A CASE IN EUROPEANIZATION OR INTERNAL DYNAMICS MATTER?**

**Prepared by Burcu Ceren Göynü**

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The goal of this paper is to analyse the domestic change in Turkey’s freedom of press policies while mapping out explanatory power of interaction between internal and external factors. In order to reach that aim, the study concentrates on the Europeanization literature, with bringing the domestic conditions back into the research. The domestic impact of European Union directives on institutions, policies and processes in Turkey, with an overall prospect of membership reward, has gained remarkable prominence especially since 1999 when Turkey declared as a candidate state. In regard to a period of extensive legal reforms in Turkey, particularly since the opening of formal negotiations in 2005, this paper will examine the issue of freedom of press as a controversial and sensitive area of reform in order to figure out the limits of EU conditionality as well as conditions for non-compliance. Thereby the study will test basic perspectives in Europeanization literature, with applying qualitative methods as a case study. In this respect the paper is based on content analysis of discourses, official documents and press releases along with secondary sources of books, articles and reports. After all, this study employs an understanding of two-level game through not only the conditional incentives of the EU, but also the internal dynamics since the domestic political interests, historical sensitivities and legacies of the past are likely to downgrade the degree and direction of domestic change in the field of press freedom. On that account, this argument is explored in line with the variations in domestic change, thus subdivided into three distinct periods: 2002-2005, 2005-2008 and 2008-2013.

**Keywords:** Europeanization, domestic change, freedom of press, non-compliance, Turkey.

## ÖZ

### AVRUPA BİRLİĞİ'NİN TÜRKİYE'DEKİ BASIN ÖZGÜRLÜĞÜ TARTIŞMALARINDA GÜCÜ: BİR AVRUPALILAŞMA ÖRNEĞİ YA DA İÇ DİNAMİKLERİN ÖNEMİ?

Hazırlayan Burcu Ceren Göynü

Ocak, 2015

Bu çalışmanın amacı, iç ve dış faktörlerin açıklayıcı gücünü açığa çıkarırken, Türkiye'nin basın özgürlüğü politikalarındaki yerel değişimleri incelemektir. Bu amaca ulaşmak için, çalışma, yerel koşulları araştırmaya geri getirerek, Avrupalılaşma yazınına odaklanmaktadır. Avrupa Birliği talimatlarının, üyelik ödülü ihtimali ile birlikte, Türkiye'deki kurumlar, politikalar ve süreçler üzerindeki yerel etkisini inceleyen çalışmalar, Türkiye'nin aday ülke ilan edildiği 1999 yılı ile kayda değer bir önem kazanmıştır. Özellikle 2005 yılında müzakerelerin açılması ile Türkiye'deki kapsamlı yasal reformlar dönemi ile ilgili olarak, bu çalışma, uyumsuzluğun koşulları ve AB koşulluluğunun sınırlarını incelemek adına tartışmalı ve hassas bir reform alanı olarak basın özgürlüğü meselesini incelemektedir. Böylece, vaka incelemesi gibi nitel yöntemler kullanılarak, Avrupalılaşma yazınındaki temel yaklaşımlar test edilecektir. Bu hususta, söylemler, resmi belgeler ve çeşitli basın bültenleri ile birlikte kitap, makale ve rapor gibi ikincil kaynakların içerik analizine dayanılacaktır. Sonuçta, bu çalışma, yerel siyasal çıkarların, tarihsel hassasiyetlerin ve mirasların basın özgürlüğü alanındaki yerel değişimin derecesi ve yönünü gerileteceği öne sürerek, sadece AB'nin koşullu teşvikleri değil, iç dinamikler aracılığı ile iki-dereceli oyun anlayışını uygulayacaktır. Bu hususta, tezdeki bu çıkarım, 2002-2005, 2005-2008 ve 2008-2013 şeklinde üç ayrı döneme bölünen araştırmada, yerel değişimlerdeki varyasyonlar doğrultusunda incelenecektir.

**Anahtar Kelimeler:** Avrupalılaşma, yerel değişim, basın özgürlüğü, uyumsuzluk, Türkiye.

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Istanbul, September 2014

Burcu Ceren Gy n

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## **ABBREVIATIONS**

|              |                                                             |
|--------------|-------------------------------------------------------------|
| <b>AKP</b>   | :Justice and Development Party (Adalet ve Kalkınma Partisi) |
| <b>ANAP</b>  | :Motherland Party (Anavatan Partisi)                        |
| <b>CEEC</b>  | :Central and Eastern European Countries                     |
| <b>CFSP</b>  | :Common Foreign and Security Policy                         |
| <b>CJEU</b>  | :Court of Justice of the European Union                     |
| <b>DP</b>    | :Democrat Party (Demokrat Parti)                            |
| <b>DSP</b>   | :Democratic Left Party (Demokratik Sol Parti)               |
| <b>ECHR</b>  | :European Convention on Human Rights                        |
| <b>EEC</b>   | :European Economic Community                                |
| <b>EIDHR</b> | :European Instrument for Democracy and Human Rights         |
| <b>FP</b>    | :Virtue Party (Fazilet Partisi)                             |
| <b>ICT</b>   | :Information and Communication Technology                   |
| <b>KCK</b>   | :Kurdistan Communities Union                                |
| <b>MBK</b>   | :Committee of National Unity (Milli Birlik Komitesi)        |
| <b>MHP</b>   | :Nationalist Action Party (Milliyetçi Hareket Partisi)      |
| <b>NPAA</b>  | :National Program for the Adoption of the Acquis            |
| <b>NSC</b>   | :National Security Council                                  |
| <b>OECD</b>  | :Organisation for Economic Cooperation and Development      |
| <b>OHAL</b>  | :State of Emergency (Olağanüstü Hal)                        |
| <b>OSCE</b>  | :Organisation for Security and Cooperation in Europe        |

|               |                                                                   |
|---------------|-------------------------------------------------------------------|
| <b>PKK</b>    | :Partia Karkaren Kürdistan (Kürdistan Workers' Party)             |
| <b>RP</b>     | :Welfare Party (Refah Partisi)                                    |
| <b>RWB</b>    | :Reporters without Borders                                        |
| <b>TAVAK</b>  | :German-Turkish Foundation for Education and Scientific Research  |
| <b>TEU</b>    | :Treaty on European Union                                         |
| <b>UNESCO</b> | :United Nations Educational, Scientific and Cultural Organisation |

## 1. INTRODUCTION

### 1.1. Background

With the establishment of Turkish Republic in 1923, modernization process in legal, economic, political and social realms was introduced by a reformist class pioneered by Mustafa Kemal Atatürk. As Keyman and Aydın's states, "the project of modernity aimed to reach the contemporary level of civilisation and accepted the universal validity of Westernization as a way of building modern Turkey"<sup>1</sup>. Wide range of reforms conducted in the early Republican years such as changes in the dress code, the alphabet, the family law, education and public life aimed at creating a break with Ottoman past in order to establish a "modern, secular, European nation-state"<sup>2</sup>. However, the formation of Turkish national identity was complex and shows a paradoxical stand on Europe and West. On the one hand Turkish national identity is built on the foundations of European civilization. On the other hand the discourse of Turkish national identity embraces Europhobic tendencies. The foundation of the Turkish Republic is heavily influenced by the historically ambivalent relationship between the Ottoman Empire and Europe in which cultural legacies of the national independence war for present day Turkey delineated Europe as "the enemy and sinister force" threatening the national unity<sup>3</sup>.

The nature of the relationship between Turkey and Europe began to change in 1957, after the signing of the Treaty of Rome. However, Turkey's long march to European Union made it one of the most difficult case in enlargement process. In 1959 Turkey applied for an associate membership to the European Economic Community and in 1963 it followed by the agreement establishing an association between the EEC and Turkey. In 1987, formal application was made and at the Helsinki Summit in

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<sup>1</sup> Senem Aydın, E.Fuat Keyman, "European Integration and the Transformation of Turkish Democracy", **Center for European Policy Studies EU-Turkey Working Papers**, no. 2, (August 2004): 3.

<sup>2</sup> Meltem Müftüler Baç, "Through the Looking Glass: Turkey in Europe", **Turkish Studies**, vol. 1 no. 1 (Spring 2000): 28.

<sup>3</sup> Banu Helvacıoğlu, "The Paradoxical Logic of Europe in Turkey: Where does Europe end?", **The European Legacy: Toward New Paradigms**, vol. 4 no. 3, (1999): 24.

December 1999, Turkey was given a formal candidate status. Since that time, Turkey underwent considerable democratic reforms to fulfil the EU's Copenhagen Criteria which aims "the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities" as a precondition to start accession negotiations with the Union.<sup>4</sup>

On the occasion of a dire financial crisis in Turkey at the end of 2000 and a coalition government composed of the Democratic Left Party (Demokratik Sol Parti-DSP), the Motherland Party (Anavatan Partisi-ANAP) and the Nationalist Action Party (Milliyetçi Hareket Partisi-MHP) with diverging political criteria, it took a long bargaining process to bring about any political reforms, resulting with a time lag in reforms they needed to meet<sup>5</sup>.

Finally from October 2001 to national elections in November 2002, three Constitutional packages as well as a new Civil Code were adopted. This period was seen a positive development in Turkey and EU relations as the progress was highlighted by the European Commission particularly in respect to human rights; however it was also underlined that further progress was needed regarding political criteria. This momentum also continued by the Justice and Development Party (Adalet ve Kalkınma Partisi-AKP), a centre-right Islamist party, which formed a single party majority government revealing a possibility of political stability. Several Constitutional packages, new Turkish Penal Code and new Press Law were adopted that demonstrated a strong will to further democratization. Following this period of far-reaching political reforms in Turkey, the EU decided to open accession negotiation with Turkey on 3 October 2005.

Consequently, the crucial rise in the reform process since the approval of Turkey's candidate status in 1999 heralded a process of extensive changes in Turkey which will be addressed as *Europeanization*. As a relatively new and contested concept, Europeanization, in the simplest term, is "the influence of EU on domestic level in candidate countries"<sup>6</sup>. Today, EU is a powerful external actor promoting domestic

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<sup>4</sup> The Copenhagen Criteria consists of three sections as political criteria, economic criteria and the institutional criteria. See; [http://ec.europa.eu/economy\\_finance/international/enlargement/criteria/index\\_en.htm](http://ec.europa.eu/economy_finance/international/enlargement/criteria/index_en.htm) [21.03.2014].

<sup>5</sup> Meltem Müftüler Bac, "Turkey's Political Reforms and the Impact of the European Union", **South European Society & Politics**, vol. 10 no. 1 (March 2005): 21.

<sup>6</sup> Ulrich Sedelmeier, "Europeanization in New Member and Candidate States", **Living Reviews in European Governance**, vol. 6, no. 1 (2011): 5.

change and significant reforms, especially in the areas of human rights norms and democratization in Turkey.

## 1.2. Research Design

The AKP government underwent important reforms in wide range of areas including the abolition of death penalty, the limited easing of restrictions on broadcasting and education in minority languages, shorter detention periods and the lifting of the State of Emergency in the Southeast and realigning civil-military relations by the notable contribution of Europeanization process.<sup>7</sup> The burgeoning reform process is accompanied by the conditionality power of EU which sustains domestic change in exchange for full membership in the future. In doing so, the EU has increasingly been a key factor in facilitating the reforms; even so this does not mean that the EU is the only driver of the democratization efforts<sup>8</sup>. However, the process of accession negotiations with Turkey which was launched in 2005 followed a controversial path bearing witness to ups and downs, primarily in the area of freedom of expression. One side of the discussion emphasizes fading of European credibility due to its ambiguity over Turkey's membership; the other side acknowledges domestic factors that hinder reforms on the area, namely historical and structural reasons. The interplay between external and domestic factors ended up with a huge gap between formal rule adoption and implementation of adopted norms and values. Nowadays the issues of freedom of expression and press freedom provoked extensive debate both in Turkey and in Europe. Since I believe that the freedom of expression and press freedom are considered significant pillars of democracy and Turkey as a critical case to reveal the limits of Europeanization, I find this a very relevant and important topic to discuss. In this sense, my aim in this thesis is firstly to examine limits of EU conditionality with unpacking conditions for non-compliance and to discuss explanatory power of interaction between external and domestic factors in analysing different degrees of domestic change and different Europeanization patterns in the case of press freedom in Turkey. By doing so, this thesis aims to uncover which factors and to what extent promote or constrain the domestic change

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<sup>7</sup> Kerim Yıldız, Mark Muller, **The European Union and Turkish Accession: Human Rights and The Kurds**, (London:Pluto Press, 2008), 40.

<sup>8</sup> Müftüler Bac, **op.cit.**, 17. Senem Aydın Düzgit, Fuat Keyman, "EU-Turkey Relations and The Stagnation of Turkish Democracy", **Global Turkey in Europe**, Working Paper 2 (2013), 2.

in freedom of press. Addressing the problems associated with non-compliance and differential impact of Europe and probing into highly sensitive issue of press freedom which is often related to national security, state sovereignty and economic factors, this thesis argues that Turkey would be a crucial case in achieving effective Europeanization and greater democratization.

As a result, the thesis asks following questions:

“Does the EU have leverage on questions of freedom of press in Turkey? If so, what are the internal and external mechanisms that drive this process?”

### **1.2.1. Main Hypothesis and Variables**

In this thesis the impact of European political conditionality on press freedom in Turkey will be analysed. Thus, it focuses on the hypothesis that:

“Considering the questions of press freedom in Turkey, membership incentive becomes insufficient when there is lack of credible and legitimate conditionality at the European level and when it meets conflict and resistance at domestic level which accounts consequently for low level of compliance to the European rules, thus limits the EU’s transformative power.”

Neither the EU leverage nor the domestic factors alone can bring about sustainable policy change and compliance. Therefore this research’s approach in studying the EU’s effect in Turkey uses the growing literature of Europeanization and regards it as an interactive process in order to prevent relying solely on EU as a main motor promoting democratization as well as to bring domestic variables back into research.

The degree of domestic change due to the EU pressure in the field of freedom of press is the dependent variable of this research while the conditions and factors that promote or constrain the policy change are counted as independent variables which are subdivided into two categories. In this sense external variables will be formed under rationalist and sociological account which consist analysis of credibility of accession reward and legitimacy of EU directives. Additionally, internal factors will be formed under rationalist, sociological and historical perspective consisting of domestic adoption cost, existence of veto players, resonance with pre-existing norms and culture of implementation that will eventually prompt us to get a grip on the conflict between European political norms and state behaviour.

### 1.3. Methodology

Drawing on the relation between the process of Europeanization of an external state –Turkey- and its road to democratization, the research conducts single case study through applying qualitative content and discourse analysis. In this sense, the aim is to “trace a causal process by linking the proposed independent variable to the dependent one”, so to uncover conditions for why the limited change occurs in case of Turkey’s freedom of press records<sup>9</sup>. In order to map the lack of change or substantial variations, the extent of rule adoption in terms of specified time periods will be examined. What is meant by rule adoption is that it consists of both legal transposition of the *acquis* and practical implementation in everyday policy-making, thus rule adoption will be formed as a combination of formal and behavioural adoption that eventually lead to effective policy change<sup>10</sup>. The thesis will relate transition periods to the speed of rule adoption by reflecting different phases of the AKP’s reform process, i.e. the years 2002-2005, 2005-2008, and 2008-2013 respectively.

The study aims to reveal causal mechanisms that drive the limited Europeanization process in Turkey. The mechanism-based approach is defined as “a set of hypotheses that could be the explanation for some social phenomenon, the explanation being in terms of interactions between individuals and other individuals, or between individuals and some social aggregate”<sup>11</sup>. Process tracing method will be also employed to unpack explanatory power of relevant factors as it attempts to identify the intervening causal chain between an independent variable (or variables) and the outcome of the dependent variable<sup>12</sup>. Furthermore it allows analyzing the effect of

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<sup>9</sup> Audie Klotz, “Case Selection”, **Qualitative Methods in International Relations: A Pluralist Guide**, ed. Audie Klotz, Deepa Prakash, (New York: Palgrave Macmillan, 2008), 49.

<sup>10</sup> Ulrich Sedelmeier, “Europeanization in new member and candidate states”, **Living Reviews in European Governance**, vol. 6, no. 1 (2011): 26. Frank Schimmelfennig, Ulrich Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, **Journal of European Public Policy**, vol. 11, no. 4, (2004): 684.

<sup>11</sup> Peter Hedstroem, Richard Swedberg, “Social Mechanisms: An Introductory Essay”, **Social Mechanisms: An Analytical Approach to Social Theory**, ed. Peter Hedstroem, Richard Swedberg, (Cambridge: Cambridge University Press, 1998), 25, quoted in Jeffrey T. Checkel, “It’s the Process Stupid! Process Tracing in the Study of European and International Politics”, ARENA Working Paper, no. 26, (2005): 4.

<sup>12</sup> Andrew Bennett , George Alexander, **Case Studies and Theory Development in the Social Sciences**, (Cambridge, MA: MIT Press, 2005), 206, quoted in Jeffrey T. Checkel, *Ibid.*, 5.

different independent variables through offering various causal paths and examining the effect of variance in the independent variables across cases<sup>13</sup>.

Turkish case is selected for the reason that it is one of the most disputed case for EU's external relations due to its size, geography and controversial European identity along with the popular scepticism and the strong and persistent divisions among the member states<sup>14</sup>. The state of press freedom is chosen likewise as it sparks an extensive debate, though remain untouched, with the issue bringing about profound disagreements between the government and civil society organizations, about the nature of anti-terrorism legislation and media patronage. However, the impact of EU-induced reforms has been instrumental as in the example of numerous amendments in the Turkish legislation since the first reform package in 2002. Therefore, European leverage on freedom of press in Turkey is a very appropriate topic to discuss in terms of European absorption capacity in the future and its key role in political agenda of Turkey.

### 1.3.1. Data Collection

As the thesis proposes that the combination of external leverage and domestic drivers lies behind the policy change or lack thereof, that determine the transformative power of the EU and the degree of compliance to European norms, it draws upon content analysis of discourses. Content analysis allows the researcher to “develop set of procedures to make inferences from the text, thus it is capable of throwing light on the ways countries –as our unit of analysis- use or manipulate symbols and invest communication with meaning”<sup>15</sup>. Combined with content analysis, discourse analysis will also be applied as it “provides a rich source of contextual data and a big picture of a realm of communication activity, ostensibly leaving no stone unturned in a consideration of all critical messages”<sup>16</sup>. By way of approaching the research question from multiple methodological positions, I plan to draw a solid and comprehensive conclusion. In order to reach that end, official documents, speeches and press releases of EU and Turkish government will be supplemented by

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<sup>13</sup> Andrew Bennett , George Alexander, **Ibid.**, 75-81.

<sup>14</sup> Frank Schimmelfennig, “Entrapped Again: The Way to EU Membership Negotiations with Turkey”, **Dublin European Institute**, Working Paper 8 (2008): 1-3.

<sup>15</sup> Margaret G. Hermann, “Content Analysis”, **Qualitative Methods in International Relations**, ed. Audie Klotz, Deepa Prakash, (New York: Palgrave Macmillan, 2008), 151.

<sup>16</sup> Kimberly A. Neuendorf, “Content Analysis: A Contrast and Complement to Discourse Analysis”, **Qualitative Methods**, vol. 2 no. 1, (Spring 2004): 34.

secondary sources, namely academic literature, newspaper articles and reports of international and civil society organizations, associations and representatives in the field.

For the Turkish side of the discussion, reform and harmonization packages, constitutional changes as well as media specific norms and criminal legal system will be analysed. For the EU side, policy papers, harmonization reports and accession partnership documents will be employed in order to gain an understanding of the standpoint of the EU.

#### **1.4. A Review of Key Concepts**

While the thesis is centred upon the assumption that freedom of press is lifeblood of democracy that should be well protected for an open and free society, the term ‘democracy’ should be clarified in order to prevent any confusion and understand the sense behind the democratization efforts in Turkey.

The ‘democracy’ is highly contested concept, but in its simplest term, it is the will of the people. However, the term should not fall short of the understanding based merely on people’s right to elect, instead as the thesis is grounded on, it is more about legally protected and freely expressed rights and freedoms and the primacy of rule of law (consolidated democracy). Likewise, Huntington defines true democracy as: “liberte, egalite, fraternite, effective citizen control over policy, responsible government, honesty and openness in politics, informed and rational deliberations, equal participation and power and various other virtues”<sup>17</sup>.

In order to complete a thorough democratic transition and develop into a consolidated democracy, it is required to have accountable and transparent institutions to an extent that democratic institutions and rules becomes the “the only game in town” behaviourally, attitudinally and constitutionally<sup>18</sup>. In behavioural term, Linz and Stephan agreed that there should not be a “significant political group

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<sup>17</sup> Samuel P. Huntington, **the Third Wave: Democratization in the Late Twentieth Century**, (Norman: University of Oklahoma Press, 1991), 9, quoted in Müge Aknur, “Introduction: Consolidation of Democracy in Turkey”, *Democratic Consolidation in Turkey: State, Political Parties, Civil Society, Civil-Military Relations, Socio-Economic Development, EU, Rise of Political Islam and Separatist Kurdish Nationalism*, ed. Müge Aknur, (Florida: Universal Publishers, 2012), 6.

<sup>18</sup> Juan J. Linz, Alfred Stepan, **Problems of Democratic Transition and Consolidation: Southern Europe, South Africa, Post-Communist Europe**, (Maryland: John Hopkins University Press, 1996), 5.

attempt to overthrow the democratic regime by creating a nondemocratic regime or turning to violence or foreign intervention to secede from the state”. Referring to attitudinal consolidation, they expressed that there should be “overwhelming majority of people believing in democratic procedures and institutions as the most appropriate way to govern collective life in a society”. Lastly, what they mean by ‘constitutionally’ consolidated democracy is that “when all the actors in a polity become habituated to resolution of a conflict according to specific laws, procedures and established norms in which violations of these norms are likely to be ineffective and costly”<sup>19</sup>. Therefore, the transition into a highly institutionalized and consolidated democracy leads us to another concept called “democratization”.

Kubicek separates democratization into three stages where democratic consolidation is the final stage of this linear process. Firstly, *liberalization* is defined as the initial stage when political restrictions are removed and alternative groups raise their voice such as less censorship on media; secondly *transition* is the process of regime change and finally *consolidation* refers to the “process, often a lengthy one and in a certain sense always ongoing, of stabilizing and institutionalizing democratic institutions and practices, as well as the internalization of democratic norms by elites and masses”<sup>20</sup>.

This study focuses on freedom of press as one of the indicators of democratic consolidation but examines the domestic change through concentrating on combination of factors, such as political parties, the military and judiciary as veto players and the EU as an external actor. As Turkey’s democratic consolidation has not yet been completed, freedom of press is highly crucial not only for its own political developments in the democratization process, but also for the EU regarding the limits of its external democracy promotion, put it differently, the effectiveness of this significant foreign policy instrument which aims to export “democracy” as a political system.

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<sup>19</sup> Juan J. Linz, Alfred Stepan, *Ibid.*, 6.

<sup>20</sup> Paul Kubicek, “International Norms, the European Union, and Democratization, Tentative Theory and Evidence”, **the European Union and Democratization**, ed. Paul Kubicek, (London: Routledge, 2003): 21.

## 1.5. Freedom of the Press: A Brief Background and Delimitations

The oldest records for the use of the notion ‘freedom of press’ dated back to the 17<sup>th</sup> century though started to have a wider area of usage in 19<sup>th</sup> century<sup>21</sup>. During this period, Virginia Declaration of Rights (1776) can be regarded as a precursor of free press agenda which acknowledged under section twelve that “the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments”<sup>22</sup>. In 1791, in the course of numerous amendments to the Bill of Rights in U.S., the right to publish one’s views was regarded as a natural right and free press as a mean of ensuring justice in government. However, the Alien and Sedition Act of 1798 sparked off the first challenge to freedom of press which outlawed “write, print, utter or publish” anything critical to government<sup>23</sup>.

To have a look at the main points of progress and backlashes in continental Europe, an emphasis might be placed on the Declaration of the Rights of Man dated on 24 August 1789 in France which stated in Article 11 that “the free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law”<sup>24</sup>. In this respect, although the French Revolution constituted a great danger for the neighbouring countries regarding the transfer of revolutionary ideas and methods, thus saw strict censorship laws and regulations, extreme centralization and penalties, it had also inspired hopes of political and civil liberties and freedom of the press at least within the scope of formal legal formations<sup>25</sup>. However, early 20<sup>th</sup> century witnessed a radical reversal in press freedom agenda due to the First World War which re-established censorship and control measures<sup>26</sup>. The Convention for the Protection of Human Rights and Fundamental Freedoms which drafted in 1950 and entered in force on 3 September

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<sup>21</sup> Hilmi Bengi, “Tarihsel Süreç İçinde Basın Özgürlüğü”, <http://www.seemo.org/istanbul/files/Hilmi%20Bengi.ppt> [13.07.2014].

<sup>22</sup> **Virginia Declaration of Human Rights**, 1776, section 12.

<sup>23</sup> “The First Amendment: Freedom of the Press 1791”, The Bill of Rights Institute, <http://billofrightsinstitute.org/resources/educator-resources/americanpedia/americanpedia-bill-of-rights/first-amendment/freedom-of-the-press/> [13.07.14].

<sup>24</sup> **Declaration of the Rights of Man**, 1789, Article 11.

<sup>25</sup> Jürgen Wilke, “Censorship and Freedom of the Press”, [http://ieg-ego.eu/en/threads/european-media/censorship-and-freedom-of-the-press#CensorshipandFreedomofthePressinthe20thCentury/dc\\_export](http://ieg-ego.eu/en/threads/european-media/censorship-and-freedom-of-the-press#CensorshipandFreedomofthePressinthe20thCentury/dc_export) [13.07.14].

<sup>26</sup> Jürgen Wilke, **Ibid.**

1953 enabled the most thorough step in protecting the rights to hold opinions, receive and impart information and ideas.

Additionally, international and regional organizations of professional journalists around the world have held consultative meetings under the body of UNESCO since 1978 which acknowledged growing responsibility possessed by the media in contemporary world. Therefore, principles including people's right to true information, journalist's dedication to objective reality, their social responsibility and professional integrity, public access and participation, respect for privacy, human dignity, public interest, universal values and diversity of cultures, elimination of war and other great evils confronting humanity, promotion of a new world information and communication order were prepared as an international common ground and as a source of inspiration for national and regional codes of ethics<sup>27</sup>.

Within the framework of this study, the concept of the press will be considered as the print media such as magazines, newspapers and news weeklies. However, in most of the European policy papers the term 'media freedom' is used which covers not only print media, but also electronic media and other means of communication and information sharing which has written text, audio and visual elements in a wider sense. For analytical purposes, I consider freedom of press as an absence of state intervention in journalistic activities, specifically of the state control due to anti-terrorism efforts. Therefore, this working definition does not concentrate on the – though they are highly interrelated- problems facing journalists and the institution of journalism emanating from the concentration of media ownership or lack of unionization of journalism. Christensen agrees that the problem facing journalists in Turkey is a "combination of the hyper-commercialization of the media sector with a traditionally 'clientelist' and 'patrimonial' relationship between media and state" coupled with profound efforts on part of these media owners to break the power of unions, with the tactics threatening journalists with job termination which ends up applying a policy of self-censorship<sup>28</sup>. However the focus in this analysis is on the government legislation and the amendments in legislation affecting the rights and

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<sup>27</sup> **International Principles of Professional Ethics in Journalism**, 20 November 1983, Principle I-X.

<sup>28</sup> Christian Christensen, "Concentration of Ownership, The Fall of Unions and Government Legislation in Turkey", **Global Media and Communication**, vol. 3 no. 2 (August 2007): 179-199.

working environment of news workers since the application of legal framework by the judicial system constitutes key hindrance to press freedom<sup>29</sup>.

## **1.6. Chapter Overview**

Upon delving into problem definition and basic proponents of research design in the introductory chapter, the second part of the thesis will dwell upon theoretical framework through examining the general picture of Europeanization, its mechanisms, outcomes and explanatory conditions, thus builds a model for non-compliance in respect to both endogenous and exogenous factors. Chapter three covers the EU's human rights and democracy promotion, mechanism of democratic conditionality and the state of press freedom at the EU level which is considered as important pillars of democracy. The chapter gives a particular attention on the taken for granted position of media system in Europe, together with European conditionality in the field of press freedom in the accession process of Turkey. This chapter concludes with the current state of the press freedom in Turkey by way of probing into the state policy, legal framework and domestic factors of violation. Chapter four introduces findings of EU's role in changing Turkish position on press freedom across different time periods and applies exogenous and endogenous determinants over the varied pace of Europeanization whereas the concluding chapter comprises the results and brings alternative accounts into future research of media.

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<sup>29</sup> Marc Pierini, "Press Freedom in Turkey", **the Carnegie Papers**, (January 2013): 7-8.

## 2. THEORETICAL FRAMEWORK: EUROPEANIZATION AND DOMESTIC CHANGE

In this chapter theoretical framework for Europeanization will be introduced. In the first section the concept, its scope and causal explanations within this study will be examined whereas second section will cover theoretical perspective that is formed in respect of both exogenous and endogenous conditions to delve into Europeanization of domestic policies and change in Turkey.

### 2.1. What is Europeanization? Explanatory Conditions, Mechanisms and Outcome

Europeanization has gained widespread attention since 1990s to shed light on the transformation of candidate countries and changes within European politics through conducting a variety of disciplines of social sciences ranging from history to economy.<sup>30</sup> Within the boundaries of political science, the term denotes the process of change at the domestic level due to the pressures generated at the EU level.<sup>31</sup> However, according to the theoretical framework adopted and subject of research chosen, Europeanization is conceptualized in a variety of different ways.<sup>32</sup> For instance, Olsen classifies five broad usages of the term which are: changes in external boundaries of Europe mainly through EU enlargement; development of formal-legal institutions of governance and common norms at the European level;

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<sup>30</sup> Sinem Acıkmese Akgul, "Cycles of Europeanization in Turkey: The Domestic Impact of EU Political Conditionality", **UNISCI Discussion Papers**, no. 23 (May 2010): 131.

<sup>31</sup> Sinem Acıkmese, Mustafa Aydın, "Europeanization through EU Conditionality: Understanding the new era in Turkish foreign policy", **Journal of Southern Europe and the Balkans**, vol. 9, no. 3 (December 2007): 264.

<sup>32</sup> Robert Ladrech, "Europeanization of Domestic Politics and Institutions: The Case of France", **Journal of Common Market Studies**, vol. 32, no. 1 (1994): 69-88. Maria Green Cowles, James A. Caporaso, Thomas Risse, **Transforming Europe: Europeanization and Domestic Change**, (Ithaca, N.Y.: Cornell University Press, 2001). Tanja Börzel, "Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain", **Journal of Common Market Studies**, vol. 39, no. 4 (1999): 573-596.

central penetration of national systems of governance that implies domestic impacts of European-level institutions and norms; exporting forms of political organization and governance to political systems outside Europe and finally, political unification project which designates Europe as a more unified and stronger political entity.<sup>33</sup> However, within this study the encompassing definition proposed by Radaelli will be conducted which stresses the importance of change, with the concept covering both organizations, role of individuals and policy entrepreneurs, and applying both to EU member states and to other countries. He argues that Europeanization refers to:

“processes of (a) construction, (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures and public policies”<sup>34</sup>

As the above definition presents, compliance to EU has two main aspects; the formal rule adoption and behavioural adoption. That is why Radaelli’s definition is preferred as it does not solely rest on legal transposition of EU rules, but also practical application or implementation. Moreover, as his clarification posits EU public policy and politics in making of form and direction of domestic change, it requires us to specify the perspective in conceptualizing the Europeanization process; bottom-up/uploading, top-down/downloading, both together or horizontal research design when studying the domestic impact of the EU in Turkey.

The first conceptualization labels Europeanization as “the evolution of European institutions as a set of new norms, rules, and practices”.<sup>35</sup> Studies based on a bottom-up perspective take domestic variables – actors, problems, resources, styles, discourses- as starting point and question whether if EU provides a domestic change together with the dynamics and potential consequences of this process.<sup>36</sup> Being founded on persuasive process of adaptation and incorporation of European policies and national policy structures, bottom-up research is likely to be equated with the

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<sup>33</sup> Johan P. Olsen, “The Many Faces of Europeanization”, **Journal of Common Market Studies**, vol. 40, no. 5 (2002): 923-924.

<sup>34</sup> Claudio M. Radaelli, “The Europeanization of Public Policy”, **the Politics of Europeanization**, ed. Kevin Featherstone, Claudio M. Radaelli (Oxford: Oxford University Press, 2003): 30.

<sup>35</sup> Tanja Börzel, “Pace-Setting, Foot-Dragging and Fence-Sitting: Member State Responses to Europeanization”, **Journal of Common Market Studies**, vol. 40, no. 2 (June 2002): 193.

<sup>36</sup> Claudio M Radaelli, “Europeanisation: Solution or Problem?”, **European Integration Online Papers**, vol. 8, no. 16 (2004): 4.

concept of European integration, thus it is not applicable to Turkish case. Likewise, the classification that incorporates both a bottom-up and a top-down approach focuses on not only member states having a general incentive to ‘upload’ their domestic policies and institutions to the European level, but also how they conform with the EU through ‘downloading’ EU directives into their domestic policy structures,<sup>37</sup> therefore the perspective is highly appropriate for Europeanization among member states. Lastly, horizontal approach as a different form of adjustment based on socialization, with analyzing changes transferring from one country to another regardless of any coercive process of adaptation from EU policy models<sup>38</sup>, remains irrelevant in the research considering EU’s impact on Turkey.

On the other side of the discussion, top-down conceptualization refers to “the impact of European institutions on political structures and processes of the member states”<sup>39</sup>, in more specific way “Europeanization-from-above”<sup>40</sup>. This approach focuses on the impact that EU-level institutions, policies and policy-making have on institutions, policies and policy-making and politics at the domestic level of governance.<sup>41</sup> However, this literature focusing on top-down approach has been criticized because of dominantly addressing uni-directional changes and narrow impacts.<sup>42</sup>

Much of the work done in Europeanization literature tended to question domestic change generating from adaptational pressure from EU-level directives, with the term being identified as “the extent to which domestic institutions would have to change in order to comply with European rules and policies”.<sup>43</sup> Studies exploring adaptational change also linked Europeanization to the “goodness of fit” hypothesis. As the concept is first introduced in the work of Risse, Cowles and Caporaso, it determines the degree of pressure for adaptation from Europe to member state: “The lower the compatibility between European and domestic processes, policies, and

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<sup>37</sup> Tanja A Börzel, *op.cit.*, 2002, 195-196.

<sup>38</sup> Claudio M. Radaelli, *op.cit.*, 2003, 41.

<sup>39</sup> Tanja A Börzel, *op.cit.*, 2002, 193.

<sup>40</sup> Sinem Acıkmese Akgül, *op.cit.*, 134.

<sup>41</sup> Lucia Quaglia et. al. “Europeanization”, *European Union Politics*, ed. Michael Cini (Oxford: Oxford University Press, 2007): 406.

<sup>42</sup> Claudio M. Radaelli, *op.cit.*, 2004, 4.

<sup>43</sup> Thomas Risse, Maria Green Cowles, James A. Caporaso, “Europeanization and domestic change: Introduction”, *Transforming Europe: Europeanization and Domestic Change*, ed. Maria Green Cowles, James A. Caporaso, Thomas Risse-Kappen (New York.: Cornell University Press, 2001): 6.

institutions, the higher the adaptational pressure.”<sup>44</sup> In general, “goodness of fit”, as one of the mechanism of Europeanization, helps demonstrate the degree of adaptational pressure, thus investigates the lack or presence of change through establishing an “EU origin”.<sup>45</sup> Therefore, if the state in question meets high compatibility between pre-existing domestic conditions and European policy and institutions, the result will be low adaptational pressure. On the contrary, if domestic structures are highly contradictory with European rules and norms, the process of Europeanization will be confronted with compliance problems and lack of effective implementation.

Later, Börzel and Risse elaborated the model and considered the degree of fit or misfit to be a necessary but not sufficient condition for domestic change to take place.<sup>46</sup> They distinguished two types of misfits whereby the process of Europeanization exerts adaptational pressure at high cost; policy and institutional misfit. On the one hand, policy misfit is defined as differences between European and domestic policies, which result in compliance problems at relatively high adaptational cost at the domestic level. On the other hand, Europeanization can result in institutional misfit which is less direct, with the notion challenging domestic rules, procedures and collective understandings, e.g. national identity, state sovereignty, therefore its impact on state is expected to be long-term and incremental.<sup>47</sup> However, along with the ‘misfit’ as a necessary explanatory precondition for domestic change, as in the words of Börzel and Risse “Europeanization must be ‘inconvenient’”<sup>48</sup>, the process of adoption should also be accompanied by number of mediating factors – understood as actors and institutions- ; namely existence of multiple veto points, facilitating formal institutions, change agents or norm entrepreneurs and consensus-based political culture as well as informal institutions promoting cooperation.<sup>49</sup> The interplay of these facilitating factors and the compatibility between pre-existing domestic conditions and European rules, norms and policies (goodness of fit),

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<sup>44</sup> Thomas Risse-Kappen, Maria Green Cowles, James A. Caporaso, *Ibid.*, 3.

<sup>45</sup> Claudio M. Radaelli, *op.cit.*, 2004, 9.

<sup>46</sup> Tanja A. Börzel, Thomas Risse, “Conceptualizing the Domestic Impact of Europe”, **The Politics of Europeanization.**, ed. Kevin Featherstone, Claudio M. Radaelli (Oxford: Oxford University Press, 2003): 58.

<sup>47</sup> Tanja A. Börzel, Thomas Risse, “When Europe Hits Home: Europeanization and Domestic Change”, **European Integration Online Papers**, vol. 4, no. 15 (2000): 5-6.

<sup>48</sup> Tanja A. Börzel, Thomas Risse, *Ibid.*, 2.

<sup>49</sup> Tanja A. Börzel, Thomas Risse, *op. cit.* 2003, 58-59. Tanja A Börzel, Thomas Risse, *Ibid.*. 2000, 1-2. Thomas Risse, Maria Green Cowles, James A. Caporaso, *op. cit.* 2001, 2.

therefore lead to a specific domain where the domestic effects of Europeanization can be traced. According to Börzel and Risse, there are three domains of Europeanization; policies, politics, polity. As policies refer to standards, instruments, problem-solving approaches, policy narratives and discourses; politics cover process of interest formation, interest aggregation, interest representation and public discourses. Polity addresses political institutions, intergovernmental relations, judicial structures, public administration, state traditions, economic institutions, state-society relations and collective identities.<sup>50</sup>

Concerning the domains of Europeanization in order to answer the question of “*what is Europeanized?*” Radaelli distinguishes between macro domestic structures, public policy and cognitive-normative structures. Domestic structures refer to institutions, public administration, intergovernmental relations, legal structure, political parties, pressure groups and societal-cleavage structures, whereas public policy attributes actors, policy problems, style, instruments, resources. Cognitive and normative structures include discourse, norms, values, political legitimacy, identities, state traditions, policy paradigms, frames and narratives.<sup>51</sup>

Nevertheless, Europeanization in these specific domains –with the help of sufficient compatibility and facilitating factors- results in a varying degree in domestic structural change. Börzel and Risse classify three possible outcomes:

*“Absorption:* member states incorporate European policies or ideas into their programs and domestic structures, respectively, but without substantially modifying existing processes, policies, and institutions. The degree of domestic change is low.

*Accommodation:* member states accommodate Europeanization pressures by adapting existing processes, policies, and institutions without changing their essential features and the underlying collective understandings attached to them. The degree of domestic change is modest.

*Transformation:* member states replace existing policies, processes, and institutions by new, substantially different ones, or alter existing ones to the extent that their essential features and/or the underlying collective understandings are fundamentally changed. The degree of domestic change is high.”<sup>52</sup>

Besides, Radaelli adds one more category to this classification and foresees four possible outcomes which are retrenchment, inertia, absorption and transformation.

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<sup>50</sup> Tanja A. Börzel, Thomas Risse, **Ibid.** 2003, 60.

<sup>51</sup> Claudio M. Radaelli, **op.cit.**, 2003, 35.

<sup>52</sup> Tanja A. Börzel, Thomas Risse, **op. cit.** 2003: 69-70.

When the domestic practices are highly contradictory with that of European, it can take a form of resistance to EU-induced changes, thus called as inertia. Absorption is defined to occur in case of non-fundamental changes, though remain at the core. When the fundamental logic of political behaviour changes, it is given the name of transformation, whereas retrenchment refers to ‘less European’ national policy which can be an example of negative Europeanization.<sup>53</sup>

With reference to Schimmelfennig and Sedelmeier<sup>54</sup>, there are still important aspects of the degree of Europeanization: the *likelihood* (degree of change measured as partial or full, low, medium or high), the *direction* (measured as positive or negative) and the *form* of change (being rather as communicative/discursive, formal and/or behavioural).<sup>55</sup> Therefore, as Radaelli covers as well, adaptation to EU has two main aspects: the formal rule and behavioural adaptation. Sedelmeier defines formal rule adoption as “legal transposition of EU rules into national law or the establishment of formal institutions and procedures in line with EU rules” whereas behavioural adoption refers to “application and enforcement of legislation, including the application of EU law by national courts”.<sup>56</sup>

Since the purpose of this study is to understand the ups and downs in the EU’s impact on Turkey’s press freedom debate grounding on the Europeanization literature, I would use the notion of top-down approach as it draws attention to the transformative power of EU, with examining change at the domestic level induced by the mechanism of European integration. In this respect Europeanization should be understood in a wider sense which accounts states in a process of fulfilling Copenhagen Criteria for future EU membership. When the Turkish case is applied in practice through this sense, it is likely to observe increasing adaptational pressures on Turkey’s domestic political structures, depending on the degree of fit or misfit and mediating or hampering factors. However, in order to avoid over-determination of

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<sup>53</sup> Claudio M. Radaelli, *op.cit.*, 2003: 37-38.

<sup>54</sup> Frank Schimmelfennig, Ulrich Sedelmeier, “Introduction: Conceptualization the Europeanization of Central and Eastern Europe”, **the Europeanization of Central and Eastern Europe**, ed. Frank Schimmelfennig, Ulrich Sedelmeier (Ithaca, New York: Cornell University Press, 2005), 1-29.

<sup>55</sup> Dorian Jano, **the Europeanization of Western Balkans: A Fuzzy Set Qualitative Comparative Analysis of the New Potential EU Member States** (Saarbrücken: VDM Verlag Dr. Müller, 2010): 68.

<sup>56</sup> Ulrich Sedelmeier, “Europeanization in New Member and Candidate States”, **Living Reviews in European Governance**, vol. 6, no. 1 (2011): 26.

EU factors and overlook of possible domestic factors, both external and domestic variables will be formulated in the following section.

The three different causal mechanisms of domestic change can be identified that draw on different branches of neo-institutionalist thought: rationalist, sociological/constructivists and historical perspective which will be respectively grouped in this study as Europeanization by conditionality, Europeanization by socialization and persistence instead of Europeanization in order to understand motives behind change or lack of change in Turkey's press freedom records.

## **2.2. Europeanization and Domestic Change: Three Logics of Change in New Institutionalism**

The study of the impact of European political system on domestic structure of Turkey could benefit from fruitful analytical tools of different institutionalist reasoning as institutions “serve to organize the polity and to have an ordering influence on how authority and power is constituted, exercised, legitimated, controlled and redistributed, thus provide codes of appropriate behaviour, effective ties and a belief in a legitimate order”.<sup>57</sup>

Institutionalist thought is categorized into two heading: institution-based and agency-based. The former emphasizes “the role of existing institutional configuration as independent explanatory factors in the analysis of political outcomes and institutional development”.<sup>58</sup> Existing institutional structures are considered to be primary explanatory factors in shaping policy and institutional change. In this sense, adaptation process is incremental and path-dependent, with emphasizing the stability and continuity of institutions. On the other side, the latter attaches more determining explanatory role to human action, rather than institutional factors. Agency-centred approaches “explain policy or institutional development (continuity and change) by reference to the prevailing actor constellation in a given institutional context”.<sup>59</sup> Therefore, institutions operate here as an intervening variable between interactions of

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<sup>57</sup> James G. March, Johan P. Olsen, “Elaborating the New Institutionalism”, **ARENA Working Paper**, vol. 11, (2005): 9.

<sup>58</sup> Christoph Knill, Andrea Lenschow, “Seek and Ye Shall Find! Linking Different Perspectives on Institutional Change”, **Max-Planck-Projektgruppe: Recht der Gemeinschaftsgüter Bonn**, vol. 6 (2000): 6.

<sup>59</sup> Christoph Knill, Andrea Lenschow, **Ibid.**, 7.

actors and corresponding outcomes. However, in the 1990s, the distinction between actor and institution-based approaches is blurred as broader understandings of institutions and conceptions of change were identified. When the dichotomy between agency and structure eroded, “what remains are differences not just in relative weight given to institution or actor centred explanations, but also in how institutions are defined, and how the behaviour in institutions is thought to be motivated”.<sup>60</sup>

Institutional analysis is divided into three perspectives that offer different definition of institution and different accounts of change: Firstly, rational-choice institutionalism emphasizes on rational actors calculating cost-benefits of rule adoption within a given set of institutions, understood as structures of external incentives. Secondly, sociological institutionalism or social constructivism refers to domestic change which is driven through soft mechanism of normative persuasion changing actors’ preferences or beliefs.<sup>61</sup> Lastly, historical institutionalism focuses rather on the influence of domestic legacies of the past that may act as an intermediate variable to obstruct institutional and policy change.<sup>62</sup> The three mechanisms stress different logic behind domestic adaptation process; as rationalist perspective embodies “logic of consequentialism”; sociological approach invokes “logic of appropriateness”, whereas historical perspective points to the “logic of path-dependence”.

Many studies on Europeanization base their theoretical framework on analytical tools provided by institutionalist approaches in assessing the policy and institutional change. Therefore, on the accounts of different variants of institutionalism, it is aimed to elaborate their impact on domestic change and to specify the framework of Europeanization used in this section. Within the framework of this study, I will follow the approach argued by Börzel and Risse as they illustrate well how theoretical assumptions about structure and agency influence the hypothesis derived in the thesis. In that sense, they introduce two pathways leading to domestic change that are theoretically grounded on rationalist and sociological institutionalism.

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<sup>60</sup> Simon Hix, Klaus H. Goetz, “Introduction: European integration and national political systems”, **West European Politics**, vol. 23, no. 4 (2000): 18.

<sup>61</sup> Dorian Jano, **op.cit.**, 54-56.

<sup>62</sup> Dorian Jano, **Ibid.**, 65.

### 2.2.1. Rationalist Perspective

Rational choice institutionalism lays emphasis on rational, goal-oriented actors engaging in intentional and interest-motivated action to maximize their utilities within a given set of institutions. This mechanism is best employed in instrumental rationality by which actors weigh the costs and benefits of their strategic preferences and consider the anticipated behaviour of other actors. Accordingly, Börzel and Risse conceive Europeanization as “an emerging political opportunity structure which offers some actors additional resources to exert influence, while severely constraining the ability of others to pursue their goals”.<sup>63</sup>

In the rationalist institutionalist logic of domestic change, Börzel and Risse focus on how Europeanization creates new opportunities for and constraints on actors in case of considerable misfit, with influencing their ability to pursue their interests through exploiting new opportunities or avoiding constraints. In this view agency is key, and there are few limitations on action capacities. According to Börzel and Risse, two intervening factors pose structural limitations on the capacity of actors:

*“Multiple Veto Points:* The more power is dispersed across the political system, and the more actors have a say in political decision making, the more difficult it is to foster the domestic consensus or 'winning coalition' necessary to introduce changes in response to Europeanization pressures.

*Existing Formal Institutions:* can provide actors with material and ideational resources necessary to exploit European opportunities and to promote domestic adaptation. The European political opportunity structure may offer domestic actors additional resources. But many are unable to exploit them when they lack the necessary action capacity”.<sup>64</sup>

These two factors determine whether the new opportunities and constraints generating from Europeanization in case of considerable misfit translate into an effective redistribution of resources among actors and, thus, whether Europeanization does indeed lead to a differential empowerment of actors as a result of which domestic processes, policies, and institutions change. Börzel and Risse propose various Europeanization mechanisms in line with rationalist institutionalism: changing opportunity structures, implementation of European policies, regulatory competition.<sup>65</sup>

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<sup>63</sup> Tanja A. Börzel, Thomas Risse, **op. cit.** 2003, 63.

<sup>64</sup> Tanja A. Börzel, Thomas Risse, **op. cit.** 2003, 64-65.

<sup>65</sup> Tanja A. Börzel, Thomas Risse, **op.cit.**. 2000, 7.

As a result, the hypothesis, the rationalist perspective has been led, is:

“Europeanization leads to domestic change through a differential empowerment of actors resulting from redistribution of resources at the domestic level.”

### 2.2.2. Constructivist/Sociological Perspective

While rationalist institutionalism renounces the role of socialization, learning and persuasion as a mechanism of Europeanization, constructivism or sociological institutionalism analyses norm-based motives driving governments' compliance attitudes and domestic change which are not fixed and can be subject to change. Unlike the rationalist perspective, actors are expected to approach in line with normative rationality and to behave according to collectively shared understanding of what constitutes appropriate and exemplary.<sup>66</sup> That is why, actors are more eager to fulfil their social expectations through redefining their goals, interests and rationality of their actions, rather than maximizing subjective desires, thus they strive to internalize new norms and identities generating from Europeanization process. Accordingly, Börzel and Risse define Europeanization as “the emergence of new rules, norms, practices and structures of meaning to which member states are exposed and which they have to incorporate into their domestic structures”.<sup>67</sup> They conceptualize two mediating factors increasing the likelihood of change in norms and beliefs to the extent that misfit leads to processes of socialization and learning which lead to the internalization of new norms and the development of new identities.

*“Change Agents or Norm Entrepreneurs:* They use moral arguments and strategic options in order to persuade actors to redefine their interests and identities, engaging them in processes of social learning. Persuasion and arguing are the mechanisms by which these norm entrepreneurs try to induce change, thus it can take the shape of epistemic communities and advocacy networks.

*Political Culture and other Informal Institutions:* facilitating consensus-building and cost sharing also promote domestic change by creating an environment where arguing, learning, persuasion and socialisation are part of the culture of decision making. Informal institutions entail collective understandings of appropriate behaviour that strongly influence the ways in which domestic actors respond to Europeanization pressures.”<sup>68</sup>

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<sup>66</sup> James G. March, Johan P. Olsen, “The Logic of Appropriateness”, **ARENA Working Papers**, vol. 4 (2009): 3.

<sup>67</sup> Tanja A. Börzel, Thomas Risse, **op.cit.** 2003, 66.

<sup>68</sup> Tanja A. Börzel, Thomas Risse, **op.cit.** 2003, 67-68.

This sociological institutionalist logic of domestic change focuses on cognitive and normative tools as Europeanization mechanisms – e.g. policy framing and norm diffusion- and whether new norms and identities are internalized by domestic actors in giving rise to domestic change and therefore lead to new definitions of interests and of collective identities.<sup>69</sup>

As a result, the hypothesis, the sociological/constructivist perspective has been led, is:

“Europeanization leads to domestic change through socialisation and collective learning process resulting in norm internalisation and the development of new identities”

### 2.2.3. Historical Perspective

Although Börzel and Risse’s analysis leaves the historical institutionalism out, it is the most relevant one for this study as it takes historical legacies and social processes as intermediate variables that may obstruct institutional and policy change. Hall and Taylor identify four key features of the historical institutionalism:

“First, historical institutionalists tend to conceptualize the relationship between institutions and individual behaviour in relatively broad terms. Second, they emphasize the asymmetries of power associated with the operation and development of institutions. Third, they tend to have a view of institutional development that emphasizes path dependence and unintended consequences. Fourth, they are especially concerned to integrate institutional analysis with the contribution that other kinds of factors, such as ideas, can make to political outcomes.”<sup>70</sup>

Pierson clarifies the concept of historical institutionalism through explaining two unifying themes within the research orientation:

“it is historical because it recognizes that political development must be understood as a process that unfolds over time. It is also institutionalist because it stresses that many of the contemporary implications of these temporal processes are embedded in institutions –whether these be formal rules, policy structures or norms.”<sup>71</sup>

Historical institutionalism is relatively distinctive in its analytical reference which is historical knowledge, institutional choices and policy preferences made in the past as

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<sup>69</sup> Tanja A. Börzel, Thomas Risse, **op.cit.** 2003, 68.

<sup>70</sup> Peter A. Hall, Rosemary C. R. Taylor, “Political Science and the Three New Institutionalisms”, **Political Studies**, vol. 44, no. 4 (1996): 938.

<sup>71</sup> Paul Pierson, “The Path to European Integration: A Historical Institutional Analysis”, **Comparative Political Studies**, vol. 29, no. 123 (1996): 126.

a condition of change. In essence, it is widely believed that these commitments can persist, or become “locked in” and thereby shape and contain actors over time.<sup>72</sup> Institutions, in this sense, are argued to be resistant to change because of the high transaction costs and institutional thresholds – e.g. supermajority or unanimous agreement - to reforms.<sup>73</sup> That is why it is significant to understand these initial decisions taken in the past to analyze the present-day policy making and magnitude of change.

The concept of path dependence is instrumental in historical institutionalist analysis. According to Levi, this approach asserts that:

“Path dependence has to mean, if it is mean anything, that once a country or region has started down a path, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct easy reversal of the initial choice. Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other—and essential if the chosen branch dies—the branch on which a climber begins is the one she tends to follow.”<sup>74</sup>

The concept of feedback effect also sheds light on the role of history in the course of reforms and policy change as it gives information about whether existing institutions and policies may produce pressure or advantage for institutional and policy change . Historical institutionalist analysis help specify the type of institutions likely to generate positive or negative feedbacks and mechanism of path dependence on Europeanization. Therefore, historical institutionalism and its analytical tools propose that “history matters” in order to understand today’s choices by way of tracing the evolution of institutions.<sup>75</sup> Pollack adds that they are also significant in

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<sup>72</sup> Mark A. Pollack, “The New Institutionalisms and European Integration”, **European Integration Theory**, ed. Antje Wiener, Thomas Diez (Oxford: Oxford University Press, 2004): 139.

<sup>73</sup> Mark A. Pollack, “The New Institutionalism and EU Governance: The Promise and Limits of Institutional Analysis”, **Governance**, vol. 6, no. 4 (1996): 437-38, cited in Mark A. Pollack, “The New Institutionalisms and European Integration”, **European Integration Theory**, ed. Antje Wiener, Thomas Diez (Oxford: Oxford University Press, 2004): 3.

<sup>74</sup> Margaret Levi, “A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis”, **Comparative Politics: Rationality, Culture and Structure**, ed. Mark I. Lichbach, Alan S. Zuckerman (Cambridge: Cambridge University Press, 1997): 28.

<sup>75</sup> Douglass C. North, **Institutions, Institutional Change and Economic Performance** (New York: Cambridge University Press, 1990), cited in Ioannis N. Grigoriadis, **Trials of Europeanization: Turkish Political Culture and the European Union** (New York: Palgrave Macmillan, 2009): 11.

explaining *how and under what conditions* historical events do –or do not- shape contemporary and future political choices and outcomes.<sup>76</sup>

In the potential member states there are considerable variations in outcomes of the EU's impact, and problem of compliance, across controversial issue areas in light of the domestic policy legacies. For instance, path-dependent character of the transformation of civil society, civilization of politics and developments in the field of minority rights and national identity in Turkey showed that how difficult to change direction and how high the costs of reversal in the course of convergence with the Copenhagen Criteria.<sup>77</sup> As Hughes, Sasse and Gordon's approach implies, "domestic political considerations, informed but not determined by historical experiences and legacies, played a more salient role in policy area than a causative effect of EU conditionality."<sup>78</sup>

Falkner and her colleagues offer a thorough analysis of the theoretical literature on policy implementation and compliance, and hypothesize that the effect of domestic opposition in the course of compliance is mediated by a member state's "culture of implementation".<sup>79</sup> They propose four distinct worlds with different modes of treating implementation duties and thus different factors explaining non-compliance patterns: the world of law observance, the world of domestic politics, the world of transposition neglect and the world of dead letters. The compliance culture favouring dutiful performance can explain most cases in the 'world of law observance', while in the 'world of domestic politics' the degree of fit with political preferences plays an important role, and in the 'world of transposition neglect' the decisive factor is administrative non-action –namely, inertia- caused by bureaucratic ineffectiveness, e.g. countervailing bureaucratic interests or malfunctioning routines. Falkner also adds fourth group of countries named 'world of dead letters' regarding especially the enforcement and application stage which faces multitude of problems in transposition processes. Enforcement and application of the domestic transposition laws are typically obstructed by systematic shortcomings in the court systems,

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<sup>76</sup> Mark A. Pollack, *op.cit.*, 2004, 5.

<sup>77</sup> Ioannis N. Grigoriadis, ***Trials of Europeanization: Turkish Political Culture and the European Union***, (New York: Palgrave Macmillan, 2009).

<sup>78</sup> James Hughes, Gwendolyn Sasse, Claire Gordon, ***Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality (One Europe or Several?)***, (New York: Palgrave Macmillan, 2004), cited in Dorian Jano, *op.cit.*, 2010, 65.

<sup>79</sup> Gerda Falkner et.al., ***Complying with Europe: EU Harmonization and Soft Law in the Member States***, (New York: Cambridge University Press, 2005), cited in Dorian Jano, *op.cit.*, 2010, 66.

inspectors and civil society systems of this group of countries.<sup>80</sup> These patterns seem to be rather stable over time since cultural factors are typically slow to change.

All in all, the hypothesis, the historical perspective has been led, is:

“Europeanization will rarely lead to domestic change because of the path dependence of domestic institutions. Culture of compliance of the candidate state, in such manner, plays a mediating role in the process of Europeanization and domestic change to break with the path dependent behaviour.”

### **2.3. Explanatory Variables of Europeanization**

This section analyses the conditions and factors that determine the extent of the EU’s impact on domestic change in Turkey. It is important to conceptualize conditions at both European-level and the domestic-level in order to explain Europeanization process in a solid way. As Wallace argues Europeanization is a two-way process, where although the European dimension is important, there are also wide-ranging factors of domestic dimension where country-driven characteristics – e.g. country-specific institutions, political cultures - remain important in explaining what happens.<sup>81</sup>

Within the framework of this study it is argued that combination of domestic factors with loss of credibility of EU conditionality’s application led to a situation in which its impact on press freedom has been stalled that resulted in a period of stagnation and slow-down of reform process. Therefore, in the next section, an interaction oriented causal mechanism – separated in exogenous and endogenous factors- for the study of Europeanization will be introduced.

#### **2.3.1. Exogenous Factors: EU-level Determinants**

Domestic impact of the European integration is widely used in literature focusing on Europeanization in both candidate and member states, even in the countries beyond

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<sup>80</sup> Gerda Falkner, “Compliance with EU Social Policies in Old and New Member States: Different Worlds, Different Remedies”, **Institute for European Integration Research**, Working Paper 6 (September 2010): 6.

<sup>81</sup> Helen Wallace, “EU Enlargement: a Neglected Subject”, **the State of the European Union 5: Risk, Reforms, Resistance, and Revival**, ed. Maria Green Cowles, Michael Smith (Oxford: Oxford University Press, 2000): 157.

Europe, for instance via European Neighbourhood Policy.<sup>82</sup> However, research addressing candidate Europeanization brought to light that EU already exerts a considerable adaptation pressure in recipient country in the course of accession negotiations, thus the process is much more clear-cut than member state Europeanization.<sup>83</sup> In the case of applicant countries, Europeanization can be framed as a research agenda to understand the gradual compliance with EU accession criteria, in exchange for attractive reward of full membership. The concept of conditionality lies at the heart of this framework in explaining main patterns in candidate country Europeanization and transformative power of EU, with the term evolving into an effective strategy of reinforcement and main feature of EU enlargement policy for all potential member states. Studies contrast the relative effectiveness of conditionality as mainly stressed by the rationalist account with persuasion and norm internalisation that are emphasized by constructivist/sociological perspective in identifying important factors for domestic change and rule adaptation. Therefore, key conditions deriving from rationalist and constructivist perspective will be conceptualized in order to model external factors in Turkey's Europeanization framework explanatory to non-compliance pattern in the field of press freedom.

*Conditions deriving from rational choice institutionalism: Europeanization by conditionality*

The use of conditionality in pre-accession talks is highly affected by the notion of credibility of EU conditionality. In its simplest term, credibility refers to the realistic chance of gaining the EU membership. According to Sedelmeier, credibility has two dimensions. As he details:

“The candidates must be certain that they will receive the promised rewards after meeting the EU's demands. Yet they also must believe that they will only receive the reward if they indeed fully meet the requirements. Thus, credibility depends on a consistent, merit-based application of conditionality by the EU.”<sup>84</sup>

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<sup>82</sup> Frank Schimmelfennig, “Europeanization beyond Europe”, **Living Reviews in European Governance**, vol. 4, no. 3 (2009): 1-22.

<sup>83</sup> Ulrich Sedelmeier, “Europeanization in New Member and Candidate States”, **Living Reviews in European Governance**, vol. 6, no. 1 (2011): 17.

<sup>84</sup> Ulrich Sedelmeier, **Ibid**, 12, quoted in Frank Schimmelfennig, Ulrich Sedelmeier, “Introduction: Conceptualizing the Europeanization of Central and Eastern Europe”, *The Europeanization of Central*

In other words, credibility stems from firstly, “capabilities of and costs for the agency that employs conditionality and secondly, the consistency of the institutions allocation of rewards.”<sup>85</sup>

Conditionality cannot work in an effective manner unless there are credible threats and promises in bargaining process. Effectiveness of the conditionality should be also accompanied by the consistency of EU’s allocation of rewards. Consistent behaviour in here means that the external agency - i.e. the EU - should treat to candidates equally without any discrimination. If the EU asks a country to implement a certain policy, whereas behaves differently in monitoring similar policy’s implementation in another country - when the conditions of the countries are similar - would be characterized by inconsistency. As soon as the EU’s conditionality is perceived to be subjective and rest on other political, strategic or economic considerations, the normative consistency would eventually be diminished and credibility of EU conditionality would be weakened. In this sense, the target state will fail to adopt EU directives. Altogether, the final credibility hypothesis of Schimmelfennig and Sedelmeier comprises the following: “the likelihood of rule adoption increases with the credibility of conditional threats and promises.”<sup>86</sup>

*Conditions deriving from sociological institutionalism: Europeanization by socialization*

The most important factor for domestic change from the constructivist/sociological account regarding external factors of Europeanization is the perceived legitimacy and appropriateness of the EU rules, making domestic actors comply. Legitimacy refers to the quality of the EU rules, the rule-making process, and the process of rule transfer; in particular, rules should be consensually shared and properly implemented among the member states. Although the EU is seen as legitimate to candidate states, there could be problems of legitimacy in some specific areas where candidate states have to adopt the EU acquis as a whole and where sometimes candidate states have to comply with more conditions than member states do.

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and Eastern Europe, ed. Frank Schimmelfennig, Ulrich Sedelmeier, (Cornell University Press, Ithaca; New York, 2005): 1-28.

<sup>85</sup> Frank Schimmelfennig, Ulrich Sedelmeier, **Ibid**, 2005.

<sup>86</sup> Frank Schimmelfennig, Ulrich Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, **Journal of European Public Policy**, vol. 11, no. 4 (2004): 674.

In this sense, Schimmelfennig and Sedelmeier state that:

“the legitimacy of EU rules and, as a result, the likelihood of rule adoption, increase if rules are formal, member states are subject to them as well, the process of rule transfer fulfils basic standards of deliberation, and EU rules are shared by other international organizations.”<sup>87</sup>

A study which rests solely on external variables – EU level conditions- in explaining domestic change would be a limited one as credible conditional EU membership perspective should be also accompanied by favourable domestic conditions. That is why, under the name of endogenous factors, domestic variables will be brought back into research in order to avoid over-determination of EU factors and overlook of possible domestic variables.

### **2.3.2. Endogenous Factors: Domestic-level Determinants**

Many studies addressing domestic impact of the EU has been explained candidate Europeanization through the pressure that EU exerts on the applicant countries during pre-accession negotiations. However, there are cases with differentiated policy change among candidate countries and across different policy sectors where exogenous pressure is not sufficient alone to account for compliance pattern. Domestic structural conditions and actors are likely to have an important mediating effect on the degree of domestic change.

Although all features of the receiving political environment in terms of the country-specific conditions can be formed as domestic variables, these will be grouped in relation with context of the study.

*Conditions deriving from rational choice institutionalism: Europeanization by conditionality*

Regarding the domestic change both on member and candidate states, the veto players have a considerable role on the variations in outcomes of the EU's impact. Tsebelis defined veto player as “individual or collective actors whose agreement is necessary for a change in the status quo.”<sup>88</sup> According to veto player theory, “the difficulty for a significant change of the status quo . . . increases in general with the

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<sup>87</sup> **Ibid**, 676.

<sup>88</sup> George Tsebelis, “Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism”, **British Journal of Political Science**, vol. 25, no. 3 (1995): 301.

number of veto players and with their distances.”<sup>89</sup> Veto players who can block adoption of a policy can be in form of institutions, i.e. president, chamber, military or government, and of parties, i.e. political elites, bureaucrats. In case of actors who strive to protect old normative order and control the apparatus of force (the military, police, intelligence agencies, judiciary etc.) to sustain the order, the degree of compliance would be low, and Europeanization process would slow-down; whereas with the low number of veto players, in Jacoby’s term “low actor density” in a policy area<sup>90</sup>, likelihood of domestic change would be high, and cost of compliance would be low.

However, even if there are low number of veto players, adoption of EU directives can be against the interest of actors and thus costly to follow. In this sense, Schimmelfennig and Sedelmeier offer the notion of *net adoption cost* of EU requirements that needs to be addressed. Accordingly, adoption cost has mainly two source; “first, they may take the form of opportunity costs of forgoing alternative rewards offered by adopting rules other than EU rules; second, they may produce welfare or power costs for private and public actors.”<sup>91</sup> That is why Schimmelfennig and Sedelmeier reformulates Tsebelis’s veto players hypothesis as “the number of veto players with significant net costs of rule adoption.”<sup>92</sup>

*Conditions deriving from sociological institutionalism: Europeanization by socialization*

As constructivist institutionalism emphasises normative rationality in explaining preferences of domestic actors, normative resonance at domestic level, or in other words “cultural match”<sup>93</sup> between EU demands and domestic rules, is highly relevant to clarify domestic impact, or lack of impact, of EU’s influence. In this sense, actors would be more eager to learning and persuasion when the norms and values of EU have some salience with pre-existing or traditional norms, values and practices in the candidate country. Drawing on the goodness of fit hypothesis of Risse, Cowles and

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<sup>89</sup> George Tsebelis, **Veto Players. How Political Institutions Work**, (Princeton: Princeton University Press, 2002), 37.

<sup>90</sup> Wade Jacoby, **the Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe**, (Cambridge: Cambridge University Press, 2004), 9.

<sup>91</sup> Frank Schimmelfennig, Ulrich Sedelmeier, **op.cit.**, 2004, 674.

<sup>92</sup> Frank Schimmelfennig, Ulrich Sedelmeier, **op.cit.**, 2005, 16, quoted in Dorian Jano, **op.cit.**, 2010, 64.

<sup>93</sup> Jeffrey Checkel, “Norms, Institutions, and National Identity in Contemporary Europe”, **International Studies Quarterly**, vol. 43, no.1 (March 1999): 83-114.

Caporaso, it could be said that normative fit between the European and the domestic level would eventually determine the degree of pressure for adaptation generated by Europeanization in candidate state.

*Conditions deriving from historical institutionalism: persistence instead of Europeanization*

As mentioned previously, historical institutionalism provide a different perspective on mediating factors by stressing the importance of domestic policy legacies. It is the logic of path dependence that dominates the likelihood of domestic change, and Europeanization which is unlikely to occur from a historical perspective because of the path-dependent domestic structure.

Key condition that can be derived from the historical research orientation is the candidate's culture of implementation which is raised by Falkner and her colleagues from a research project conducted in the 15 member states. They theorize the importance of domestic culture of implementation as factors mediating the process of Europeanization. Sverdrup identifies 'implementation' as "the transposition of European norms into domestic legislation, as well as to the adherence to and enforcement of such legislation so that it forms part of the political, legal and social environment."<sup>94</sup> He argues that a culture of compliance and compromise, together with transparency and organisation of the administration, is a crucial factor for a country's implementation performance.<sup>95</sup> In this regard, culture of good compliance could be seen as a self-reinforcing social mechanism that facilitates compliance pattern, particularly in world of law observance.<sup>96</sup> However, as our case study would show in next sections, strong tradition of state sovereignty, security-centred concerns and authoritarian tendencies have led to restrictions on individual freedoms and security on behalf of state security in the transposition process and fed into non-compliance culture in the implementation stage which accounts Turkey in the world of transposition neglect or in world of dead letters during a specific time period.

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<sup>94</sup> Ulf Sverdrup, "Compliance and Conflict Management in the European Union: Nordic Exceptionalism", **Scandinavian Political Studies**, vol. 27, no. 1 (2004): 24.

<sup>95</sup> Ulf Sverdrup, **Ibid**, cited in Gerda Falkner, Miriam Hartlaap, Oliver Treib, "Worlds of compliance: Why leading approaches to European Union implementation are only 'sometimes-true theories'", **European Journal of Political Research**, vol. 46 (2007): 414.

<sup>96</sup> Gerda Falkner, Miriam Hartlaap, Oliver Treib, **Ibid.**, 406.

All in all, it should be noted that different conditions derived from different research orientations are by no means mutually exclusive and they should not be regarded as the only mechanism explaining implementation and compliance or facilitating domestic change. They often work simultaneously and dominate different phases of the process of adaptational change.

#### **2.4. Interim Review**

This section is formed to examine theoretical grounds of Europeanization and apply it into the pattern of domestic change in the field of press freedom in Turkey. The process of change centred upon basic scope conditions as goodness of fit or misfit, formal and behavioural adaptation in order to find out likelihood, direction and form of change along with the degree of adaptational pressure exerted by the EU. Moreover, prospective mediating and/or hampering factors are formed through the perspectives in Europeanization both at external and internal level. Thereby, whether the EU has leverage on Turkey's press freedom policies together with the degrees of influence of Europeanization and internal dynamics will be better examined in following chapters through the variables constructed in here.

### **3. FREEDOM OF PRESS AT THE EU AND TURKEY LEVEL**

This chapter aimed to examine the issue of press freedom both at EU and Turkey level, with focusing primarily on legal framework. Thereby, it is basically subdivided into two parts, first, to investigate the scope conditions that make the EU a reference point on the matter of press freedom, second, to make an in-depth analysis of historical sensitivities and legacies of the past together with legislative framework in the field of press freedom in Turkey.

#### **3.1. EU as an External Leverage in Human Rights and Democracy Promotion: Conditionality on Freedom of Press at the EU Level**

It is intended in this part to identify the framework regarding human rights and democracy promotion, in the field of press freedom, which is institutionalized at the EU level and the democratic conditionality imposed on the candidate countries in the course of the accession process. Drawing on this, the part consists of three main sections. Under the first heading, the EU and its role on democracy promotion in candidate countries will be analyzed. As the success of external democracy promotion directly relates to the EU's membership conditionality prospect, the second part will examine the use of democratic conditionality by the EU in identifying the benchmarks and requirements concerning the democracy promotion and press freedom. In the last part, legal base of the press freedom consolidated at the European level will be introduced, with a special focus on ever-evolving nature of press freedom in terms of the definition and content in the EU policy papers; also with an emphasis on some cases where the area is not free of flagrant violations by those very same EU member states.

##### **3.1.1. EU's Human Rights and Democracy Promotion in Enlargement Process**

EU's role in stimulating progress towards political democratization is crucial as the external borders of the EU expanded and European integration deepened, together

with foreign political changes, have led the EU to make an increasing emphasis on human rights and democracy in its enlargement strategy<sup>97</sup>. Promotion of human rights and democracy even exceeded the borders of the EU and regarded as one of the major objective of common foreign and security policy (CFSP) in the interest of increasing security especially in the post-9/11 context<sup>98</sup>. Likewise, the European Commission agreed that “human rights and democracy are universal values that should be vigorously promoted around the world” and thus three main instruments are identified to promote the democratisation process in partner countries which are political dialogue, mainstreaming democratic values in all EC development instruments and financial and technical assistance programmes<sup>99</sup>. In order to integrate the promotion of human rights and democracy into its external policies, EU also launched the European Instrument for Democracy and Human Rights (EIDHR) in 2006, with aiming to support civil society and intergovernmental organizations defending democracy.

Legal framework of the EU’s role in democratization is set out in several treaties<sup>100</sup>. As Article 2 of the Treaty on European Union (TEU) recognizes “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. In the same vein, Treaty of Amsterdam identified the provision embodied in TEU and set the objective of CFSP as “to develop and consolidate democracy and rule of law and respect for human rights and fundamental freedoms”. Under the section of economic, financial and technical cooperation with third countries, Treaty of Nice agreed the same objective and specified the community policy as “to contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms within its spheres of competence, economic, financial and technical cooperation measures”. In line with the Union’s external action on the international scene, The Treaty of Lisbon also emphasized “democracy,

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<sup>97</sup> Mehmet Bardakçı, “Europeanization and Change in Domestic Politics: Impact and Mediating Factors of the Copenhagen Political Criteria in Turkish Democracy: 1999-2005” (PhD Thesis, University of Duisburg-Essen, 2007), 110.

<sup>98</sup> Peter Simons, “The State of the Art in the EU Democracy Promotion Literature”, **Journal of Contemporary European Research**, vol. 7, no. 1 (2011): 132.

<sup>99</sup> “Development and Cooperation- Europe Aid: Human rights and democracy”, European Commission, [http://ec.europa.eu/europeaid/what/human-rights/index\\_en.htm](http://ec.europa.eu/europeaid/what/human-rights/index_en.htm) [26.03.2014]

<sup>100</sup> In order to access EU law and see the treaties mentioned here: <http://eur-lex.europa.eu/homepage.html>

the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”.

EU stipulates the adoption of above-mentioned democratic rules and practices in target countries by identifying certain benchmarks and requirements. In so doing, democratic conditionality is set out as the main strategy used to induce candidate states to comply with the EU’s democratic principles<sup>101</sup>. By contrast, EU has also been criticized because of not being equally enthusiastic to all candidate countries and ignoring domestic circumstances<sup>102</sup>. As Börzel and Risse agree, “one size fits all” model for the promotion of human rights, democracy and rule of law is seen insensitive for cultural and socio-economic differences and diversity in the local context<sup>103</sup>. To put it differently, Schimmelfennig and Scholtz also concerned with the two major design problems of democracy promotion which are overestimation of the relevance of EU incentives in the democratization process along with neglect of socioeconomic developments as an additional or alternative causes, and also limited generality or uncertainty as to whether the findings are also applicable to non-candidate countries<sup>104</sup>.

In the next section, EU’s use of conditionality in human rights and democracy promotion together with some criticisms in line with the above-mentioned assumptions will be introduced in order to make sense about the question of press freedom in the following section which regarded as being constitutive of the progress of democratic ideas by the European Parliament<sup>105</sup>.

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<sup>101</sup> Frank Schimmelfennig, Stefan Engert, Heiko Knobel, “Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey”, **Journal of Common Market Studies**, vol. 41 no. 3 (2003): 495.

<sup>102</sup> Işık Gürleyen, “EU Political Conditionality as a Fortifying Factor for Turkish Democracy”, **the Second- Pan-European Conference on EU Politics: Implications of a Wider Europe: Politics, Institutions and Diversity, 24-26 June 2004** (Bologna: the ECPR Standing Group on the European Union, 2004): 9.

<sup>103</sup> Tanja A. Börzel, Thomas Risse, “One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law”, **Centre for Development, Democracy, and the Rule of Law, Workshop on Democracy Promotion, 4-5 October 2004** (U.S.: Stanford University, 2004): 30.

<sup>104</sup> Frank Schimmelfennig, Hanno Scholtz, “EU Democracy Promotion in the European Neighborhood: Political Conditionality, Economic Development and Transnational Exchange”, **European Union Politics**, vol. 9 no. 2 (2008): 189.

<sup>105</sup> “Standard setting for media freedom across the EU”, European Parliament: Committee on Civil Liberties, Justice and Home Affairs (2013): 5, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0117&language=EN> [23.03.2014].

### 3.1.1.1. EU Use of Democratic Conditionality

Although the provisions for democratic standards and the respect for human rights and rule of law were highlighted in numerous EU treaties, democratic conditionality, and with it democracy promotion, was not founded in EU's enlargement strategy until mid-1990s. The conditionality appeared to evolve in light of lessons learned after the accession of Greece, Portugal and Spain in the late 1970s and the beginning of 1980s<sup>106</sup>. The changing external dynamics generated by the dissolution of Soviet Union and the collapse of Communist regimes across Central and Eastern European countries (CEE) had various consequences for the democracy promotion. In this respect, the democracy promotion was abandoned its anti-Communist role and became superior to security concerns based on military threats<sup>107</sup>. In this period, EU developed its extensive model of democracy promotion with the help of the mechanism of conditionality in order to maintain fragile course of democratization in the region. Nevertheless, in June 1993 the European Council formally defined certain political criteria for the candidate countries during the accession processes, particularly for the potential member states in CEE countries, known as the Copenhagen Criteria:

*“Political criteria:* stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

*Economic criteria:* existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;

*Acceptance of the Community acquis:* ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union”<sup>108</sup>.

As the Copenhagen criteria require the candidates to meet certain political, economic and acquis standards in order to become full member of the EU, along with the “Madrid criterion of effective implementation of adopted norms through appropriate administrative and judicial structure as well as the Helsinki criteria of good neighbourliness and higher standards for nuclear safety”, membership conditionality, in general, brought about a transformation of domestic politics and reshaped political

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<sup>106</sup> Geoffrey Pridham, **Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe**, (New York: Palgrave Macmillan, 2005), 33.

<sup>107</sup> Geoffrey Pridham, *Ibid.*, 36.

<sup>108</sup> “Accession Criteria”, European Commission, [http://ec.europa.eu/enlargement/policy/glossary/terms/accession-criteria\\_en.htm](http://ec.europa.eu/enlargement/policy/glossary/terms/accession-criteria_en.htm) [28.03.2014].

structure in the target countries<sup>109</sup>. According to Pridham, EU's democratic conditionality, since then, concentrated less on institutional matters as part of the formal criteria to more on the areas of substantive democracy which is more concerned with qualitative and non-elitist criteria<sup>110</sup>. Likewise Kubicek states that the EU has put more emphasis on civil society, development of political parties, protection of minorities, free media and social pluralism while EU was moving beyond promulgation of new rules and more towards sustained, meaningful democratic practices<sup>111</sup>.

However, the impact of democratic conditionality is subject to debate since there are differences with regard to the credible membership perspective, adoption cost of incumbent governments and legitimacy of EU rules. As Grabbe specifies, complexity of EU democratic conditionality contains certain inconsistencies in the EU's advice, questions of double standards and readiness for membership, general and vague conditions and unequal nature of relationship<sup>112</sup>. Therefore she believes that "the conditions were designed to minimize the risk of new entrants becoming politically unstable and economically burdensome to the existing Union"<sup>113</sup>. Likewise, Jung precisely identifies conditionality as a "part and parcel of political game conditioned by the changing political environments", rather than a technical affair, considering the fact that there is no objective measurement of the successful implementation of reforms<sup>114</sup>. Consequently, as in the Turkish case, the lack of a firm commitment of the EU to full membership has led the democratic conditionality to be perceived as political and discriminative, rather than technical and objective, and raised additional non-Copenhagen criteria questions, i.e. the absorption capacity of the EU, geographic arguments, security and geopolitical views, the identity factor relating to culture and religion, thereby it retards Turkey's democratization process.

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<sup>109</sup> Sinem Açıkmeşe Akgül, "Cycles of Europeanization in Turkey: The Domestic Impact of EU Political Conditionality", **UNISCI Discussion Papers**, no. 23 (May 2010): 135-136.

<sup>110</sup> Geoffrey Pridham, *op.cit.*, 42.

<sup>111</sup> Paul J. Kubicek, "International Norms, the European Union, and Democratization: Tentative Theory and Evidence", **the European Union and Democratization**, ed. Paul J. Kubicek (London: Routledge, 2003): 21.

<sup>112</sup> Heather Grabbe, "European Union Conditionality and the "Acquis Communautaire", **International Political Science Review**, vol. 23 no. 3 (2002): 249-268.

<sup>113</sup> Heather Grabbe, *Ibid.*, 251.

<sup>114</sup> Dietrich Jung, "A Northern View", **Conditionality, Impact and Prejudice in EU- Turkey Relations**, ed. Nathalie Tocci (Roma: IAI- TEPAV Report, 2007): 71.

### 3.1.2. Press Freedom in the EU: the Lifblood of Democracy<sup>115</sup>

On the European level, press freedom or in wider sense, free and pluralistic media are recognized as pillars of the preservation and good functioning of the democracy that have to be respected and protected for an open and free society. As the Commission agrees that media freedom is directly related to the fundamental human rights of freedom of conscience and of expression and to the evolution of democracy, control over the flow of information through applying censorship on the press, would lead to concentration of power, thus totalitarian and authoritarian form of governance. Given the significant role media plays in substantive democracy – i.e. in creating transparency, having the ability to challenge those in power and helping to make enlightened judgements and informed political choices – European Union is believed to be based on the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law which are introduced in the Article 2 and 7 of the Treaty on European Union (TEU)<sup>116</sup>. The EU's commitment to respect freedom and pluralism of the media, as well as the right to information and freedom of expression is basically enshrined in Article 11 of the Charter of Fundamental Rights<sup>117</sup>:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected”.<sup>118</sup>

Therefore press freedom is identified as an absence of state intervention in media activities in the same manner that Article 11 reflects a general non-interference approach<sup>119</sup>. The article is also in line with the provision of Article 10 of

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<sup>115</sup> Hillel C. Neuer, statement delivered in the United Nations Sub-commission on the Promotion and Protection of Human Rights (11 August 2004), <http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1313923&ct=1748035> [29.03.2014].

<sup>116</sup> European Commission, High Level Group on Media Freedom and Pluralism, **A Free and Pluralistic Media to Sustain European Democracy** (Brussels, January 2013), 17. [http://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/hlg/hlg\\_final\\_report.pdf](http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf) [29.03.2014].

<sup>117</sup> “Media Freedom and Pluralism”, Digital Agenda for Europe: A Europe 2020 Initiative, European Commission, <https://ec.europa.eu/digital-agenda/en/media-freedom-and-pluralism> [23.03.2014].

<sup>118</sup> Charter of Fundamental Rights of the European Union, December 2000, Article 11.

<sup>119</sup> Beata Klimkiewicz, “Media Pluralism: European Regulatory Policies and the Case of Central Europe”, **EUI Working Paper**, vol. 19 (2005). Cited in the Centre for Media Pluralism and Media Freedom, European Union Competencies in respect of Media Pluralism and Media Freedom, (Fiesole, January 2013), 99.

the European Convention for the Protection of Human Rights and Fundamental Freedoms, which in total forms part of the Community acquis as a general principle of the EU order:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.<sup>120</sup>

To complement these commitments, the Lisbon Treaty in 2009 has also made EU Charter of Fundamental Rights legally binding. In doing so, EU institutions and member states are obliged to act in compliance with the rights and principles of the Charter and EU has gained an important tool to handle the breaches of fundamental rights. Having regard to the Charter of Fundamental Rights and European Convention for the Protection of Human Rights and Fundamental Freedoms as well as reports in media published by several non-governmental organizations and studies on media-related issues, European Parliament also acknowledges the role of media as a fundamental public watchdog in democracy and states that:

“Freedom of the media is a cornerstone of the values enshrined in the Treaties, among them democracy, pluralism, and respect for the rights of minorities; the history thereof, under the name of ‘freedom of the press’, has been constitutive of the progress of democratic ideas and the development of the European ideal in history”<sup>121</sup>.

Based on these steps taken in regard to media freedom, on May 25, 2009, 48 editors-in-chief and journalists from 19 countries signed the European Charter on Freedom of the Press and formulated ten principles for the freedom of the press from

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<sup>120</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 and No. 14 Rome, 4.XI.1950. <http://conventions.coe.int/treaty/en/treaties/html/005.htm> [23.03.2014].

<sup>121</sup> European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Standard setting for media freedom across the EU, (Brussels: 23 March 2013), 5. <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0117&language=EN> [23.03.2014].

government interference<sup>122</sup>. The Charter stresses on independent journalism free of persecution, repression and economic sanctions, protection of journalistic sources and judicial protection from harassment and physical attack, with an overall goal to make its adoption a condition in EU accession negotiations.

Most recently, by working together with Council of Europe, OSCE and OECD, European Commission resolved on prioritising freedom of expression and media in the EU accession process through the establishment of the Instrument for Pre-accession Assistance II (IPA) for the period between 2014 and 2020. To support work on the challenges regarding regulatory agencies, violence and intimidation against journalists, defamation and economic pressure on media, the Commission decided upon to:

- “- promote freedom of expression and media and stress its importance for EU membership through the regular political dialogues with the enlargement countries.
- ensure freedom of expression and media is consistently addressed as a priority through chapter 23 judiciary and fundamental rights and chapter 10 information society and media.
- grant an award for excellence in investigative journalism starting in 2014”<sup>123</sup>.

To address the implementation side of the EU’s role in promoting press freedom, and its corollary freedom of expression, Reporters Without Borders (RWB) index in 2014 appears to be supportive that the given juridical base is being applied as the top 50 countries include 31 European ones<sup>124</sup>. The index claims that the northern Europe seems to be the model of respect for media freedom being based on solid constitutional and legal foundations and real culture of individual freedoms. As the EU will accede to the European Convention on Human Rights (ECHR) which is an organ of the Council of Europe and provides enforcement machinery for the protection of fundamental civil and political rights, it will constitute an important step in the development of human rights in Europe as an additional law enforcement

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<sup>122</sup> European Charter on Freedom of the Press, 25 May 2009. <http://www.pressfreedom.eu/en/index.php> [25.03.2014].

<sup>123</sup> European Commission, Enlargement Strategy and Main Challenges 2013-2014 (Brussels: 16 October 2013), 10, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/strategy\\_paper\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf) [06.04.2014].

<sup>124</sup> “World Press Freedom Index 2014”, Reporters Without Borders, <https://rsf.org/index2014/en-index2014.php> [31.03.2014].

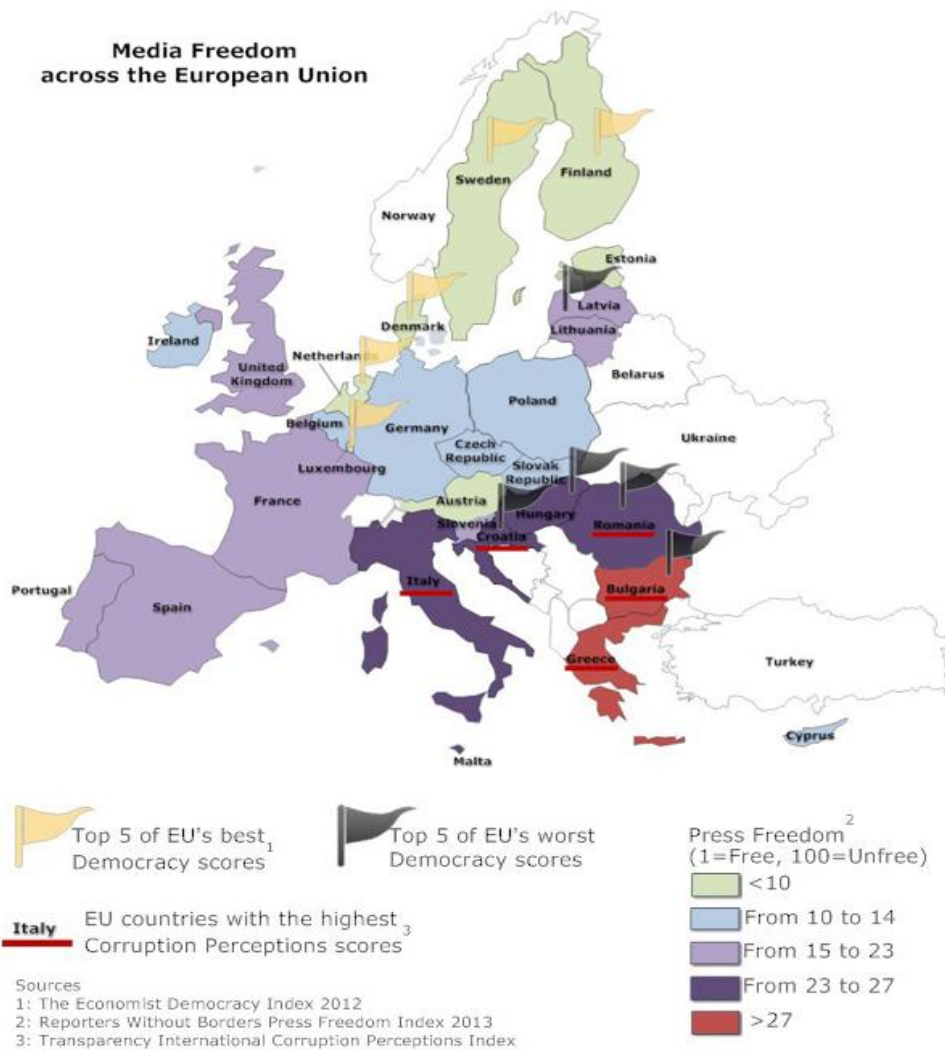
structure to Court of Justice of the European Union (CJEU)<sup>125</sup>. Considering these commitments and comprehensive framework for defending freedom of expression and of press, it can be said that the EU upholds rules and practices across its members as well as outside the borders through exploring ways to enhance its role in the field of media freedom. However, this legal base is not free of shortcomings as well. The Index on Censorship, as an international organization that promotes and defends the right to freedom of expression, issued a report about freedom of expression within the EU and asserts that the way the common European values of respect for human dignity, freedom, democracy, equality, rule of law, respect for human rights are put into practice vary considerably while Finland, Netherlands, Denmark, Sweden are mostly regarded best places for freedom of expression; Italy, Hungary, Greece and Romania lag behind new and emerging global democracies<sup>126</sup>.

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<sup>125</sup> “Accession of the European Union”, European Convention on Human Rights, <http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention> [01.04.2014].

<sup>126</sup> Index on Censorship, **Time to Step Up: The EU and Freedom of Expression** (London, 2013), 4-6.

**Figure 1: Media Freedom across the European Union**



Index on Censorship, **Time to Step Up: The EU and Freedom of Expression** (London, 2013), 7.

There are number of challenges regarding freedom of press and independent media system in Europe owing to economic constraints, namely increasing financial dependency on mass markets and growing monopolisation of media ownership. Other factors can also be observed in different realms such as security policies i.e. increasing state control due to anti-terrorism efforts, new digital technologies which poses both opportunities and new challenges such as in the area of privacy rights as well as historic, cultural and social conditions with regard to EU enlargement i.e. small markets and monopolies, traditionally strong political control of the media<sup>127</sup>.

<sup>127</sup> Andrea Czepek, Melanie Hellwig, Eva Novak, "Introduction: Structural Inhibition of Media Freedom and Plurality Across Europe", **Press Freedom and Pluralism in Europe: Concepts and**

While it is widely accepted that free press is crucial for the preservation of democracy on the European level, the ideas of what exactly it should comprise and be implemented vary remarkably. As Czepek, Hellwig and Novak, who discuss a European approach to press freedom and include case studies of media systems from wide range of European countries, claim that on the one hand, press freedom is implemented in legal frameworks by different European institutions such as European Commission, European Parliament, Council of the European Union and Council of Europe which adopt regulatory policies and set different priorities, namely economic liberalism or cultural diversity as a normative goal. On the other hand, EU member states have developed different media regulations which lead to significant variations in the form and level of the regulations based on different conditions in political framework, historical developments, social and cultural influences, economic structures and legal provisions<sup>128</sup>. For instance, there are pan-European developments with regard to conditions for media freedom and plurality such as the policy framework for information and communication technology (ICT) – the i2010 initiative- which brings together the EU’s media policies through pursuing three main priorities: regulating the internal market for the information society and media services, stimulating the information society by strengthening investment in innovation and research in ICT, and exploiting the benefits of ICT through new technological developments and possibilities<sup>129</sup>. However, there are also country-specific approaches of media regulation which varies from models of self-regulation to strict statutory regulations. In many European countries, the media legislation allows excessive state intervention in the workings of the media that are weakening European press freedom model. For instance, Italy saw numerous cases of intimidation and outright threats of violence to journalists; while journalists in Spain and Portugal who covered demonstrations based on economic turmoil raised frequent reports of mistreatment at the hands of the police, the UK agreed to set up a new royal charter creating a watchdog to oversee a press regulator which is criticized as

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**Conditions**, ed. Andrea Czepek, Melanie Hellwig, Eva Novak (London: Intellect Publishers, 2009): 9-10.

<sup>128</sup> Andrea Czepek, Melanie Hellwig, Eva Novak, *Ibid.*, 10-11.

<sup>129</sup> “Information society introduced”, European Commission, Eurostat, [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Information\\_society\\_introduced](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Information_society_introduced) [05.08.2014].

being a state-sponsored regulation<sup>130</sup>. In addition, France, like several countries where RWB pointed out problems regarding anti-press proceedings, met violations of the protection of journalists' sources, the continuing concentration of media ownership, displays of contempt and impatience on the part of government officials towards journalists and their work, and judicial summonses<sup>131</sup>.

Within this framework it is observed that the scope of press freedom and the role of journalists are not clearly defined concepts at the European level and are not precisely mentioned in the Copenhagen criteria, thus EU does not have an explicit competency to tackle the field of media freedom<sup>132</sup>. While explicitly guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the media freedom was largely considered by the EU "to be an important element of the human rights and democracy conditionality" though without determining as an independent category for evaluation and without an explicit mechanism to ensure its implementation in the existing member states<sup>133</sup>.

As the candidate states must comply with Copenhagen political criteria, which include paying full respect to human rights and fundamental freedoms, the Union has to control how the European values and media-specific legal framework are equally applied in practice among its member states in order to be legitimate in accession negotiations of candidate countries. Otherwise, the problem of clear and credible consensus deficit could lead to legal uncertainty that would limit the domestic impact of EU. Consequently, a common European regulatory model would be eventually required in order to foster media freedom and pluralism in a more efficient way and to make the EU an influential democracy promoter and human rights defender in the external arena.

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<sup>130</sup> Steven M.Ellis, "Europe: Journalists Face Fresh Challenges in Russia, other ex-Soviet States", International Press Institute, **World Press Freedom Review 2012-2013** (Vienna, 2013), 17-21. <http://ipi.freemedia.at/publications/wpfr.html> [02.04.2014].

<sup>131</sup> Jean-François Julliard, "Press Freedom Crisis in Europe", **European Magazine Media Association** (2012-2013): 51.

<sup>132</sup> Andrea Czepek, Melanie Hellwig, Eva Novak, **op.cit.**, 12.

<sup>133</sup> Alison Harcourt, "The Regulation of Media Markets in Selected EU Accession States in Central and Eastern Europe", **European Law Journal**, vol. 9 no. 3 (July 2003): 324.

### 3.1.3. Membership Conditionality in the Field of Press Freedom in the Accession Process of Turkey

On the account of the fact that press freedom is considered to be crucial element in the integration process of the EU and essential for well-functioning democratic systems, it is set out as an qualifying criterion for Turkey's accession to the EU under the Copenhagen criteria. Apart from that, although the press freedom is not particularly mentioned by the Negotiating Framework of 2005, it is broadly stated that:<sup>134</sup>

“The Union expects Turkey to sustain the process of reform and to work towards further improvement in the respect of the principles of liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, including relevant European case law; to consolidate and broaden legislation and implementation measures specifically in relation to [...] provisions relating to freedom of expression [...]”.

Accession Partnership Document in 2003, 2006 and 2008 also set out short term and long term priorities for the reform process and pre-accession strategy that Turkey is expected to accomplish on the respect by its commitments towards effectively satisfying the Copenhagen criteria. As pointed out under the civil and political rights section, these priorities concerning the freedom of expression have to be fulfilled in both legislation and implementation stage. In this context, Council of the European Union officially states that:

“-In view of ensuring full respect of freedom of expression, revise and implement legislation on freedom of expression, including freedom of the press, in line with the European Convention on Human Rights and with the case law of the European Court of Human Rights,  
-remedy the situation of those persons prosecuted or sentenced for non-violent expression of opinion”<sup>135</sup>.

The Commission predominantly expresses the need for change in the Turkish legal system to strengthen freedom of expression, and of the media and stipulates judicial practice that systematically reflects European standards through establishing ECHR-compatible legal framework<sup>136</sup>. In more detail, the Commission identifies some benchmarks and agrees some issues that need to be addressed in the accession

<sup>134</sup> In order to access main documents on the accession process and see the reports, papers, resolutions mentioned here: <http://www.abgs.gov.tr/index.php?p=123&l=2> [06.04.2014].

<sup>135</sup> The Council of the European Union, **Accession Partnership Document for Turkey** (Brussels, 2008), 8.

<sup>136</sup> Enlargement Strategy and Main Challenges 2013-2014, **Ibid.**, 22.

process at all levels such as implementation of Article 10 of ECHR on media freedom, political non-interference through legal system, strengthening legal framework, functioning media self-regulation, transparency of media ownership, independence of media and media market regulations, and implementation of labour laws at media outlets, together with enhancing cooperation and consultation with national and regional media organizations, civil society organizations and also with government, journalists and their associations<sup>137</sup>.

The Commission acknowledges that the long-lasting political reforms with the help of strong political will and administrative capacity are required to implement the Chapter 23 on judiciary and fundamental rights and Chapter 24 on the justice, freedom and security in the EU acquis<sup>138</sup>. In this way, political reforms and progress in meeting the benchmarks are essential as they would determine the overall pace of accession negotiations in the future.

### **3.2. Turkish Case: State Policy, Legal Framework, Domestic Factors**

It is aimed in this section to identify status quo concerning freedom of press in Turkey. Firstly, brief summary of historical development on the struggle for press freedom in Turkey will be introduced in order to make sense the historical legacies in the next chapters. In the second part, the current state of press freedom and media landscape will be presented referring to the legal regulatory framework. As a result main obstacles in free press will be classified as political and legal pressures namely, national security concerns and judicial system.

#### **3.2.1. Historical Context**

Freedom of press in Turkey has been widely discussed among the country's civil society and international partners in recent years. To understand the state of play and main concerns regarding press freedom, it is necessary to provide historical context of press freedom in modern Turkey.

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<sup>137</sup> "Speak up! 2 conference on freedom of expression and media", European Commission (June 2013), [http://ec.europa.eu/enlargement/policy/policy-highlights/media-freedom/index\\_en.htm](http://ec.europa.eu/enlargement/policy/policy-highlights/media-freedom/index_en.htm) [07.04.2014].

<sup>138</sup> Enlargement Strategy and Main Challenges 2013-2014, *Ibid.*, 22.

### 3.2.1.1. One Party Rule 1923-50

The struggle for free press is a long-standing subject which is grounded on both troubles and transformations since the Ottoman Empire carried out reforms in the nineteenth century including the declaration of Tanzimat reforms<sup>139</sup>. Repressive measures and strict censorship had been taken under the martial law at the time of war, but the victory of Independence War opened up a new period in the sense that censorship was removed and the press was liberated to a large extent. For instance, Article 77 of the Constitution in 1924 which is promulgated six months after the proclamation of the Turkish Republic guaranteed the freedom of press and acknowledged that “the press is free within the limits of law and would not be subject to any prior inspection or control”<sup>140</sup>. However, the Ankara government continued to take restrictive measures against critical reports and opposition such as the journalists opposed to the government were tried in Independence Tribunal and accused of being ‘traitor’<sup>141</sup>. Moreover, following the rebellion in the south east Turkey, launched by the Sheikh Said, the government declared martial law on 4 March 1925, censored the press through banning newspapers and trying leading journalists in the name of inciting the rebellion and silenced the opposition<sup>142</sup>. All the activity tended to disrupt the social order, peace and security of the state were forbidden and the suspects were tried before the Independence Tribunals according to the Law on the Maintenance of the Order (Takrir-i Sükun Kanunu). As a result of these trials, many journalists were exiled within the country until they returned to Istanbul due to an amnesty. As Sabiha Sertel, the first professional female journalist, stated in her memoirs, nobody talked about the progress of the country or the development of the Turkish Revolution, thus dominance of single party rule continued to increase its influence in the beginning of 1930s<sup>143</sup>.

In relation with the freedom of press, the Law for Protecting Minors from Harmful Publications (Küçükleri Muzır Neşriyattan Koruma Kanunu) was also adopted – and

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<sup>139</sup> Dilruba Çatalbaş, “Freedom of Press and Broadcasting”, **Human Rights in Turkey**, ed. Zehra F. Kabasakal Arat (Philadelphia: University of Pennsylvania Press, 2007), 21.

<sup>140</sup> Yaşar Salihpaşaoğlu, “Türkiye’de Basın Özgürlüğü” (PhD Thesis, Ankara University Institute of Social Sciences, 2007), 148.

<sup>141</sup> “Gazetecinin Mahkemeyle İlk İmtihani”, *Radikal*, 19 August 2012.

<sup>142</sup> Nurettin Güz, **Türkiye’de Basın İktidar İlişkileri 1920 - 1927**, (Ankara: Turhan Publishing, 1991), 174.

<sup>143</sup> Sabiha Sertel, **Roman Gibi**, (Istanbul: Belge Publishing, 1987), 122, cited in Yavuz Güçtürk, A Comparative Study of the Press Laws of 1909 and 1931, (Master Thesis, Middle East Technical University Graduate School of Social Sciences, 2005), 72.

still in force - in same period which has been extensively used against the press, book publishers, writers and magazines that were accused of damaging the integrity and morals of minors<sup>144</sup>. Additionally, another important media-related development in this period was the transformation Anatolian News Agency which was founded on 6 April 1920. In 1925, the Agency was transformed from a state agency to an incorporated company and regarded as autonomous structure.

In 1930s, the dissent press started to raise its voice and was welcomed on the political grounds with the establishment of Free Republicans Party (Serbest Cumhuriyet Fırkası). The dissent press, on the one hand, was criticizing the government's actions heavily, on the other hand was facing harsh criticisms, even defamations from the pro-governmental media<sup>145</sup>. The nation-wide fierce dispute divided the Turkish press into two hostile camps and forced the founder of the party to dissolve it. However, the harsh conflict between the opposition and pro-governmental press escalated to an extent that the new Press Law in 1931 was prepared to suppress and control the opposition press and gave power to the Council of Ministers to ban publications and close publishing houses which contradicts "the prevalent politics / policies of the country" as it is given in the Article 50<sup>146</sup>. The Law later subjected to six amendments until 1940<sup>147</sup>. The most extensive one was in 1938 that required prior permission and security payment in order to publish a newspaper and also compelled the publishers not to have a "bad reputation" ("suişöhret asabında bulunmamak"), though it appeared to be highly subjective and amorphous in nature<sup>148</sup>. Two years later, during Second World War, the state control over Anatolian Agency was reinforced by the newly-established public body – Directorate General of Press and Information - in order to prevent newspapers from influencing public opinion in support of war. The martial law from 1940 to 1947 deteriorated the press freedom. For instance, the amendments in 1940 added a paragraph which states that "a person who publish papers injuring national values or with the given purpose, misguiding the national history, will be punished by law", thus it is forbidden to

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<sup>144</sup> Helsinki Watch, **Paying the Price: Freedom of Expression in Turkey**, (New York, 1989), 16.

<sup>145</sup> Yaşar Salihpaşaoğlu, **op.cit.**, 150.

<sup>146</sup> Dilruba Çatalbaş, **op.cit.**, 23.

<sup>147</sup> The first one was made on 14 May 1932 and the others in 1933, 1934, 1938 and 1940 respectively.

<sup>148</sup> Topuz, Hilmi, **100 Soruda Türk Basın Tarihi**, (Istanbul: Gerçek Yayınevi, 1996), 95, cited in Dilruba Çatalbaş, *Ibid.*, 23.

interpret history outside of “official view”<sup>149</sup>. In 1946, the annulment of the Press Association Law increased the concerns regarding the censorship and restrictive measures against the press, thus journalists established the Journalists’ Association on 10 June 1946 with an aim to preserve profession of journalism, the traditions of profession, principles of ethics and support the journalists both materially and morally; to ensure the right to information, freedom of expression and communication<sup>150</sup>.

### **3.2.1.2. Multiparty System 1950-80**

After the long-lasting one-party rule and martial law during World War II, the public’s desire for democracy and freedom had been burgeoning. Therefore Democrat Party in 1950s was highly welcomed promising greater freedom in economic, cultural and social spheres as well as pluralist press. In this direction, Press Law in 1950 was subject to comprehensive changes. The authority to close journals had taken from the cabinet council (İcra Vekilleri Heyeti) and given to the courts. Furthermore, the requirement of licensing, guarantee letter and basic education to publish a newspaper was removed<sup>151</sup>. After the period full of restrictive measures and strict censorship under one-party rule, the DP government was highly supported by the media organs and nevertheless, a new Press Law was enacted on 15 July 1950 with an article of “the press is free” which recognized freedom of press as a fundamental principle. The law also allowed the publication of newspaper regardless of prior approval from the state authorities and even adopted provisions that recognized and protected the labour rights of professional journalists<sup>152</sup>.

However, the golden era of press freedom did not last very long as the government became intolerant of criticisms like its predecessors. According to Çatalbaş, the Cold War and Soviet threat which implied Truman doctrine in Turkey were also used to control press and socialists. Likewise, on 17 March 1954, the Law on Crimes Committed through Press and Radio was enacted that remarkably suppressed the freedom of press and led to trials of many journalists. On top of that, martial law in 1955 due to the riots of 6 and 7 September in Istanbul worsen the press freedom through issuing several bans on press. The Press Law was also amended that curbed

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<sup>149</sup> Yaşar Salihpaşaoğlu, *op.cit.*, 153.

<sup>150</sup> “History”, Journalist’s Association, <http://www.tgc.org.tr/index.asp> [15.04.2014].

<sup>151</sup> Yaşar Salihpaşaoğlu, *op.cit.*, 154.

<sup>152</sup> Dilruba Çatalbaş, *op.cit.*, 25.

freedoms, sentenced many journalists, issued temporary proscriptions and closed newspapers. For instance, the famous Pulliam case led to arrests of many journalists who were accused of insulting Turkey by calling it an authoritarian state<sup>153</sup>. On 18 April 1960, an investigation commission (meclis tahkikat encümenleri) was established in Parliament with the power to confiscate publications and close papers and printing houses<sup>154</sup>.

On 27 May 1960, a group of military officers launched a coup against the government and ended ten-year rule of the DP. Although the Committee of National Unity (Milli Birlik Komitesi) did not tolerate critics regarding the law suits and charges against the DP leaders, they took some measures in favour of press freedom. The MBK repealed the Law on Crimes Committed through Press and Radio, amended the Press Law in which they removed some provisions suppressing freedom of press and established the Press Advertising Corporation to regulate public advertisements.

Finally, new constitution of the Republic was adopted on 09 July 1961 that regulated the press freedom in a more liberal manner. Article 22 of the Constitution stated that “the press is free and shall not be subject to censorship”<sup>155</sup>. Restrictive measures could be conducted only by law and court judgement in order to safeguard national security, public morality, dignity, honour and rights of individuals. However, considering the prior examples of being highly intolerant to criticisms, the MBK also passed a law which tightened the control over the opposing press through sentencing the journalists one to five years who covered military takeover as illegal and unjust and who praised and defend the DP government<sup>156</sup>. Debates over Article 141 and 142 of the Penal Code could be also seen in this period which punished left-wing and Islamist political activities.

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<sup>153</sup> In September 1958, Eugene C. Pulliam from Indianapolis News visited Turkey and wrote an article full of scorchers about the press policy of Democrat Party and other anti-democratic acts. These articles were translated and published by some of the newspapers and magazines in Turkey – e.g. Vatan, Dünya, Ulus, Kim, Akis and Altıok -. Prime Minister Menderes opened legal cases against writers and directors of those newspapers and magazines. The results of the cases had broad repercussions in the United States and International Press Institute. Gökhan Eşel, “Demokrat Parti Dönemi Türk – American İlişkilerinde Basın Sansürü ve Pulliam Davası”, **TUBAR**, xxix (Spring 2011): 146.

<sup>154</sup> Özgür Öğret, Stefan Martens, “Pressing for Freedom: Journalists beneath the shadow of tanks”, **Hurriyet Daily News**, 6 July 2010.

<sup>155</sup> **Constitution of the Republic of Turkey**, 1961, Article 22.

<sup>156</sup> “The Law on Activities Breaking the Constitutional Order, National Security and Peace (Law No. 38)”, 05 March 1962.

At the beginning of 1970s, social unrest, increasing faction and violence between left and right-wing groups led to another military intervention. The memorandum of armed forces on 12 March 1971 established martial law in 11 cities, including major urban areas and Kurdish regions, where the commander of martial law was charged to take following measures:

“to control all verbal, written and pictorial communications, publications, letters, cables and other consignments; to ban or impose censorship on all kinds of newspapers, periodicals and books, and on the printing or distribution of other publications; to seize all kinds of documents including books, periodicals, newspapers, brochures, posters, pamphlets, placards, records, tapes as well as broadcasting and communication media and to close down printing houses and record and tape manufacturing workshops; and to require special authorisation for the publication of new newspapers and periodicals”<sup>157</sup>.

Although martial law regime ended in September 1973 with the general elections, political instability and social unrest continued throughout 1970s<sup>158</sup>. As Kabacalı points out, the trial of eleven newspapers and two news agencies that were charged with disclosing state secrets on the Cyprus issue in 1974 are exemplary as being an important assault to press freedom<sup>159</sup>.

### **3.2.1.3. Freedom of Press in 1980s – 1990s**

On 12 September 1980, military seized control of the state; with the first decree of the National Security Council (NSC), the Parliament, government and all political parties were dissolved and martial law was passed in whole country. The press and other means of communication could not escape extensive restrictions. Martial law authorities were empowered to monitor the press, newspapers were banned and closed down regarding their “harmful content”, journalists and editors were taken into custody and sentenced to prison for hundreds of years.

The NSC reinforced the control over the press by the adoption of law no. 2370 in October 1981 regarding the amendments of Article 311 and 312 of Turkish Penal Code. Inciting to commit a crime by various means of mass media, sound tapes, newspapers, magazines, papers, records and films were regarded as aggravating factors in determining the penalty with the new version of Article 311. Another

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<sup>157</sup> “Martial Law Act (Law No.1402)”, **the Official Gazette**, 13837 (May 1971), Article 3/c.

<sup>158</sup> Dilruba Çatalbaş, **Ibid.**, 27.

<sup>159</sup> Alpay Kabacalı, **Başlangıçtan Günümüze Türkiye’de Basın Sansürü**, (İstanbul: Periodicals of Journalist’s Association, 1990), 207.

frequently used Penal Code provision was Article 312 which prohibited “inciting people to enmity and hatred by pointing to class, racial, religious, confessional, or regional differences”. The Article was clearly amended in 1981 in reaction to the ethnic reawakening among many Kurds that came to the fore in the 1970s, thus it was largely used against publications about and debating Kurdish question<sup>160</sup>.

The third Constitution of Turkish Republic entered into force on 7 November 1982 by a majority vote of approval of 91.37% which was widely criticized both at the national and international level in respect of many anti-democratic norms and procedures<sup>161</sup>. The preamble of the Constitution stated that “no protection shall be afforded to thoughts or opinions that run counter to Turkish national interests, the fundamental principle of the existence of the indivisibility of the Turkish state and territory, the historical and moral values of Turkishness, or the nationalism, principles, reforms and modernism of Atatürk [...]”<sup>162</sup>. In concern with press freedom, Article 28 stated that “the press is free and shall not be censored” and also “the establishment of a printing house shall not be subject to prior permission and to the deposit of financial guarantee”. However in the same article, number of provisions regarded publications an offense if they “threatens the internal and external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets”<sup>163</sup>. Moreover, Article 26 and 28 included that “publications shall not be made in any language prohibited by law”.

On 25 October 1983, the NSC tightened the state control over press and enforced censorship with the adoption of the Emergency Rule Law (Olağanüstü Hal Kanunu). Article 11 specified measures to be taken in order to protect general security, safety and public order and to prevent the spread of acts of violence:

“Prohibition of or requiring permission for the publication, issuing of reprints or editions, and the distribution of newspapers, magazines, brochures, books etc.; and prohibition of importation and distribution of publications published and reprinted outside the region where state of emergency are declared; and to confiscate books, magazines, newspapers, brochures, posters and similar publications of which the publication dissemination have been banned; to

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<sup>160</sup> Human Rights Watch, **Violations of Free Expression in Turkey** (New York: 1999), 23.

<sup>161</sup> Mehmet Semih Gemalmaz, “State of Emergency Rule in the Turkish Legal System: Perspectives and Texts”, **Turkish Yearbook of Human Rights**, vol. 115, no. 11-12 (1989-1990): 118.

<sup>162</sup> **Constitution of the Republic of Turkey**, 1982, Preamble, Paragraph 5.

<sup>163</sup> **Constitution of the Republic of Turkey**, 1982, Article 28.

control, restrict or prohibit every kind of broadcasting and words, writings, pictures, films, records, sound and image bands (tapes)”<sup>164</sup>.

Article 25 of the same law also pointed out that if the crime of “spreading or transmitting unreal or exaggerated news or information for the purpose of creating public emotion and excitement are committed by the use of publication and broadcasting organs”, the penalty will be doubled<sup>165</sup>. Besides these measures, many provisions of the Press Law of 1950 were amended in line with the 1982 Constitution. With these amendments, required qualifications to be a responsible editor as well as penalty of imprisonment and heavy fines were increased. It was also allowed to prohibit the distribution of publications and to confiscate the means of publishing<sup>166</sup>.

In 1990s, Turkey underwent one of its most radical transformations. Headed by Turgut Özal, a former prime minister and president and leader of the Motherland Party (ANAP), Turkey liberalized its economy, which had the secondary effect of allowing new forms of media to emerge, with focusing more and more on entertainment and popular culture, increasing tabloidization, downgrading quality journalism and contributing to the depoliticization of the society<sup>167</sup>. Another change in this period was the “entry of the non-media capital into the publishing industry”. The rapid spread of free-market policies and deregulation trends in the post-1980s led to upsurge of corporate media companies and new media bosses in many countries. As in the case of Turkey, growing monopolization of media ownership, increasing pressures and intermingled relations between the political administration, media bosses, journalists and writers started to have a profound effect on free and pluralist press<sup>168</sup>.

Nonetheless, Islamic fundamentalism and Kurdish nationalism, which were seen as major threats to the unitary structure of the state, its territorial integrity and secular foundations, shaped the political environment henceforth and affected liberty of press like various fundamental rights and freedoms. In this sense, state of emergency

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<sup>164</sup> Mehmet Semih Gemalmaz, *Ibid.*, 141-142.

<sup>165</sup> Mehmet Semih Gemalmaz, *Ibid.*, 152.

<sup>166</sup> Yaşar Salihpaşaoğlu, *Ibid.*, 169-170.

<sup>167</sup> Dilruba Çatalbaş, *Ibid.*, 28. Also see Özgür Öğret, Stefan Martens, “Pressing for Freedom: Journalists beneath the shadow of tanks”, *Hürriyet Daily News*, 6 July 2010.

<sup>168</sup> Yusuf Kanlı, “Walking on a Knife’s Edge: Freedom of Press in Turkey”, *Freedom of Press: On Censorship, Self-censorship and Press Ethics*, ed. Soren Dosenrode, (Baden-Baden: Nomos Verlag, 2010): 103.

decrees throughout 1990s had detrimental impact on the press, which were also contrary to Constitutional provisions and fundamental legal principles. For instance, the decree no.430, enacted in 1990, vested the duty of implementing the state of emergency legislation (OHAL) to the governor of the province or regional governors to “to prohibit, confiscate, and close publishers disseminating materials likely to cause serious disruption to public order and to create public excitement”<sup>169</sup>.

As a positive development, Articles 141, 142 and 163 of the Penal Code, which had criminalized advocacy of communism, Kurdish separatism and religion-based propaganda were repealed on 12 April 1991. However, Article 8 of the Antiterrorism Law, enacted in 1991, as a measure to fight against the terrorist organization PKK (Partia Karkaren Kürdistan, or Kürdistan Workers’ Party) was a substitute for the removal of Article 141 and 142 of the Penal Code; and the new version of Article 312 substituted the Article 163<sup>170</sup>. Therefore, convictions were ensured to continue and further limitations on freedom of expression and press were introduced.

Most prominently, Article 7 and 8 of the Anti-Terror Act implied provisions related with press and press freedom. While assistance to the members of illegal organizations and propaganda on behalf of the organization was prohibited under the Article 7, dissemination of separatist propaganda against the state’s indivisibility with special penalties applicable to the publisher, editor, and author of such material was criminalized under the Article 8 of the Act. The vague clause of “regardless of methods, intentions and ideas behind such activities” in Article 8 paved the way for restrictive interpretations and dramatic increase in the number of detentions and prosecutions in 1993-94<sup>171</sup>. Consequently, the amendment made in 1995 removed the phrase and led to release of many individuals charged under Article 8.

Although 1990s opened up civilian administrations, the heavy control on press of 1980 military coup through imposition of emergency rule and strict legislation still continued. As a result of these draconian measures, over 2000 lawsuits were brought against press; approximately 3000 journalists, writers, artists, publishers were tried as defendants; editors in chief were sentenced to imprisonment for more than 5000

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<sup>169</sup> “Olağanüstü Hal Bölge Valiliği ve Olağanüstü Halin Devamı Süresince Alınacak İlave Tedbirler Hakkında Kanun Hükmünde Kararname (Law no.430)”, **the Official Gazette**, 20727 (December 1990). Cited in Edel Hugues, “Political Violence and Law Reform in Turkey: Securing the Human Rights of the Kurds?”, **the Journal of Conflict Studies**, vol. 26 no. 2 (2006): 27-28.

<sup>170</sup> Yaşar Salihpaşaoğlu, **op.cit.**, 175.

<sup>171</sup> Human Rights Watch, **Violations of Free Expression in Turkey** (New York: 1999), 23-24.

years in total<sup>172</sup>. Fortunately, the impact of the reforms engendered by the EU accession process provided winds of change since the Helsinki Council in 1999 which approved Turkey's candidate status.

### 3.2.2. Regulatory Framework of Turkish Press

Before delving into the legal environment of the media in Turkey, regulatory institutions in the given field should be noted owing to the fact that wide range of authorities sometimes creates confusion over their competences and mandates<sup>173</sup>. The actors of regulation can be separated into three: executive bodies e.g. Ministry of Transportation, Directorate General of Press and Information and Communication High Council; independent regulatory agencies e.g. Information and Communication Technologies Authority and Radio and Television Supreme Council and lastly self-regulatory professional media organizations e.g. Turkish Press Council and wide range of journalists associations e.g. the Journalists Association of Turkey, the Journalists' Federation of Turkey, the Progressive Journalists Association, the Foundation of Journalists and Writers, the Association of the Media, the Association of Economy Reporters, the Association of Photo Reporters, the Association of Parliamentary Reporters, together with two main journalist unions called Union of Journalists in Turkey and Media Union<sup>174</sup>.

While all three type of actor are significant in developing policies for the media and regulating the media sector, the first two bodies could be considered as more powerful regarding the media coverage in Turkey owing to the deficient process of deliberation and consultation with the civil society and media. The judicial base set out by these actors, high courts and the parliament covers a large number of laws and regulations both media-specific laws and laws in the penal system such as Press Law, Broadcasting Law, Internet Law, Electronic Communications Law, Anti-Terror Law and Turkish Penal Code which will be briefly introduced within the framework of this study.

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<sup>172</sup> Hıfzı Topuz, **II.Mahmut'tan Holdiglere Türk Basını**, (Istanbul: Remzi Publishing, 2003), 273.

<sup>173</sup> Esra Elmas, Dilek Kurban, "Communicating Democracy – Democratizing Communication: Media in Turkey: Legislation, Policies, Actors", **TESEV Democratization Program Media Studies Series 1** (2011): 39.

<sup>174</sup> Esra Elmas, Dilek Kurban, **Ibid.**, 39-40. For the full list of professional media organizations, see "Turkish Media at a Glance", Directorate General of Press and Information, [http://www.byegm.gov.tr/uploads/docs/bir\\_bakista\\_en.pdf](http://www.byegm.gov.tr/uploads/docs/bir_bakista_en.pdf) [12.04.2014].

### 3.2.2.1. Constitutional framework

Considering the fact that freedom of press cannot be fully realized without the protection of freedom of expression, first and foremost, Turkish law guarantees freedom of expression by the Article 25 of the Constitution which states that “everyone has the freedom of thought and opinion” and that “no one shall be compelled to reveal or blamed or accused because of his/her thoughts and opinion”<sup>175</sup>. Article 26 of the Constitution, moreover, gives “the right to express and disseminate thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively” in parallel to Article 10 of the ECHR<sup>176</sup>. However, the provision is amended on 3 October 2001 on accounts of classifying restrictions:

“The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary”.

Article 28 of the Constitution particularly regulates the freedom of press through clearly stating that “the press is free, and shall not be censored” and highlighting the State as being assigned to “take necessary measures to ensure freedom of press and information”. Considering the fact that freedom of press which is complementary to freedom of expression and ensures its usage is not absolute and unlimited, therefore the limitation of press freedom is also specified based on Article 26 and 27 of the Constitution<sup>177</sup>. The Article explicitly focuses on threats to the internal or external security of the State and to the indivisible integrity of the State with its territory and nation as reasons for restrictions. In this respect, it is acknowledged that distribution or publications of the periodicals and non-periodicals “may be prevented by decision of a judge”, therefore the article authorises seizure by court order and allows immediate seizure by competent authorities<sup>178</sup>.

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<sup>175</sup> **Constitution of the Republic of Turkey**, 1982, Article 25.

<sup>176</sup> **Constitution of the Republic of Turkey**, 1982, Article 26.

<sup>177</sup> Yaşar Salihpaşaoğlu, *op.cit.*, 130.

<sup>178</sup> **Constitution of the Republic of Turkey**, 1982, Article 28.

The protection of printing facilities is guaranteed by the Article 30 of the Constitution stating that “press equipments shall not be seized, confiscated or bared from operation on the grounds of having been used in a crime”, whereas Article 31 specifies the right to use the mass media and means of communication by individuals and political parties, as the conditions and provision for such use shall be regulated by law. Despite all these constitutional safeguards relating to the press and publications, Çatalbaş agrees that Article 13 of the Constitution allows extensive exceptions and permits restrictions on the grounds of protecting national security, public order, public peace, public interest, public morals, and public health<sup>179</sup>. Likewise, Elmas and Kurban express that Turkey lacks a unified and coherent content regulation on the media. They consider constitutional amendments in 2001 as leaving wide restrictions untouched on accounts of the exercise of these rights based on national security concerns, public order, and the integrity of the state with its nation and territory<sup>180</sup>.

### 3.2.2.2. Media-specific Laws

As revised and enacted on 9 June 2004, Law no.5187 on the print media, i.e. Press Law protects freedom of the press and the use of this freedom with covering publication and distribution of printed work and guarantees journalists’ right to protect their news resources. The Article 3 of the Press Law states that “the press is free” in line with the Article 28 of the Constitution. According to the law, free press includes “the right to acquire and disseminate information, and to criticize, interpret and create works”<sup>181</sup>. However, the provision also acknowledges wide catalogue of restrictions:

“The exercise of this freedom may be restricted in accordance with the requirements of a democratic society to protect the reputation and rights of others as well as public health and public morality, national security, public order and public safety; to safeguard territorial integrity; to prevent crime and the disclosure of state secrets; and to ensure the authority and impartial functioning of the judiciary.”

Additionally, the Press Law sets certain measures to the exercise of the freedom of press on these points: compromising the judicial process (Article19), encouraging

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<sup>179</sup> Dilruba Çatalbaş, *op.cit.*, 2007, cited in Konrad Adenauer Stiftung (KAS), **Democracy Report II: Media and Democracy – Turkey** (Berlin, 2008), 193.

<sup>180</sup> Esra Elmas, Dilek Kurban, *op.cit.*, 45-46.

<sup>181</sup> “Press Law (Law No. 5187)”, **the Official Gazette**, 25504 (June 2004): Article 3.

sexual assault, murder or suicide (Article 20), illicit disclosure of identities (Article 21) and failure to publish reply and correction (Article 18)<sup>182</sup>.

The Article 11 of the Press Law has also been widely discussed as it attributes criminal liability to chief editor, director in charge or press consultant where the author is abroad or unidentified. On the occasion of refusal of the director to publish the given work, the publisher would be regarded as liable<sup>183</sup>. However, this provision contradicts with the Article 38 of the Constitution as it states that “criminal responsibility shall be personal” and also with the Article 20 of the Turkish Penal Code as it points out that “no one can be kept responsible from another person’s act”<sup>184</sup>.

Supplementary to publishing via print or broadcast, the ever-evolving nature of technology, limitless information sharing and developments on the Internet presented the term ‘digital journalism’ -or online journalism- which gained substantial importance as a contemporary form of journalism. Therefore, the rapidly growing number of news portals and journalism websites in Turkey – are said to be more than 150-<sup>185</sup> posed problems for the government in controlling the vast amount of information flows. The Internet Law (no. 5651) of 2007 regulates liabilities of content providers, domain providers, access providers and mass use providers as well as marks certain grounds for restriction in line with the Article 8 about incitement to suicide, sexual exploitation and abuse of children, facilitating the use of drugs, obscenity, prostitution, arranging a place or facility for gambling, and crimes against defined in the Law on Crimes Committed against Atatürk (no. 5816)<sup>186</sup>. As this reveals, legal restrictions extend to the internet through banning of access to websites “when there is sufficient evidence of the improper aspect of content”<sup>187</sup>. According

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<sup>182</sup> “Country Profiles and Regional Overviews: Turkey”, **Access Controlled: The Shaping of Power, Rights and Rule in Cyberspace**, ed. Ronald Deibert, John Palfrey, Rafal Rohozinski, Jonathan Zittrain (USA: Massachusetts Institute of Technology, 2010): 346.

<sup>183</sup> “Press Law (Law No. 5187)”, **the Official Gazette**, 25504 (June 2004): Article 11.

<sup>184</sup> **Constitution of the Republic of Turkey**, 1982, Article 38. Also see “Turkish Penal Code (Law No. 5237)”, **the Official Gazette**, 25611 (September 2004): Article 20.

<sup>185</sup> Yavuz Baydar, “Under Strain: Turkish Journalists Go Online”, **Al Monitor**, 16 April 2013.

<sup>186</sup> “Law on the Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications (Law no. 5651)”, **the Official Journal**, 26530 (May 2007): Article 8.

<sup>187</sup> **Ibid.**, Article 8.

to OSCE Report, application of the Internet Law has potential to impact free expression, investigative journalism and the protection of journalistic sources<sup>188</sup>.

Besides, Pierini argues that the Internet Law, together with other sources of law provide grounds for censorship which resembles the charges used against journalists such as making terrorist propaganda. Therefore, access to websites can be subject to wide interpretations of Anti-Terror Law and the Penal Code which is problematic in the sense that:

“First, the Internet Law regulates the reasons for blocking websites but those reasons do not include making propaganda for a terrorist organization. Legally speaking, this violates the principle of superiority of the law governing the specific matter (blocking of websites) over the general matter (terrorism). Second, the application of the Internet Law and Anti-Terror Law for blocking websites creates an environment of legal insecurity and allows for prosecutorial uncertainty.”<sup>189</sup>

### 3.2.2.3. Application of Penal Laws

In addition to afore mentioned regulatory framework, Law on the Fight against Terrorism (no.3713), mostly known as Anti-Terror Law and Turkish Criminal Code (no. 5237) are also applied in order to regulate media content and draw the lines of usage of press freedom. Thomas Hammerberg, Commissioner for human rights of the Council of Europe, points out that these two statutory legislation lie at the bottom of vast majority of cases against Turkey brought to European Court of Human Rights<sup>190</sup>. However, while the amendments made in September 2004 and June 2006 owing to heightened security concerns and their contradiction with the EU harmonization process will be a subject for the next section, I would like to introduce basic tenets of the two penal systems in this section.

Turkey as a state which is founded upon fundamental policies on the grounds of “militarized, secular, mono-ethnic conception of national identity”<sup>191</sup> and on the

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<sup>188</sup> Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, **Briefing on Proposed Amendments to Law No. 5651: The Internet Law of Turkey** (Vienna, 2014), 9.

<sup>189</sup> Marc Pierini, “Press Freedom in Turkey”, **the Carnegie Papers** (January 2013), 11-12.

<sup>190</sup> Thomas Hammerberg, “Freedom of Expression and Media Freedom in Turkey”, report by the Commissioner for Human Rights of the Council of Europe following his visit to Turkey from 27 to 29 April 2011 (Strasbourg, 12 July 2011): 6, <https://wcd.coe.int/ViewDoc.jsp?id=1814085> [10.08.2014].

<sup>191</sup> Kerim Yıldız, Mark Muller, **The European Union and Turkish Accession: Human Rights and The Kurds**, (London: Pluto Press, 2008), 39.

principle of “security”<sup>192</sup>, anti-terrorism problem had always been an important factor in Turkey’s press freedom, and in general human rights records. The definition of terror in Article 1 of the Anti-Terrorism Act is as follows:

“Terror; every kind of acts which are perpetrated by any of the methods of extortion, intimidation, discouragement, menace and threat by using force and violence by a person or by persons belonging to an organization with a view to changing the nature of the Republic as defined in the Constitution and its political, legal, social, secular and economic order, impairing the indispensable integrity of the State with its country and nation, endangering the existence of the Turkish State and Republic, weakening or annihilating or overtaking the State authority, eliminating the basic rights and freedoms and damaging the internal and external security, public order or general health of the country by means of pressure, force and violence, terror, intimidation, oppression or threat.”<sup>193</sup>.

Accordingly, the term “terrorist organization” is described as a formation “when two or more persons come together for the same purpose” in the same article. As the definition implies, the organization could include “associations, groups, armed groups, bands and armed bands”.

In respect of the press freedom, Article 6/4 and 7/2 of the Anti-Terror Law had been subject to severe criticisms because of the vague phrases, over broad definition and the likelihood of arbitrary implementation<sup>194</sup>. The provisions states that even if the owners or editor in chief of press organs have not personally participated in the crime of publishing or broadcasting the declarations and announcements of terrorism, they might still be punished ranging from six months to two years imprisonment with a fine corresponding to ninety per cent of the average sales revenues of the previous month<sup>195</sup>.

In the second place, the Criminal Code is also widely applied in order to provide the legal basis in regulating media content, such as through increasing the sentences (ranging from one third to a half) in case that the crime takes place via the press and media organs. To give examples of the offences that are implemented in line with the Code: defamation (Article 125); provoking commission of a crime (Article 214);

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<sup>192</sup> Berivan Gökçenay, “The Issues of Basic Rights and Freedoms in Turkey - EU Relations”, **Turkey in the 21st Century: Quest for a New Foreign Policy**, ed. Özden Zeynep Oktav (UK: Ashgate Publishing, 2011), 194.

<sup>193</sup> “Law on Fight Against Terrorism (Law no. 3713)”, **the Official Gazette**, 20843, (April 1991): Article 1.

<sup>194</sup> Berivan Gökçenay, **op.cit.**, 194.

<sup>195</sup> “Law on Fight Against Terrorism (Law no. 3713)”, **the Official Gazette**, 20843, (April 1991): Article 6-7.

praising a crime or criminals (Article 215); provoking the population to enmity or hatred and denigration against another group (Article 216); and publishing or broadcasting obscene material which is against general ethics (Article 226); insulting the Turkish nation, state of the Turkish Republic, the Turkish Grand National Assembly, the government of the Republic of Turkey or judicial organs of the state (Article 301); setting up criminal organisations for the overthrow of the constitutional order (Article 314); encouraging military personnel to disobey the orders and acts (Article 319); discouraging individuals from doing their military service (Article 318)<sup>196</sup>. However, it is widely confirmed that there is no clear legal certainty between criticism and denigration under the Penal Code that leads to different interpretation and implementation across cases<sup>197</sup>.

### 3.3. Interim Review

The analyses in regard to press freedom at the level of both parties in the discussion is formed in this section, first, to shed light on the EU's role or right to say in discussing likelihood of Europeanization of press freedom policies in Turkey, and second, to make sense of the desire or resistance to change in Turkey considering the issue in question. To reach that end, the priority is given to the legislative framework since it could open a new door into historical and structural reasons of resistance, conditions of non-compliance and limits of Europeanization in the next chapter.

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<sup>196</sup> Dilek Kurban, Ceren Sözeri, "Caught in the Wheels of Power: The Political, Legal and Economic Constraints on Independent Media and Freedom of Press in Turkey", **TESEV Democratization Program Media Studies Series 3** (2012): 39.

<sup>197</sup> Konrad Adenauer Stiftung (KAS), **Democracy Report II: Media and Democracy – Turkey** (Berlin, 2008), 193.

## **4. EUROPEANIZATION OF TURKEY’S PRESS FREEDOM POLICY**

This chapter aims to analyze Europeanization of press freedom policies in Turkey. Applying conceptual and theoretical instruments that have been discussed in the previous sections, the degree of Europeanization for the period of 2002-2013 will be analyzed. The analysis in question is distinguished between three frames according to the degree of domestic change and pace of Europeanization: These periods are 2002-2005, 2005-2008 and 2008-2013. The purpose of these chapters is to understand why domestic change in press freedom has varied over time in Turkey. It aimed to test research hypothesis and explanatory power of the EU- and domestic-level factors in the line with gathered empirical evidence among different time periods. The analysis gives a particular importance to the actors, institutions and discourses and the interplay between internal variables and the EU-level conditions in determining the pattern of Europeanization in Turkey.

### **4.1. Europeanization of Turkey’s Press Freedom Policy 2002 – 2005**

This section will apply endogenous and exogenous variables formed in the previous chapters to examine the domestic change in press freedom while asking why the change or lack of change arose.

#### **4.1.1. Domestic Changes in Press Freedom**

Before probing into the impact of the EU democracy and human rights promotion in Turkey and amendments in Turkish legislation conducted by AKP government since 2002, background to the crucial rise in the reform process should be given as the process explicitly began to found in 1999 when Turkey was given candidate status in Helsinki.

#### **4.1.1.1. Background to the AKP Rule: Reforms during the Coalition Government 1999-2002**

Turkey's candidate status approved by the EU Helsinki Council held on 10-11 December 1999 brought a new dimension to the Turkey-EU relations. In this context, the Accession Partnership Document issued by the European Commission in November 2000 in cooperation with the National Program for the Adoption of the Acquis (NPAA) adopted by Turkish government in March 2001 opened up an ambitious programme of Europeanization in Turkey and unleashed a period of EU induced political reforms<sup>198</sup>. Regarding Turkey's compliance with the Copenhagen Criteria in order to adjust its political system to the EU norms, various political reform packages were adopted from 2001 to 2004, especially in critical areas of rule of law and fundamental freedoms, including freedom of thought and opinion, freedom of expression and dissemination of thoughts, freedom of association, right to hold meeting and demonstration marches. Under the coalition government, a major Constitutional package was adopted that brought about improvements with respect to freedom of expression, freedom of the press, freedom of association, freedom of assembly, the right to a fair trial, and a restriction on the death penalty to certain categories of crime, together with 34 amendments to the 1982 Constitution<sup>199</sup>.

The first harmonization package, which entered into force in February 2002, enacted a series of amendments to the Penal Code (Article 159, 312) and the Anti-terror Law (Article 7, 8) which were regarded as indirect means for content regulation of press in the previous section. These amendments extended the scope of the freedom of expression, provided reduction of pre-trial detention periods and ensured safeguard provisions of the rights of prisoners<sup>200</sup>. The second reform package came into force in April 2002 amended the Press Law (no.5680), the Law on Political Parties (no.2820), the Law on Associations (no.2908) and the Law on Meetings and Demonstration Marches (no.2911)<sup>201</sup>. With respect to press freedom, confiscation of printing equipment of publication which is against the basic principles of the

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<sup>198</sup> İhsan D. Dağı, "Transformation of Turkish Politics and the European Union: Dimensions of Human Rights and Democratization", **Journal of Southern Europe and Black Sea Studies**, vol. 1 no. 3 (2004): 51.

<sup>199</sup> Ergun Özbudun, "Democratization Reforms in Turkey, 1993-2004", **Turkish Studies**, vol. 8 no. 2 (June 2007): 180.

<sup>200</sup> Secretariat General for EU Affairs, **Political Reforms in Turkey** (Ankara, 2007), 5.

<sup>201</sup> *Ibid.*, 6-7.

“integrity of the nation, republican order, or the country’s national security” became possible by the decision of a judge; nonetheless maximum suspension of such offences was made shorter and the paragraph of “publishing in a language prohibited by law” was removed<sup>202</sup>. The August 2002 package was the last reform package of the DSP- ANAP- MHP coalition government. It was the most extensive one in the sense that it abolished death penalty in peacetime, enabled broadcasting in and learning of different languages and dialects traditionally used by Turkish citizens in their daily life and introduced provisions allowing retrial of all the law cases in light of the decisions of the ECHR<sup>203</sup>. With regard to amendments to the Press Law, prison sentences for criminal offences related to press was replaced with heavy fines. The package was highly criticized among the Turkish nationalists because of the provisions on education, broadcasting and cultural rights as they were perceived as threats to the “unitary character of the Turkish state” and as a “concession to terrorism”, though it was significant in fulfilling the political *acquis* standards of the Copenhagen Criteria<sup>204</sup>.

#### **4.1.1.2. AKP Government: Golden Age of Reforms<sup>205</sup>**

In the fall of 2002, the Justice and Development Party (Adalet ve Kalkınma Partisi; AKP) won the landslide victory with receiving the 34.3 of the votes and accomplished the adoption of further EU-induced reforms by means of the far-reaching harmonization packages. On 11 January 2003, the forth reform package entered into force and issued significant changes as part of extending the freedom of expression and press with a series of amendments enacted to the Press Law, the Law on Political Parties, the Law on Associations and the Law on the Human Rights Investigation Commission. Regarding the press freedom, Article 15 of the Press Law was changed, with the new provisions protecting the owners of periodicals, editors and writers from being forced to disclose their sources of information in compliance with the ECHR case law within the framework of ensuring the fulfilment of the function of the press in a democratic society and the right of the public to be

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<sup>202</sup> Mehmet Bardakçı, *op.cit.*, 253-254.

<sup>203</sup> Secretariat General for EU Affairs, **Political Reforms in Turkey** (Ankara, 2007), 8-9.

<sup>204</sup> Meltem Müftüler Bac, “Turkey’s Political Reforms and the Impact of the European Union”, **South European Society & Politics**, vol. 10 no. 1 (March 2005): 23-24.

<sup>205</sup> Ziya Onis, “Turkey-EU Relations: Beyond the Current Stalemate”, **Insight Turkey**, vol. 10 no. 4 (2008): 35-50.

informed<sup>206</sup>. The fifth harmonization package in February 2003 included provisions on freedom of association that replaced prison sentences with fines; whereas the sixth reform package in July 2003 introduced amendments enacted to the Anti-terror Law in relation with the press freedom. Accordingly, Article 1 of the Anti-terror Law on the definition of terrorism and terrorist offences made “the use of force or violence” the prerequisite in defining the crime of terrorism and stipulated that only acts "constituting a crime" are included in the definition of terrorism<sup>207</sup>. Article 8 of the same law on the propaganda against the indivisible unity of the State was also repealed in the package in order to expand freedom of expression.

Under the seventh reform package, which entered into force in August 2003, Article 159, 426 and 427 of the Penal Code was amended. Firstly, Article 159 of the Penal Code no.765 was changed to reduce the minimum penalty for those who "openly insult or deride Turkishness, the Republic, the Grand National Assembly, the moral personality of the Government, the Ministries, the military or security forces of the State or the moral personality of the judiciary" from one year to six months and also it is ensured that expressions of thought which are solely intended to “criticize” do not incur any penalties<sup>208</sup>. Secondly, Article 426 of the Code was amended to exclude scientific and artistic works, and “works of literary value” from the scope of the article banning published or unpublished work on the grounds of moral principles like “hurting people’s feelings” or “exploiting people’s sexual desires”. Thirdly, the amended Article 427 deleted the word “destroy” from the text of the Article and acknowledges that destruction of the confiscated publications can no longer to be undertaken on account of these offences<sup>209</sup>.

Concerning the developments outside the harmonization packages, constitutional amendments of 2004 is important in the sense that it gave constitutional security to the freedom of press<sup>210</sup>. Accordingly, the amended Article 30 of the Constitution guaranteed printing facilities and their annexes in the manner that they could not be

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<sup>206</sup> Zeki Yildirim, “Türkiye’de İfade ve Basın Özgürlüğü Sorunu: Avrupa Birliği Uyum Sürecinde İfade ve Basın Özgürlüğü Alanında Yapılan Çalışmalar”, **Erzincan Üniversitesi Hukuk Fakültesi Dergisi (EÜHFD)**, vol. 16 no. 1-2 (2012): 67.

<sup>207</sup> Secretariat General for EU Affairs, **Political Reforms in Turkey** (Ankara, 2007), 14.

<sup>208</sup> Secretariat General for EU Affairs, **Political Reforms in Turkey** (Ankara, 2007), 15. Zeki Yildirim, **op.cit.**, 69.

<sup>209</sup> Secretariat General for EU Affairs, **Political Reforms in Turkey** (Ankara, 2007), 15. Zeki Yildirim, **Ibid.**, 69-70.

<sup>210</sup> Meltem Müftüler Bac, **op.cit.**, 26.

seized, confiscated or barred from operation any longer by reason of being an instrument of crime. Although, the article recognized this guarantee except the cases which committed “against the indivisible integrity of the State within its territory and nation, the fundamental principles of the Republic or national security”, these exceptions were deleted from the Article by the amendment<sup>211</sup>.

In addition to these constitutional amendments, the new Press Law no. 5187 which annuls the former press law no. 5680 and its amendments, was prepared in line with the Article 10 of European Convention on Human Rights and the judgements of European Court of Human Rights and adopted on 24 June 2004. Although, as it is stated in the previous section that Article 3 on the probable grounds of restriction and Article 11 on the penal liability to editors, press advisor or publisher have been argued because of not including “a strong public interest clause for the protection of journalists”, the new law reinforced provisions concerning the protection of journalists’ sources<sup>212</sup>. As Article 12 states; “the owner of the periodical, responsible editor and owner of the publication cannot be forced to either disclose their news sources or to legally testify on this issue”<sup>213</sup>. Additionally, the amendments strengthened the right to reply and correction; largely replaced the prison sentences with fines; removed sanctions such as the shutting down of publications, halting distribution and confiscating printing machines; reduced the possibility of confiscating printed materials<sup>214</sup>. In the Progress Report of Turkey in 2005, European Commission also noted that there had been positive developments such as acquittals and a number of releases as a result of the adoption of the new Press Law<sup>215</sup>. However, as the Turkish Association of Journalists claimed, fines are exorbitantly high especially for the local media that can economically destabilize them. The association also stated that regulation on the coverage of court cases is too restrictive<sup>216</sup>. For instance, the Article 19 on “comprising the judicial process” considers the publications about the proceedings of the prosecutor, judge, court or content of document regarding the preparatory inquiry from an extensive angle that

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<sup>211</sup> Ergun Özbudun, *op.cit.*, 184.

<sup>212</sup> Thomas Hammerberg, *op.cit.*, 9. Dilruba Çatalbaş, *op.cit.*, 32.

<sup>213</sup> “Press Law (Law No. 5187)”, *the Official Gazette*, 25504 (June 2004): Article 12.

<sup>214</sup> Mehmet Bardakçı, *op.cit.*, 254-255.

<sup>215</sup> European Commission, *Turkey: 2005 Progress Report* (Brussels: 9 November 2005), 26.

<sup>216</sup> “Türkiye Gazeteciler Cemiyeti’nin Basın Kanunu Tasarısının Maddelerine İlişkin Görüşleri”, Türkiye Gazeteciler Cemiyeti, <http://www.tgc.org.tr/yasatasarisi.htm> [31.03.2005], cited in Dilruba Çatalbaş, *op.cit.*, 32.

could censor any kind of news which are included in the scope of “judicial news”<sup>217</sup>. Likewise, although it is aimed to ensure the innocence of the accused without overstepping the boundaries of reporting, Article 20 on the “encouraging sexual assault, murder or suicide” could be subject to arbitrary interpretations regarding the open-ended term of “encourage”<sup>218</sup>. That is why, although the draft Press Law enthusiastically welcomed by several prominent journalists, clear definitions are needed for a transparent legislation.

#### **4.1.2. The Degree of Domestic Change: Accommodation**

The AKP government has come out as the leading actor promoting democratic transformation in line with Europeanization in Turkey since the fall of 2002<sup>219</sup>. Wide range of reforms conducted in this time period increased the EU membership prospect and eventually led to opening of membership negotiations in October 2005. Considering these efforts and facilitating interplay of external and domestic factors the period will be identified as “accommodation” in which member states adjust their existing processes, policies and institutions, though essential features and collective understanding remain fixed<sup>220</sup>. The overall pace of change and misfit is medium and the adjustment can be described as “patching up” new elements with new underlying principles onto existing units without changing the old structures with old principles<sup>221</sup>. Therefore, Héritier adds that “patching up” might lead to “hybrid administrative structures” that embraces various and diverse administrative principles and policy instruments<sup>222</sup>. However, as there has been a strong democratization impulse on parts of Turkey provided by the Europeanization process - though numerous reform packages merely added new elements to the existing structures based on same principles-, the reform agenda did not necessarily lead to conflict with established principles. Nevertheless, endogenous and exogenous

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<sup>217</sup> Baris Günaydin, “5187 Sayılı Yeni Basın Kanunu”, **Türkiye Barolar Birliği Dergisi**, no. 57 (2005), 329. <http://tbbdergisi.barobirlik.org.tr/m2005-57-129> [02.05.2014].

<sup>218</sup> Baris Günaydin, **Ibid.**, 330.

<sup>219</sup> Beken Saatcioglu, “AKP’s Europeanization in Civilian, Rule of Law and Fundamental Freedoms: The Primacy of Domestic Politics”, **Journal of Balkan and Near Eastern Studies**, vol. 16 no. 1 (2014): 86.

<sup>220</sup> A. Tanja Börzel, Thomas Risse, 2003, 69-70.

<sup>221</sup> Adrienne Heritier, “Differential Europe: National Administrative Responses to Community Policy”, **Transforming Europe: Europeanization and Domestic Change**, ed. Maria Green Cowles, James A. Caporaso, Thomas Risse (New York.: Cornell University Press, 2001): 54. Also see Tanja A Börzel, Thomas Risse, **Ibid.**

<sup>222</sup> Adrienne Heritier, **Ibid.**, 54.

variables which are appeared to have a profound impact on the result of ‘accommodation’ will be introduced in the following part in order to get a grip on “why did change occur?”<sup>223</sup> or in other words, “what accounts for the apparent success of EU’s democracy promotion policy?”<sup>224</sup>.

#### **4.1.3. Exogenous Factors: The EU Context**

The present analysis will emphasize not only the basic premise of the top-down approach -that is the ‘domestic impact’ of the EU in candidate countries-, but also the factors and causal mechanisms on the application of EU’s democratization strategy. Therefore, the working hypothesis reveals that credibility and legitimacy of EU’s influence determine the effectiveness of its conditionality.

##### **4.1.3.1. Credibility**

The EU membership perspective has changed dramatically since the approval of Turkey’s candidate status in 1999 when Turkey become subject to mechanisms of aid and assistance like CEECs and supervision in line with the Copenhagen Criteria that resulted in annual reports analysing the progress made by Turkey towards membership. Therefore, in March 2001, the Council of the EU issued Accession Partnership Document to set out priority areas and provide policy instruments for the preparation for membership<sup>225</sup>. This step was followed by the acceptance of Turkish National Programme for the Adoption of the Acquis which aimed to fulfil all relevant international conventions and take necessary measures, especially in the areas of democracy and human rights.

According to Kubicek, the decision to recognize Turkey’s membership bid created a “political avalanche of democratization”<sup>226</sup>. Indeed, powerful incentive provided by the EU filled the gap of desperate need for large-scale reforms on economic and political grounds. Öniş defines this process with high credibility as a crucial turning point from vicious cycle of political and economic instability and delayed reforms on Turkey’s part and absence of full membership signal and commitment on EU’s part to “virtuous cycle of mutually reinforcing democratization process and economic

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<sup>223</sup> Zelal Basak Kizilkan-Kisacik, **Europeanization of Minority Norms in Turkey** (Cologne: Nomos, 2013).

<sup>224</sup> Paul Kubicek, “Political Conditionality and European Union’s Cultivation of Democracy in Turkey”, **Democratization**, vol. 18 no. 4 (2011): 917.

<sup>225</sup> For the relevant documents: see <http://ab.gov.tr/index.php?p=123&l=2> [14.06.2014].

<sup>226</sup> Paul Kubicek, **op.cit.**, 2011, 914.

reforms”<sup>227</sup>. He also agrees that the reforms conducted in this period would be “inconceivable in the absence of powerful incentives and pressures from the EU”<sup>228</sup>.

Although the Copenhagen Summit in December 2002 left Turkey out from the list of countries whose the accession negotiations were completed and eventual membership were projected from 2004 onwards, the conditional date of December 2004 to open negotiations has provided a “sense of certainty” in EU-Turkey relations regarding the start of accession negotiations and a “prospect that full EU membership is a real possibility”<sup>229</sup>. Additionally, the EU has considerably increased the amount of pre-accession financial assistance to Turkey that reached €250 million in 2004, €300 million in 2005 and €500 million in 2006 to “help Turkey prepare to join the EU as quickly as possible”<sup>230</sup>. All in all, strengthening the credibility of conditionality led to increase in democratization impulse and to the belief on parts of Turkey that “if they implemented the reforms they could join the EU”<sup>231</sup>.

#### 4.1.3.2. Legitimacy

The basic premise related with the exogenous factors was introduced in preceding chapters on the basis of the assumption that credible and legitimate application of conditionality would bring about political change in a country. However, legitimacy aspect of conditionality started to have a profound impact on losing credibility late in this period because of the Cyprus issue. While Turkey refrained from establishing any link between the Cyprus issue and the ongoing relations with the EU, the Helsinki Summit provided a clear linkage between the progress of the quality/nature of Turkey–EU relations and the resolution of the conflict together with the rest of bilateral problems with Turkey’s neighbouring countries<sup>232</sup>. In this regard, the EU membership was made conditional on peaceful resolution of disputes as it is evident in the Commission’s press release in 2003 that “the absence of a settlement could

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<sup>227</sup> Ziya Onis, “Turkey-EU Relations: Beyond the Current Stalemate”, **Insight Turkey**, vol. 10 no. 4 (2008): 37.

<sup>228</sup> Ziya Öniş, **Ibid.**, 39.

<sup>229</sup> E. Fuat Keyman, Ziya Öniş, “Helsinki, Copenhagen and Beyond: Challenges to the New Europe and the Turkish State”, **Turkey and European Integration: Accession Prospects and Issues**, ed. Mehmet Uğur, Nergis Canefe (London: Routledge, 2004), 176.

<sup>230</sup> “EU Funded Programmes in Turkey 2003-2004”, EU Commission Representative to Turkey, <http://www.euromedtransport.eu/En/image.php?id=1513> [14.06.2014].

<sup>231</sup> Paul Kubicek, **op.cit.**, 918.

<sup>232</sup> Kıvanç Ulusoy, “the Europeanization of Turkey and its impact on the Cyprus Problem”, **the Journal of Southern Europe and the Balkans**, vol. 10 no. 3 (December 2008): 314.

become a serious obstacle to Turkey's EU aspirations”<sup>233</sup>. Contrary to this statement, the EU felt obliged to open the door to Turkey supposing that she adjust her legislation in line with the Copenhagen criteria and resolved the disputes with Greece, particularly the Cyprus problem. However, Turkey continued to reject any linkage between the Cyprus issue and her relations with the EU since the coming of the AKP government and the emergence of the Annan Plan in late 2002<sup>234</sup>.

It could be said that legitimacy of the EU directives has decreased dramatically by the negotiations between the EU and the Cyprus that started in 1998 and concluded with the signing of the Treaty of Accession on 16 April 2003. This incident placed the “burden of responsibility” solely on the Turkish government regarding the solution of the Cyprus problem<sup>235</sup>. In 2004, the Cyprus issue became tangled with the Annan Plan which aimed to settle the dispute by unifying the island before Cyprus would accede to the EU on 1 May 2004. The referendum on the Annan Plan was held on 24 April 2004 and resulted rather surprisingly: 65 per cent of the Northern Cypriots voted in favour of the plan whereas 76 per cent of the Greek Cypriots overwhelmingly rejected it<sup>236</sup>. The Cypriot entry to the EU without a peaceful settlement of the dispute and with the *acquis* applying only for the southern part - despite the fact that the very same part said no in the referendum- considerably decreased the legitimacy of the EU rules, the quality of the rule-making process and rule transfer. However, the political compliance of the Turkish government was high and also welcomed by the Council on grounds of Turkey’s positive contributions for the settlement of the Cyprus problem. In this respect, although the Council Summit in December 2004 decided to open accession negotiations with Turkey, the following time frame fell short of expectations regarding effective accession process for Turkey.

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<sup>233</sup> “Bulgaria, Romania and Turkey make significant progress towards accession criteria”, **the European Commission**, [http://europa.eu/rapid/press-release\\_IP-03-1499\\_en.htm](http://europa.eu/rapid/press-release_IP-03-1499_en.htm) [15.06.2014].

<sup>234</sup> Kıvanç Ulusoy, *op.cit.*, 315.

<sup>235</sup> Çiğdem Nas, “Turkey and the European Union: a Stumbling Accession Process under New Conditions”, **Turkey in the 21st Century: Quest for a New Foreign Policy**, ed. Özden Zeynep Oktav (UK: Ashgate Publishing, 2011), 168.

<sup>236</sup> “Cyprus: What has happened?”, The Turkish Ministry of Foreign Affairs, [http://www.mfa.gov.tr/cyprus\\_-what-has-happened\\_.en.mfa](http://www.mfa.gov.tr/cyprus_-what-has-happened_.en.mfa) [15.06.2014].

#### **4.1.4. The Endogenous Factors: Domestic Context**

Although the EU appeared enthusiastic and credible about the enlargement project, including its 1999 decision to take Turkey in, there were problems of legitimacy in the sense that rules and norms were by no means ‘consensually shared and properly implemented’ among the member and other candidate states. Yet, the Turkish government remained compliant to EU directives and continued reform process in this time period. In this respect, it could be observed that domestic factors have sped the domestic change up and shaped the Europeanization outcome. Accordingly, in line with Börzel and Risse’s hypothesis on “domestic change through differential empowerment of actors”, Saatçioğlu states that “the EU has triggered reforms to the extent that reforming has helped empower the governing AKP”<sup>237</sup>.

In order to reveal the explanatory power of domestic factors in this time frame, analyses focusing on veto players, domestic adoption cost, normative fit and culture of implementation will be given in this section.

##### **4.1.4.1. Veto Players**

With reference to the Tsebelis’s veto player theory, the scope of domestic resistance or compliance to the EU rules will be explained as the political actors’ assent is crucial for a change in press related policies.

##### **4.1.4.1.1. AKP Government**

In November 2002, a major development in Turkey-EU relations came rather paradoxically with the victory of newly-established AKP<sup>238</sup>. It is paradoxical in the sense that its grand-predecessors Welfare (RP) and Virtue (FP) Parties were shut down in 1998 and 2001 respectively on grounds of Turkish Constitutional Court’s judgement regarding their anti-secular activities. However, in contrast to the Islamic state model based on ‘Nationalist Outlook’ ideology, the government adopted an agenda of ‘conservative democracy’ in which it was aimed to achieve contemporary

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<sup>237</sup> Tanja A Börzel, Thomas Risse, *op.cit.*, 2000. See Beken Saatçioğlu, “AKP’s Europeanization in Civilization, Rule of Law and Fundamental Freedoms: The Primacy of Domestic Politics”, *Journal of Balkan and Near Eastern Studies*, vol. 16 no. 1 (2014): 88.

<sup>238</sup> Meltem Müftüler Bac, *op.cit.*, 2005, 24.

standards of democracy without abandoning values, traditions and identity<sup>239</sup>. In this regard, the government announced that:

“The EU membership is natural corollary of our modernization process. Meeting the EU criteria in economic and political realms is an important step towards modernization together as state and society. Regardless of EU membership, these criteria are inevitable to be implemented. [...] Ideological approaches of Eurosceptics on grounds of national sovereignty, national security, national interest, and national and local culture delay our fulfilment of Copenhagen criteria. Our party sides with re-evaluating these terms which aimed the continuation of bureaucratic statist regime understanding from a democratic, civil and pluralist perspective that safeguarded the rights of the individual and was based on popular participation”<sup>240</sup>.

The AKP government appeared to prioritised the EU membership and be committed to the EU-related reforms, thus induced far-reaching legal and constitutional changes necessary for meeting the requirements of the Copenhagen political criteria<sup>241</sup>. In retrospect, Öniş and Keyman link AKP’s success to its three distinct characteristics: firstly, their emphasis on competence over ideology based on Islamist state model, secondly their message on integrity and fairness aimed at sustainable economic recovery and inclusive of different segments of society, and lastly their strong emphasis on democracy as a long-term solution to Turkey’s internal problems<sup>242</sup>. However, according to Saatçioğlu, the EU emerged as a ‘strategic ally’ for the AKP by which the imperative to ‘survive’ has been fulfilled in a secular political system<sup>243</sup>. She also adds that a major set of democratization reforms have induced instrumentally by the AKP government. In this sense, the government has capitalized on the promotion of EU accession to widen its support base towards the pro-EU membership/liberal minded electorate and AKP’s conservative/pro-Islamist constituency which were disposed to stimulate freedom of religion via the European guidelines as well as to anchor its political reforms aimed at weakening domestic

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<sup>239</sup> Abdullah Gül, speech delivered at the Organization of the Islamic Conference (OIC) Summit in Malaysia on 15 October 2003, quoted in Beken Saatcioglu, *op.cit.*, 2014, 90.

<sup>240</sup> AKP, *AK Parti Seçim Beyannamesi* (Ankara, 2002), 13. Also see Gamze Avcı, “the Justice and Development Party and the EU: Political Pragmatism in a Changing Environment”, *South European Society and Politics*, vol. 16 no. 3 (2011): 415.

<sup>241</sup> Senem Aydın, E.Fuat Keyman, *op.cit.*, 2004, 12.

<sup>242</sup> Ziya Öniş, E. Fuat Keyman, “Turkey at the Polls: A New Path Emerges”, *Journal of Democracy*, vol. 14 no. 2 (April 2003): 99.

<sup>243</sup> Beken Saatçioğlu, *op.cit.*, 2014, 91.

secular forces – e.g. the military, high courts, Kemalist forces-, thus to secure its position domestically<sup>244</sup>.

Regardless of the primacy of liberal political identity, strong will to democratization or instrumentally oriented measures, it is obvious ultimately that the EU has been a discursive reference point increasingly in this period and helped to create “strong language of rights” while providing legitimacy to AKP’s heavy emphasis on fundamental rights and freedoms<sup>245</sup>. The main shift of focus from “state and security” to “society and prosperity” has reinforced AKP’s position and created a fertile ground to conduct the reforms, primarily in field of human rights and democracy<sup>246</sup>.

#### 4.1.4.1.2. The Military

As the preceding chapters introduced, press was insistently dominated by the military tutelage during the military coups in every ten years. For instance, the Anti-Terror Law of 1991, adopted during the peak of PKK violence in southeast Turkey, was notably applied in order to regulate media content and draw the lines of usage of press freedom, was actually a “reminiscent of the ‘old’ Turkey where the military held the last word”<sup>247</sup>. As specified by Dağı, recent debates on the state of freedom of expression and press are rooted in the legal, political and social distortion of 1980 military intervention and introduced by the 1982 constitution<sup>248</sup>. Thus, the rebalancing of civil-military relations and increasing civilian supremacy over the military that are mainly enhanced in the recent process of political reforms in Turkey could be expected to inevitably promote freedom of journalists and media workers. Therefore a brief outlook to the decreasing political weight of the military as a veto player with a long-standing considerable influence will be given below.

The military in Turkey had always been influential in political decision making as a guardian of authoritarian secularism and Westernizing vision. In this respect the

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<sup>244</sup> Beken Saatçioğlu, “Unpacking the Compliance Puzzle: The Case of Turkey’s AKP under EU Conditionality”, **KFG Working Paper Series**, no. 14 (2010): 3. Also see Tanja A. Börzel, Diğdem Soyaltın, “Europeanization in Turkey: Stretching the Concept to its Limits?”, **KFG Working Paper Series**, no. 36 (2012): 14.

<sup>245</sup> Senem Aydın, E. Fuat Keyman, **op.cit.**, 2004, 17.

<sup>246</sup> Ziya Öniş, E. Fuat Keyman, **op.cit.**, 2003, 97.

<sup>247</sup> Fevzi Bilgin, “The Challenges of Democracy and Press Freedom in Turkey”, <http://www.rethinkinstitute.org/files/Bilgin-Press%20Freedom%20in%20Turkey.pdf> [17.06.2014].

<sup>248</sup> İhsan Dağı, **op.cit.**, 2004, 52.

AKP pictured itself Western oriented, democracy-aspiring actor in order to ‘survive’ despite of its anti-secular roots in which the EU has become a primary focus. According to Cizre, the first term of the government in office relied on the strategy of “confrontation avoidance”, with an additional intention of shifting the centre from civil-military bureaucracy to the civil society, thus limiting military’s political influence<sup>249</sup>. The requirements of the EU accession process gave a significant external impetus to the government in order to realign civil-military relations. Considering two major constitutional reforms and numerous legislative packages in this period, it can be seen that the status and composition of the National Security Council (NSC) -an institution which has embodied the political role of the military and termed as ‘the shadow government’ by the government itself- was greatly changed in which number of civilian members was increased and its role was designed as an advisory body<sup>250</sup>. Representative authority of the NSC was removed from several governmental branches. The scope of the Secretary General’s role as well as the appointment procedure was also changed. Hereunder this regulation, Secretariat’s authority to undertake national security investigations on its own initiative was removed<sup>251</sup>. Its budget and special funds were put under parliamentary scrutiny and frequency of meeting was reduced. The competence of military courts to try civilians was also abrogated<sup>252</sup>.

The main EU guidelines aimed to ensure civilian control of the military as well as global emphasis on democratic accountability and transparency of the military and security sector were highly reflected in the AKP’s reform agenda that enabled fundamental civilization of Turkish politics. As a result, it can be seen that the military remained weak in terms of being a veto player in the questions of press freedom, thus reforms addressing the free press were likely to be adopted in this period.

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<sup>249</sup> Ümit Cizre, “The Justice and Development Party and the Military: Recreating the Past After Reforming It?”, **Secular and Islamic Politics in Turkey: The Making of the Justice and Development Party**, ed. Ümit Cizre, (London/ New York: Routledge Studies in Middle Eastern Politics, 2008), 134.

<sup>250</sup> “MGK Gölge Hükümeti”, **Milliyet**, 29 September 2004.

<sup>251</sup> Mehmet Bardakçı, **op.cit.**, 2007, 221-222.

<sup>252</sup> For a detailed list of reforms undertaken to decrease the influence of the military in politics, see Senem Aydın, E.Fuat Keyman, **op.cit.**, 2004, 20.

#### 4.1.4.2. Net Adoption Cost

It would not be wrong to say that weak veto players incurred low adoption cost in this time frame. The perceived amount of political cost in complying with EU rules and norms is crucial in the sense that when it is high for the target government such as on grounds of national security, national sovereignty, economic well-being etc., then the EU criteria would be costly to meet even if the exogenous conditions are convenient to maintain the reform agenda. In this regard, the reason of reforms that were welcomed among different segments of society in this time period specified by Öniş and Keyman as such: “By 2002, having endured for years the terrible and chronic damage that such problematic governments could do to effective governance and accountability, the voters were ready to cry “Enough!” and to opt instead for a ruling structure that offered the prospect of being more responsive to society and its needs”<sup>253</sup>.

Indeed Turkey’s experience in the late 1990s and early 2000s of the MHP-DSP-ANAP coalition government was shaped largely by the financial and economic turmoil and clash of interests regarding their different perspectives in adoption of the reforms. In retrospect pursuant to journalistic problems, certain provisions of the Penal Code and Anti-Terrorism Law used particularly against “traditional triumvirate of enemies”, namely leftists, separatist, Islamists presses which were perceived as threats to unitary structure of the state, its territorial integrity and its secular foundations<sup>254</sup>. Covering controversial issues, such as criticising the military, nationalism and Kurdish identity, several journalists faced prosecutions, political pressures and even became victims of assassinations. In this context, EU-induced reforms failed to overcome the persistent constraints related to free press and fell short of having a common ground since pro-European voters saw the coalition government as indecisive and slow, whereas anti-European voters agreed that reform packages made political concessions to foreigners<sup>255</sup>. Therefore the prevailing social cleavages were reflected low-level of compliance in this period.

Apart from the desperate need in the application of reforms, the political cost of compliance was also low due to the end of terrorism in the late 1990s after the

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<sup>253</sup> Ziya Öniş, E. Fuat Keyman, **op.cit.**, 2003, 96.

<sup>254</sup> Tim Jacoby, “Political Violence, the ‘War on Terror’ and the Turkish State”, **Critical Studies on Terrorism**, vol. 3 no. 1 (2010): 99. Also see, Dilruba Çatalbaş, **op.cit.**, 2007, 28-29.

<sup>255</sup> Meltem Müftüler Bac, **op.cit.**, 2005, 23.

capture of Öcalan in 1999 and the announcement of ceasefire by the PKK. While the security concerns in the previous period had a leading role over the reforms which were viewed as highly costly, the period since 2002 opened room for democratization instead of further securitization. All in all, within the framework of Europeanization literature, domestic political costs of reforms was low in this time frame owing to the perceived optimism about future stability and weakening internal security concerns, together with their emphasis on “competence, integrity and democracy”, the strategy of “confrontation avoidance” and civilian control of the military.

#### 4.1.4.3. Normative Resonance

It was given in the chapter two that the resonance of EU-level norms with domestic ones is a key factor enabling the successful diffusion and compliance as higher societal salience of European norms would enable effective conditionality and domestic change<sup>256</sup>. Considering this hypothesis, it can be seen in this timeframe that domestic political practices were appeared to be in line with core European democratic and human rights norms. For instance, measures towards civilian control of the military, abolition of death penalty, ‘zero tolerance’ policy on torture and easing of restrictions on broadcasting and education in minority languages resulted in higher domestic resonance. In terms of press freedom, provisions of new Press Law regarding abrogation of sanctions, such as the closure of publications, the halting of distribution and the confiscation of printing machines has improved the domestic resonance, thus the likelihood of compliance. Therefore, it can be said that the normative fit facilitated the domestic change in the sense that European norms enjoyed a general consensus among Turkish elites and reflected in the government’s discourses. Moreover, the relatively high societal salience of ‘Europe’ among Turkish population by the year 2004 further promoted the accommodation of EU criteria. According to Eurobarometer’s index on the public opinion in the EU, 71 per cent of the Turkish population consider the future membership to be a ‘good thing’ which had been the highest among member and other candidate states<sup>257</sup>.

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<sup>256</sup> Societal salience is defined as “the degree to which a society defines itself as ‘European’ or ‘Western’”. See Frank Schimmelfennig, Stefan Engert, Heiko Knobel, “Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey”, **Journal of Common Market Studies**, vol. 41 no. 3 (2003): 500.

<sup>257</sup> European Commission, **Public Opinion in the European Union**, (Brussels, 2004), C50.

#### **4.1.4.4. Path Dependence: Culture of Implementation**

The logic of path dependence which stresses the importance of domestic policy legacies in determining the level of domestic change was mixed in the given period. On the one hand, Turkey's notable progress in strengthening press freedom and expression was welcomed by the Commission in its 2004 Progress Report owing to the profound amendments in Penal Code, Anti-Terror Law and basically the Press Law which resulted in a reduction in the number of prosecutions and convictions in the cases. However, on the other hand, prosecutions and punishments based on "non-violent expression of opinion" were emphasized in the same report and it was claimed that frequency of cases that were filed against members of the press aroused concerns as well<sup>258</sup>.

As a result, path dependent character of the political pressure and persistent restrictions on press, together with lack of a solid compliance culture render the overall pace of Europeanization rather limited. However, the far-reaching legal changes could enable the transition to 'world of law observance' if these changes would be accompanied by behavioural adaptation which will be further referenced in the following sections.

### **4.2. Europeanization of Turkey's Press Freedom Policy 2005 – 2008**

It is aimed to analyse the degree of Europeanization for the period which starts with the opening of accession talks with the EU in 2005 and the time when reforms are suspended. On the other side, 2008 marks the Turkish Constitutional Court's close verdict not to disclose the incumbent AKP and the beginning of Ergenekon investigations which depicts a clandestine network accused of attempting to overthrow the government and to instigate armed riots. Through examining the time period, it is intended to find out what caused the reform fatigue and resistance to EU policies in the field of press freedom.

#### **4.2.1. Domestic Changes in Press Freedom**

As a result of the AKP's commitment in accomplishing far-reaching reforms in line with the compliance to the Copenhagen Criteria, the European Commission has

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<sup>258</sup> European Commission, **2004 Regular Report on Turkey's Progress towards Accession**, (Brussels, 2004), 36-39.

made a positive assessment and subsequently the European Council Presidency concluded that “on the basis of a report and recommendation from the Commission, that Turkey fulfils the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay” in its meeting in December 2004<sup>259</sup>. Regarding this decision, Turkey’s long road to EU has seen a momentous turning point and in October 3, 2005, the accession negotiation has eventually started relating to the conditions for adoption and implementation of the EU body of law. Accordingly, the negotiation framework has set in order to examine the fulfilment of the requirement by Turkey on the basis of the regular review of the Commission. However, compared with the AKP’s proactive term in office in the last time frame, this period was “scanty and no more substantial” according to Avcı<sup>260</sup>. The loss of enthusiasm and commitment on the part of the AKP government and the public for the EU membership project is also identified as “loose Europeanization” by Öniş<sup>261</sup>. Likewise, Saatçioğlu recognized the period as being “AKP’s illiberal inclination”, namely “slow-down in compliance”<sup>262</sup>.

In this period the most salient development regarding the press is the new Turkish Criminal Law no. 5237 came into effect on 1 June 2005, mainly as a result of Turkey’s efforts toward aligning its legislation with EU law. Although, the Code was welcomed positively by the European Commission in its first place because of improving certain provisions relating to freedom of expression, strengthening fight against torture and ill-treatment and criminalizing discrimination, concerns were also expressed mainly about the cases against the novelist Orhan Pamuk, the editor of *Agos* Hrant Dink, the writer Emin Karaca and publisher Ragıp Zarakolu concerning the interpretations of the Code in a restrictive manner<sup>263</sup>. As regards to freedom of the press, prosecutions and convictions for the expression of non-violent opinion was likely to occur and self-censorship in the press was likely to entail because of the fact that the Code simply re-numbered and re-worded provisions contained in the previous penal code. For instance, the Articles 215, 216, 301 and 318 of the new Penal Code continued to regulate the same offences in the previous law under the

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<sup>259</sup> “Presidency Conclusion of the Brussels European Council”, 16-17 December 2004, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/83201.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf) [13.05.2014].

<sup>260</sup> Gamze Avcı, *op.cit.*, 417.

<sup>261</sup> Ziya Öniş, 2008, 41.

<sup>262</sup> Beken Saatçioğlu, 2010, 19.

<sup>263</sup> European Commission, **Turkey: 2005 Progress Report** (Brussels, 9 November 2005), 25-26.

Article 312, 159 and 155 which are used as main sources of the indirect content regulation in the press and journalistic limits and constraints<sup>264</sup>. Concerning the clauses constraining the freedom of the press, the new Code also allows “making propaganda for an illegal organization or its aims” to be punished by one to three years in prison, with the heavier penalty if the offence is committed by the media<sup>265</sup>.

Contradictory to new Press Law in 2004 which aimed at “avoiding prison sentences in cases of offences committed through the press”, Article 285 of the Code foresees a four and a half years in prison anyone “violating the confidentiality of an investigation”, while Article 277 envisages two to four years in prison for those who “sway the justice system.” Moreover, under Article 267, defamation through the press with the aim of exposing someone to a judicial investigation is liable to one to four-year prison sentence<sup>266</sup>. According to the Commission, it is highly likely that these articles could be used against journalists covering court proceedings<sup>267</sup>.

Additionally, Anti-Terrorism Law amended in 2006 in concert with the new Turkish Penal Code of 2005 and in response to heightened security concerns. According to Yıldız and Muller, the amendments reintroduced anti-democratic measures which “represent potentially retrogressive steps that risk undermining the progress already achieved through the EU harmonization process”<sup>268</sup>. Indeed, the revised law greatly widened the scope and number of crimes punishable as terrorist offences and introduced articles likely to further restrict freedom of press<sup>269</sup>.

As identified in the previous chapter, the Law contains an over broad and ambitious definition of key terms with the result of introducing legal restrictions on freedom of expression and press under the name of making “terrorist propaganda”<sup>270</sup>. Punishment for this offence which is regulated under Article 3 and 4 of “terrorist offences and offences committed for terrorist purposes” has been increased from fines to imprisonment of one to five years. If the terrorist propaganda is conducted

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<sup>264</sup> Dilek Kurban, Ceren Sözeri, 2012, 39.

<sup>265</sup> “Turkey- 2005 Annual Report”, Reporters without Borders, <http://www.refworld.org/type,ANNUALREPORT,RSF,TUR,46e690e0c,0.html> [14.05.2014].

<sup>266</sup> “Reporters Without Borders concerned of new Turkish Penal Code”, *Bianet*, 31 May 2005.

<sup>267</sup> European Commission, **Turkey: 2005 Progress Report** (Brussels, 9 November 2005), 26.

<sup>268</sup> Kerim Yıldız, Mark Muller, 2008, 41.

<sup>269</sup> Konrad Adenauer Stiftung (KAS), **Democracy Report II: Media and Democracy – Turkey** (Berlin, 2008), 194.

<sup>270</sup> European Commission, **Turkey: 2006 Progress Report** (Brussels, 8 November 2006), 6.

via organs of the press or media, the penalty is increased by half<sup>271</sup>. Article 6 which regulates the activities of the press was also amended in 2006 and the punishment for the crime of “disclosure and publication” was set as a reintroduction of custodial sentence of between one and three years.

The press is further limited by the provision that periodicals whose content is found to praise crimes and criminals within the framework of activities of a terrorist organisation, or which has found to make terrorist organisation propaganda can be suspended by decision of a judge<sup>272</sup>. The Law also introduced liability to chief editors and to press and media owners for publishing terrorist propaganda or praise them in press or media organs. According to the Commission, in its Progress Report of Turkey in 2006, the new law establishes aggravated penalties for "propaganda" and "praise" of terrorism, though this definition of such crimes is not in line with the Council of Europe Convention for the Prevention of Terrorism<sup>273</sup>.

As a result of the pressures on free press owing to the provisions of the amended Anti-Terror Law in 2006 and adopted new Turkish Penal Code in 2005, many writers and journalists were prosecuted. In one of those incidents, the European Court of Human Rights held unanimously in cases of *Erdal Taş v. Turkey*, *Yıldız and Taş v. Turkey* (the owner and editor of Yeni Gündem), *Falakaoglu v. Saygılı v. Turkey* (the editor and owner of Yeni Evrensel) that there had been a violation of Article 10 (freedom of expression) and Article 6 (right to a fair trial) of the European Convention of Human Rights<sup>274</sup>. Moreover, the Court of Cassation confirmed a six-month suspended prison sentence for journalist Hrant Dink, editor-in-chief of the bilingual Turkish-Armenian weekly *Agos*, in October 2005 on the basis of Article 301 of the new Penal Code for insulting "Turkishness" in a series of articles he wrote on Armenian identity, unfortunately he was assassinated in January 2007, with leaving behind an urgent need for full investigation<sup>275</sup>.

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<sup>271</sup> “Law Regarding Amendments in the Anti-Terror Law (no. 5532)”, June 2009, Article 7.

<sup>272</sup> “Law Regarding Amendments in the Anti-Terror Law (no. 5532)”, June 2009, Article 6.

<sup>273</sup> European Commission, **Turkey: 2006 Progress Report** (Brussels, 8 November 2006), 6.

<sup>274</sup> “Seven Chamber Judgments Concerning Turkey”, European Court of Human Rights, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-1881591-1976061#{"itemid":\["003-1881591-1976061"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-1881591-1976061#{) [16.05.2014].

<sup>275</sup> European Commission, **Turkey: 2006 Progress Report** (Brussels, 8 November 2006), 14. Also see, European Commission, **Turkey: 2007 Progress Report** (Brussels, 6 November 2007), 15.

#### 4.2.2. The degree of domestic change: retrenchment

Although the previous period in question saw the AKP government's solid commitment to the EU accession process, this timeframe was shaped mainly by problems of actual implementation and adoption of restrictive measures. The rise in government's anti-European interests and slow-down in reform process increased concerns of the Commission regarding that the non-violent expression of opinion was expected to be strengthen and continued limits on freedom of press to be remedied by the previous reform packages, though it was stated in 2008 Progress Report that "the government did not put forward a consistent and comprehensive programme of political and constitutional reforms"<sup>276</sup>. Therefore, this period will be identified as "retrenchment" meaning that EU pressure to reform a specific policy area strengthens the coalition of domestic actors opposing reforms, therefore the national policy becomes 'less European' in which intervention is likely to be valued over liberalization<sup>277</sup>. Likewise, Ovalı alternates the term retrenchment by using the concept such as "de-Europeanization" or "re-nationalization" in order to identify candidate country's reactionary behaviour to adaptation pressures generated by the EU<sup>278</sup>. According to him, the negative reaction is in essence brought about through partial or complete renationalization of domestic politics, policies and polity, or as he specifies, of interest articulation, interest representation and public discourse.

In case of Europeanization of the press freedom policies in Turkey, above-mentioned legal amendments ensure ample evidence that national interests have leading role over the EU guidelines. Thus, it can be said that if the preferences of the receiving government are contrary to the EU's rules and regulations, retrenchment is a possible outcome. Consequently, probable roles for exogenous and endogenous factors will be introduced in the next part in order to figure out why retrenchment occurred.

#### 4.2.3. Exogenous Factors: The EU Context

While embracing the approach focusing on external factors, this part will explain the slow-down in the reform process with the differentiated application of conditionality

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<sup>276</sup> European Commission, **Turkey: 2008 Progress Report** (Brussels, 5 November 2008), 8.

<sup>277</sup> Claudio M. Radaelli, "Whither Europeanization? Concept Stretching and Substantive Change", **European Integration Online Papers**, vol. 4 no. 8 (2000): 15.

<sup>278</sup> Şevket Ovalı, "Global Financial Crisis and De-Europeanization of Turkish Foreign Policy", <http://www.eisa-net.org/be-bruga/eisa/files/events/warsaw2013/Sevket%20Ovali%20Working%20Paper%20Warsaw.pdf> [20.06.2014].

by the EU. The focus will be given on losing credibility and legitimacy of the EU guidelines that have rendered the democratic conditionality ineffective.

#### 4.2.3.1. Credibility

Compared to the previous timeframe when the EU was also committed to the future enlargement through applying clear membership perspective and credible threats and rewards, the period which begins with opening of accession negotiations with Turkey saw a harsh reversal which negatively affected the likelihood of democratization in Turkey as well. In this respect, the principles governing the negotiations with Turkey, including renewed emphasis on “absorption capacity” and “open-endedness” of accession process led to widespread criticism because of containing ambiguous clauses in nature. As it is stated in the Negotiation Framework in 2005:

“The negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand. While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond.”

Although the EU’s absorption capacity was introduced in the Copenhagen Summit as part of the accession criteria, it did not affect the ongoing process of Eastern enlargement in 2004, though invoked extensively in Turkish case. Özer agrees that inclusion of such a clause enabled the Union to use it as a “justification for Turkey’s rejection” to the EU, thus it served as a “sign of unwillingness” of the EU for Turkey’s accession<sup>279</sup>. She also added that the statement in the document can be regarded as “the evidence of double standards towards Turkey and of reluctance on the EU side for Turkish membership”<sup>280</sup>. Indeed, “enlargement fatigue” that has been notably invoked within the EU after the accession of various countries in 2004, characterizes the current unwillingness to grant EU membership to new states. Szolucha claims in regard to problem of absorption capacity that “the EU’s inability to counter enlargement fatigue is supposed to reflect two main issues of the capacity question: the EU’s capacity to function after successive enlargements and the

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<sup>279</sup> Yonca Özer, “The EU’s Impact on Democratization in Turkey: Europeanization through Political Conditionality”, **Turkey and European Union: Process of Europeanization**, ed. Çiğdem Nas, Yonca Özer (England, USA: Ashgate Publishing, 2012), 61.

<sup>280</sup> Yonca Özer, **Ibid.**

‘democratic deficit’”<sup>281</sup>. Examples proving this line of argument can be given from the Dutch, French and Irish referenda in 2005 and 2008 about their rejection of the Constitutional and the Lisbon Treaty which provides ample evidence about the public opinion turning against the further enlargement and the protest vote against the EU as an elite-driven project. The stance of these specific states reveals also that domestic factors in the European arena will come back to the fore increasingly and illustrates the Union’s “split personality” which would detract democratic conditionality from being determinate, clear and credible<sup>282</sup>.

During this period, the inhospitable environment along with losing credible and consistent EU incentives affected the nature of conditionality in future enlargements. As Pridham specifies, “political conditionality has become broader in its scope, much tighter in its procedures, and less easy to control within a less enlargement-friendly environment in the EU and against less certainty about enlargement prospects”<sup>283</sup>. Increasing Turco-sceptic perspectives in the EU reinforced this unfriendly atmosphere and led eventually to loss of trust in the Turkish side. For instance, the discussions about offering “privileged partnership” –but not membership-status by European leaders such as Nicholas Sarkozy, Angela Merkel and Wolfgang Schäuble fed the decrease in trust. Their statements on “culturally different” or regionally “non-European” Turkey paved the way for a general perception in the Turkish public opinion that the EU is a “Christian Club” discriminating and othering Turkey based on its size, demographic growth, geography, economy and most importantly identity where Turkey was not delineated in line with Europe’s Christian past, Greco-German tradition, and the Enlightenment process<sup>284</sup>.

The Cyprus issue further aggravated the credibility problem in this timeframe. In 2004 the accession of numerous countries to the EU obliged Turkey to extend the customs union to new member states. Although Turkey expanded the customs regulation in line with the 1995 Ankara Agreement, the AKP government was chary

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<sup>281</sup> Anna Szolucha, “The EU and Enlargement Fatigue: Why has the European Union not been able to counter enlargement fatigue?”, **Journal of Contemporary European Research**, vol. 6 no. 1 (2010): 9.

<sup>282</sup> *Ibid.*, 1-13.

<sup>283</sup> Geoffrey Pridham, “Change and Continuity in the European Union’s Political Conditionality: Aims, Approach, and Priorities”, **Democratization**, vol. 14 no. 3 (2007): 446.

<sup>284</sup> Catherine Macmillan, “Privileged Partnership, Open Ended Accession Negotiations and the Securitization of Turkey’s EU Accession Process”, **Journal of Contemporary European Studies**, vol. 18 no. 4 (December 2010): 454–457, cited in H.Tarık Oguzlu, “Turkey and the European Union: Europeanization without Membership”, *Turkish Studies*, vol. 13 no. 2 (2012): 234.

of opening sea ports and airspace to Greek Cypriot ships and planes, with the Declaration on Cyprus on 29 July 2005 stating that the “signature, ramification and implementation of the Protocol did not amount to any form of recognition of the Republic of Cyprus”<sup>285</sup>. As a response, the EU warned Turkey that “recognition of all Member States is a necessary component of the accession process” and stated that:

“The European Community and its Member States expect full, non-discriminatory implementation of the Additional Protocol, and the removal of all obstacles to the free movement of goods, including restrictions on means of transport. Turkey must apply the Protocol fully to all EU Member States. The EU will monitor this closely and evaluate full implementation in 2006. The European Community and its Member States stress that the opening of negotiations on the relevant chapters depends on Turkey’s implementation of its contractual obligations to all Member States. Failure to implement its obligations in full will affect the overall progress in the negotiations.”<sup>286</sup>

However, linking accession to some other non-Copenhagen issues like Cyprus blocked the ongoing negotiations as eight of the chapters were frozen in December 2006 thus weakened the credibility of conditionality. On that account, the EU’s treatment on Cyprus issue was regarded as an unfair demand bearing on one-sided concession as well as an application of double standards. Turkey already backed the Annan Plan to reunite the island, though as Patton accurately states, “EU bullying to either recognize Cyprus or forget EU membership has proven to be highly counterproductive and has countenanced a perception among Turks that the Cyprus issue is a zero-sum game with the deck unfairly stacked and in which there can be only one winner”<sup>287</sup>. Moreover, the Turkish side begun to think that compliance with the political criteria will not come into its own as violations remained unpunished and benefits did not granted despite the fulfilment of obligations<sup>288</sup>. Therefore, incentives to comply with the EU criteria were dramatically reduced as rewards remained precarious, that resulted in apparent loss of momentum in the transformative power of the EU.

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<sup>285</sup> Declaration by Turkey on Cyprus, T.R. Ministry of Foreign Affairs. [http://www.mfa.gov.tr/declaration-by-turkey-on-cyprus\\_-29-july-2005.en.mfa](http://www.mfa.gov.tr/declaration-by-turkey-on-cyprus_-29-july-2005.en.mfa) [21.06.2014].

<sup>286</sup> “EU Enlargement: Turkey”, European Community and Member States, [http://www.eu-un.europa.eu/articles/en/article\\_5045\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_5045_en.htm) [21.06.2014].

<sup>287</sup> Marcie J. Patton, “AKP Reform Fatigue in Turkey: What Has Happened to the EU Process?”, *Mediterranean Politics*, vol. 12 no. 3 (2007): 346.

<sup>288</sup> Senem Aydın, E.Fuat Keyman, *op.cit.*, 2004, 17.

#### 4.2.3.2. Legitimacy

It can be said that the EU's treatment on the Cyprus issue shook the legitimacy of rules to its very foundation as Turkey did its fair share of the work to reunite the island whereas divided Cyprus acceded to the Union while reaching a dead end over the peaceful resolution of disputes. Apart from that, the discussions about democracy deficit after the enlarged Europe gained attention on accounts of rejected referendums in France and Netherlands about the future Constitutional Treaty and questions of democratic legitimacy. The referendum saying no to Europe revealed the protest vote against the EU as an elite project in which it lacks space for public leverage on future direction of the Union<sup>289</sup>. The no votes also showed that pro-EU discourses were drowned out by the voices of the right-wing which focused more on impact of enlargement and immigration on national identity<sup>290</sup>.

Although this picture does not necessarily assert that the EU rules and regulations lost their legitimacy among Turkey's decision-makers and public opinion, it sheds light on the legitimacy discussions in the following timeframe in the sense that the quality of democracy started to be widely discussed with the rise of radical right and uncertainty over Turkey's eventual membership as well as with the deepening economic crisis leading to deep political crisis at the EU level.

#### 4.2.4. The Endogenous Factors: Domestic Context

The losing credibility and legitimacy of the external incentives had a direct impact on the strengthening veto players with an increased cost of rule adoption and implementation in this period. The stalled Europeanization process was also accompanied by decreasing domestic resonance of EU-level norms with domestic ones as the European rules and norms began to be questioned by Turkish policy-makers. As a result, the reform process fell short of the expectations and remained path-dependent.

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<sup>289</sup> Anna Szolucha, *op.cit.*, 9.

<sup>290</sup> Vivien A. Schmidt, "Democracy in Europe: The Impact of the European Integration", *Perspectives on Politics*, vol 3 no. 4 (2005): 771-772.

#### 4.2.4.1. Veto players

The scanty reform process increased the number of veto players and strengthened the existing ones in this time frame<sup>291</sup>. While the Cyprus issue fed into the nationalist sentiments in Turkey, the revival of terrorism in 2004 reinforced this tendency as substantial reform process particularly in the areas of freedom of expression, press and minority rights started to be hindered because the political climate became highly sceptical.

##### 4.2.4.1.1. The PKK

Although the PKK is not a veto player in form of institutions or parties, it is a de facto veto player as its presence or absence is crucial for a change in the status quo<sup>292</sup>. Indeed, after a terrorist attack conducted by the PKK, it became formidable to adopt reforms in the area of freedom of press as every journalistic activity can be perceived as “terrorist propaganda” in an antagonistic environment.

The PKK’s terrorist activities was launched in 1984, concluded in 1999 with the announcement of ceasefire, but revived in 2004, thus fits into the analyses in which incentives to reform was high during the fairly peaceful environment in early 2000s compared to 2004 onwards when national security and counterterrorism concerns gained widespread attention and underlay the juridical restrictions on press. In retrospect, various harmonization packages in the previous period enabled a new and more constructive step toward human rights while impinging upon deep seated “historical taboos” such as easing of restrictions on broadcasting and education in minority languages and lifting of the State of Emergency in the southeast Turkey<sup>293</sup>. However, from 2004 onwards, lack of dialogues and initiatives in reaching a negotiated settlement was cited by the PKK as the reason to terminate the ceasefire<sup>294</sup>. In regional context, political instability and sectarian violence in Iraq after the US-led invasion strengthened the likelihood of an independent Iraqi Kurdistan in Turkey’s southern neighbourhood and revived armed struggle in the

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<sup>291</sup> Yonca Özer, *op.cit.*, 61.

<sup>292</sup> Silke Hils, “Europeanization of Turkey’s Kurdish Policy: Years 2002-2011” (M.A. Thesis, Europa Universität Viadrina, Istanbul Bilgi University, 2012), 30-31.

<sup>293</sup> Kerim Yıldız, Mark Muller, *op.cit.*, 40.

<sup>294</sup> Derya Bayır, “The Role of the Judicial System in the Politicide of the Kurdish Opposition”, **The Kurdish Question in Turkey: New Perspectives on Violence, Representation and Reconciliation**, ed. Cengiz Gunes, Welat Zeydanlioglu (London, New York: Routledge, 2014): 35.

PKK<sup>295</sup>. In that case, nationalist calls pushed the AKP government into mounting military action against the PKK bases and hideouts in Northern Iraq in February 2008. The level of tension was also aggravated by the counter nationalist discourses of the Kurdish leaders in Northern Iraq. As a result, Kirişçi notes that “the rise in PKK violence and tension with Kurds in northern Iraq led to considerable backsliding in the Turkish military’s attitude towards reforms”<sup>296</sup>. For instance, the Chief of General Staff Yaşar Büyükanıt claimed that “the EU *acquis* would divide us!” while not granting membership to the EU. He also added that:

“It is not a conspiracy theory, it is a fear. In the reports prepared by EU Commission and EU Parliament, new minorities in Turkey are being endlessly produced. It is not a gossip, enter the EU Parliament’s website, look through the decisions taken so far [...] If you look at the results of the reports, the concept of ‘citizenship’ needs to be identified again. Parliament resolutions was formerly said to be not binding, but it is in general terms, not for Turkey”<sup>297</sup>.

All in all, in terms of increasing security concerns on grounds of revival of the PKK violence in 2004, the period cannot be regarded as a fertile ground for applying reforms in the field of press freedom. As it is already given, amendments to the Anti-Terror Law in 2006 further aggravated the state of play in regulating the media content and weakened Turkey’s democratization process.

#### 4.2.4.1.2. The Military

Although the pervious time frame saw the increasing civilian control over the military, this period lacked the substantial steps to curtail the power of the military. In August 2006, Yaşar Büyükanıt succeeded to the fairly liberal Chief of General Staff Hilmi Özkök and took a tougher stance against the government and the EU officials as he claimed that reform process would prevent the military from doing its job to protect the regime and to defend its founding principles<sup>298</sup>. Therefore, the Progress Reports in this term generally marked that “limited progress has been made in aligning civil-military relations with EU practices”<sup>299</sup>.

In the second term of AKP government in 2007, the political landscape was shaped by struggles between the government and the secular Turkish state establishments -or

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<sup>295</sup> Marcie J. Patton, *op.cit.*, 346.

<sup>296</sup> Kemal Kirişçi, “The Kurdish Issue in Turkey: Limits of European Union Reform”, **South European Society and Politics**, vol. 16 no. 2 (2011): 341.

<sup>297</sup> “Müktesebat bizi parçalar!”, **Radikal**, 13 April 2007.

<sup>298</sup> Marcie J. Patton, *op.cit.*, 354.

<sup>299</sup> European Commission, **Turkey 2006 Progress Report** (Brussels, 8 November 2006), 8.

in Patton's term the "Kemalist nomenklatura"- namely the military, the judiciary and the bureaucracy<sup>300</sup>. In this regard, the first major crisis emerged in the spring of 2007 when Turkey experienced huge public demonstrations in support of secularism, yet mostly critical of military involvement, amid the nomination of Abdullah Gül as AKP's candidate for presidency<sup>301</sup>. As the instability and polarisation was considerably increased at the societal level due to AKP's aspirations to make greater room for Islam, it turned into a state of crisis when a communiqué was issued in the webpage of Turkish General Staff in support of the secular order of the Republic<sup>302</sup>. Referring as "e-ultimatum" or "e-coup", it showed the military's prevailing influence over politics, with positioning itself as a guarantor of secularism and order as well as territorial integrity of Turkey.<sup>303</sup>

In terms of press freedom, military tutelage over the press still continued as the weekly newspaper *Nokta* was closed by its owner due to increasing self-censorship in Turkey under military pressure after revealing several coup plots<sup>304</sup>. The newspaper also disclosed secret military documents which classified media outlets and journalists on the basis of their views, thus "journalists most critical of the army" lost accreditation to military receptions and briefings by an internal memorandum from General Staff. The closure followed by a police raid, with the public prosecutor acting on behalf of the General Staff Military Prosecutor<sup>305</sup>. In this respect, as noted in the 2007 Progress Report, the military continued to exercise significant political influence in this time frame, namely in the specific fields of Kurdish issue, Cyprus problem and secularism, thus restrict the academic research and public debate such as on security and minority rights issues<sup>306</sup>. The restrictions on press therefore received its share from the attempts of armed forces.

#### 4.2.4.1.3. The Judiciary

As it is given before, one of the areas of domestic struggles of power was between the government and the judiciary in the time frame especially since 2007. Indeed, the judiciary in Turkish political culture is not only a significant institution guaranteeing

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<sup>300</sup> Gamze Avcı, *op.cit.*, 413. Also see Marcie J. Patton, *op.cit.*, 349.

<sup>301</sup> "Huge Rally for Turkish Secularism", *BBC News*, 29 April 2007.

<sup>302</sup> Kemal Kirişçi, *op.cit.*, 341.

<sup>303</sup> Senem Aydın Düzgit, Fuat Keyman, *op.cit.*, 2013, 5.

<sup>304</sup> Can Dündar, "Nokta'landık mı?", *Milliyet*, 23 April 2007.

<sup>305</sup> European Commission, *Turkey 2007 Progress Report* (Brussels, 6 November 2007), 15.

<sup>306</sup> *Ibid.*, 9.

democracy along with the executive and parliament, but also a core establishment next to the military protecting Kemalist republican values of secularism and nationalism<sup>307</sup>. As Glyptis agrees, “Kemalism as a language is taught in schools, reproduced through the media and spatial narratives and extensively used by politicians, members of armed forces and the judiciary”<sup>308</sup>. Thus, in order to ‘survive’ despite of its Islamist roots, the AKP government attempted to widen its support base through adopting pro-EU reform agenda and the promise of extended religious freedoms and to guarantee its continuity vis-à-vis the secularist state establishment in the judiciary and the military<sup>309</sup>. In this respect, several packages introduced to comply with the EU’s Copenhagen criteria touched the core elements of Turkey’s political structure and dynamics such as reducing the influence of military in politics, abolishing State Security Courts, aligning the judiciary with European standards<sup>310</sup>. The prospect of EU membership is feared and coveted at the same time, with leading to reinterpretation of key terms and notions, thus creating tension<sup>311</sup>. Although, the establishment of Turkish Republic was centred on modernization via Westernization, thus the Kemalist nomenklatura was also open to comply with EU demands, the status quo underpinning Kemalist legacy was desired to be maintained under the AKP rule. Regarding Turkey’s EU aspirations and internal contestations, Glyptis believes that Recep Tayyip Erdogan has sought to “use Kemalist westernisation to challenge Kemalist secularism” in order to overcome the largely oppositional judiciary<sup>312</sup>.

A crucial development in that sense was about Article 301 of the Turkish Penal Code. As a result of external and internal dynamics in this period, the article can be regarded as a major weapon of the judiciary in which it forbids to denigrate Turkishness, the Turkish Republic, and the foundation and institutions of the State, even on grounds of expression of non-violent opinions on Armenian and Kurdish

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<sup>307</sup> Marcie J. Patton, *op.cit.*, 349.

<sup>308</sup> Agapi-Leda Glyptis, “Kemalism as a Language for Turkish Politics: Cultivation, Reproduction, Negotiation”, (PhD Thesis, London School of Economics and Political Science, 2007), 31.

<sup>309</sup> Senem Aydın Düzgit, Fuat Keyman, *op.cit.*, 2013, 4. Soli Ozel, “After the Tsunami”, *Democratization*, vol.14, no.2 (April 2003): 80-94.

<sup>310</sup> Burhanettin Duran, “The Justice and Development Party’s ‘new politics’: Steering toward conservative democracy, a revised Islamic agenda or management of new crises?”, *Secular and Islamic Politics in Turkey: The Making of the Justice and Development Party*, ed. Ümit Cizre (London/ New York: Routledge Studies in Middle Eastern Politics, 2008), 87.

<sup>311</sup> Agapi-Leda Glyptis, *op.cit.*, 37.

<sup>312</sup> *Ibid.*, 11.

issues and the role of the military. The article had been widely criticized because of its frequent use and arbitrary interpretations. As a result, noted in the 2007 Progress Report that “judicial proceedings and threats against human rights defenders, journalists, writers, publishers, academics and intellectuals have created a climate which has led to occurrences of self-censorship in the country”<sup>313</sup>.

The domestic battle was further deteriorated with the Constitutional Court’s judgment to invalidate first round of voting in the presidential election that was held in April 2007 to meet a quorum. The Court backed the opposition and military’s argument which was against the presidency of Abdullah Gül because of his Islamist credentials, resulting in high degree of uncertainty and instability<sup>314</sup>. Though the struggles culminated in the closure case against the AKP in March 2008 based on the violations of Turkey’s secular constitutional order. The case was launched in respect to statements made by AKP government to lift the constitutional ban on wearing the headscarf in university campuses. Yet the Constitutional Court rendered a verdict against the closure of the party which took 47 per cent of the vote, though the party received serious warning and pecuniary fine.

On this matter, Patton accounts for the role of the Constitutional Court as “the most powerful judicial nemesis” of the AKP<sup>315</sup>. She adds that:

“Putting politics ahead of legal principles, it has acted with determination to check the reform agenda of the government by blocking proposed laws, overruling constitutional amendments, and upholding restrictive interpretations of civil rights and democratic freedoms compelling human rights litigants to seek remedy at the ECHR.”<sup>316</sup>

As a result, judiciary in Turkey had been a powerful veto player in this period, with the practices aiming to maintain the status quo and traditional state apparatus even at the expense of democracy and human rights.

#### **4.2.4.1.4. The AKP government**

In 2007, the AKP won the elections, increased its votes and started the second term in power. The government emerged as a much stronger party and enjoyed its secured position regardless of survival instincts compared to previous period, thus lost its

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<sup>313</sup> European Commission, **Turkey 2007 Progress Report** (Brussels, 6 November 2007), 61.

<sup>314</sup> “Turkey’s Presidency Vote Annulled”, **BBC News**, 1 May 2007.

<sup>315</sup> Marcie J. Patton, **op.cit.**, 350.

<sup>316</sup> **Ibid.**, 350-351.

primary focus on EU reform agenda particularly since 2005 with the opening of accession negotiations. According to Kalaycıoğlu, “the focus of the government moved inwards and towards consolidating its power by establishing full-scale control of all the autonomous agencies of the state”<sup>317</sup>. Regarding its widening support base and consolidating power, the government tended to revive the Islamist agenda and started to confront and challenge the secularist establishments, with the attempts eventually leading to a “kulturkampf” between the secularist and Islamist revivalist bloc of the country<sup>318</sup>. This case became apparent after the 2007 elections in the sense that attitudes towards headscarf turned out to be a “political showdown” that further led to closure case<sup>319</sup>. As the AKP adopted a liberalist approach in line with EU standards to meet the demands of its conservative base on the issue of freedom of religion, ECHR’s verdict against wearing headscarf on university campuses on November 2005 disappointed the AKP. Erdogan argued that the Court’s decision was very upsetting and added that “the court can’t make decisions on this issue; the ulema should”, thus he sparked major controversy<sup>320</sup>. Although it should be noted that the ECHR is not an EU institution and directly related to the EU legislation, the unfortunate judgment caused the government and sympathisers to be alienated from the EU membership prospect and fed into the feeling of Euro-scepticism among conservative circles in Turkey<sup>321</sup>.

In terms of press freedom, the revision of the Penal Code and the adoption of the amended Anti-Terror Law illustrated the anti-democratic tendencies and risked the progress already achieved in the previous period<sup>322</sup>. That is why the AKP government emerged as a strong veto player in this time frame and became incapacitated especially in terms of effective implementation of the adopted norms. General Directorate of Criminal Records and Statistics indicates that 2017 lawsuits were opened in the year 2006 and 2767 lawsuits in 2007 based on the allegations from Anti-Terror Law no. 3713. The numbers became pressing considering the

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<sup>317</sup> Ersin Kalaycıoğlu, “The Turkish-EU Odyssey and Political Regime Change in Turkey”, **South European Society and Politics**, vol. 16 no. 2 (2011): 274.

<sup>318</sup> Ersin Kalaycıoğlu, **Ibid.**

<sup>319</sup> Gamze Avcı, **op.cit.**, 414.

<sup>320</sup> “Erdogan doktrini”, **Milliyet**, 16 November 2005.

<sup>321</sup> Ali Resul Usul, “The Justice and Development Party and the European Union: From euro-scepticism to euro-enthusiasm and euro-fatigue”, **Secular and Islamic Politics in Turkey: The Making of the Justice and Development Party**, ed. Ümit Cizre (London/ New York: Routledge Studies in Middle Eastern Politics, 2008), 186.

<sup>322</sup> Kerim Yıldız, Mark Muller, **op.cit.**, 41.

lawsuits pursuant to Penal Code no. 5237. With regard to Article 220 (forming organized groups with the intention of committing crime), 1237 and 1232 lawsuits were opened in 2006 and 2007 respectively; whereas 386 and 356 lawsuits were brought based on the Article 301 (designation) in the given years in turn. On the basis of the Article 314 (armed organized criminal groups), 1145 and 1094 cases were opened in 2006 and 2007 respectively<sup>323</sup>.

As a result it can be said that candidate status does not matter and membership prospect becomes far from being promotive when the adopted rules and norms are not sufficiently internalized by the veto players. Therefore, the sceptical stance of the powerful actors led to the domestic adjustment cost to be perceived as high and not necessarily worthwhile.

#### **4.2.4.2. Net Adoption Cost**

The cost-benefit calculations of candidate states determine the effective diffusion of European norms and compliance with the rules in the sense that the states would be reluctant to meet the cost of compliance which far outweighs the benefits of membership. With respect to one-sided European pressure to solve the Cyprus issue, to extend the cultural rights to Kurds and to recognize the historical events of 1915 as an act of genocide, nationalist sentiments in this period were dramatically expanded to an extent that reform packages were perceived as a political concession to foreign powers at external level and to terrorism at domestic level<sup>324</sup>. Maintaining the balance between countering terrorism and protecting the free press fell short of the expectations with over-application of Penal Code and Anti-Terror Law. Therefore, not only adopting, but also implementing EU rules and regulations appeared to be at great cost, with endangering domestic change of the status quo. Lastly, in terms of strengthening press freedom, the domestic battle between pro-reform and reform-sceptical forces created an environment which was by no means facilitator to apply the reforms.

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<sup>323</sup> The Ministry of Justice, "Written parliamentary question" (No. B.03.0.KGM.0.00.00.03/355/497, 06 February 2009): 4-6.

<sup>324</sup> For the sources of patriotic sentiments, see Marcie J. Patton, *op.cit.*, 345-346.

#### 4.2.4.3. Normative Resonance

As an alternative factor to shed light on the retrenched attitude on reforms in this period, Kubicek agrees that the questions about EU credibility and legitimacy as well as some incongruence with reference to “cultural match” such as practices on maintaining secular order, constrained the EU’s attempts to push the reform process<sup>325</sup>. Indeed, the failures in ensuring “full civilian supervisory functions over the military” and the “tendency of the military to make public comments on issues beyond its remit” -including on the reform agenda- as well as questions regarding “independence and impartiality of the judiciary” increased the concerns on the EU side<sup>326</sup>. Thus, the resonance of EU level norms with domestic ones remained low and limited the likelihood of compliance. Likewise, Schimmelfennig et al. claim that “Western liberal democracy lacks resonance in Turkey” and they add: “military traditionally receives high rates of approval within society as the ‘guardian of Kemalism’, politicians and the multi-party system are viewed with deep mistrust and lack of confidence”<sup>327</sup>. Additionally, the low societal salience of Europe among Turkish population by the year 2007 undermined the effectiveness of the reform process as 44 per cent of the Turkish public believed that membership would be a ‘good thing’ (71 per cent in 2004). The trust in EU also remained lower in Turkey with 38 per cent; whereas it was 57 per cent among the EU member states, with the trends obviously falling in Turkey compared to them<sup>328</sup>. The overall picture resulted in the fact that the low level of domestic resonance fed into the retrenchment of EU criteria in the given timeframe.

#### 4.2.4.4. Path Dependence: Culture of Implementation

The historical perspective focusing on domestic policy legacies and path-dependent behaviour is applicable in this period to throw light on the Turkey’s de-Europeanization pattern. Considering military’s overarching influence on politics and judiciary’s leading role over protecting secularism and nationalism, it can be claimed that the past policy choices and deep-rooted institutions still determine the path to

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<sup>325</sup> Paul Kubicek, 2011, 923.

<sup>326</sup> European Commission, **Turkey 2007 Progress Report** (Brussels, 6 November 2007).

<sup>327</sup> Frank Schimmelfennig, Stefan Engert, Heiko Knobel, *op.cit.*, 508.

<sup>328</sup> European Commission, **Public Opinion in the European Union**, Executive Summary: Turkey (Brussels, Spring 2007), 2.

EU membership, as Icöz specifies, through shaping political action and maintaining long periods of stasis<sup>329</sup>.

While adopting a pessimistic view of permanent and static illiberalness in Turkish political structure, Aydınli agrees that Turkey is stuck in a vicious circle of “illiberal democracy”<sup>330</sup> and struggling with the dilemma of reconciling reform and security<sup>331</sup>. As Turkey faces long-standing security challenges or fears about giving in to terrorism or losing indivisible unity of the state, both the leading elites and society designated a “safety belt or guarantor” in order to maintain liberalization process<sup>332</sup>. However, Aydınli believes it is problematic in the sense that:

“Such a safety belt must be a security providing mechanism, and therefore must include strong security institutionalization— a process that is almost inevitably illiberal in nature, since it represents a type of authoritative, centralization of power at a time when political decentralization is meant to be on the rise.”

From this point of view, it can be said that although attempts have been made to curtail the political influence of military, it still maintains its position as an autonomous part of the static Turkish state, with adopting different perspectives and priorities on reform agenda. Therefore, so long as the security demands prevailed on grounds of Cyprus issue, Kurdish separatism and Islamic revivalism, the reform process was often overlooked in between Kemalist and pro-Islam narrative in Turkey. Within this framework, the reforms on freedom of press fell victim to increasing security concerns and counter-terrorism/separatism efforts, when illiberal culture of implementing reforms reappeared and pursued a path-dependent character.

#### 4.3. Europeanization of Turkey’s Press Freedom Policy 2008 – 2013

It is intended to analyse the degree of Europeanization in Turkey’s press freedom debate for the period which starts with the beginning of Ergenekon investigations that depicts a clandestine network accused of attempting to overthrow the government and to instigate armed riots. On account of the fact that many journalists

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<sup>329</sup> Gülay Icoz, “Turkey’s Path to EU Membership: An Historical Institutional Perspective”, **Journal of Contemporary European Studies**, vol. 19 no. 4 (2012): 512.

<sup>330</sup> Fareed Zakaria used the term to identify democratically elected governments which are “routinely ignoring constitutional limits on their power depriving their citizens of basic rights and freedoms”. Fareed Zakaria, “Rise of Illiberal Democracy”, **Foreign Affairs**, (November/December 1997): 23-43.

<sup>331</sup> Ersel Aydınli, “The Reform-Security Dilemma in Democratic Transitions: The Turkish Experience as Model?”, **Democratization**, vol. 20 no. 6 (2013): 1147.

<sup>332</sup> Ersel Aydınli, **Ibid.**, 1146.

have been prosecuting in the context of alleged Ergenekon terrorist organization, the analyses of this time frame is centred upon the mechanisms that can explain Turkey's low degree of compliance with EU's free press norms. Therefore, the section is designed to identify the scope conditions enabling these mechanisms to operate.

#### **4.3.1. Domestic Changes in Press Freedom**

This period has seen increasing use of Penal Code and Anti-Terror Law to decisively restrict the press by penalising them mainly on the basis of terrorist offences and assisting members of or making propaganda in connection with terrorist organizations (Article 5 and 7 of the Anti-Terror Law) as well as on the grounds of establishing, commanding or becoming member of an armed organization with the aim of committing certain offences (Article 314 of the Criminal Code)<sup>333</sup>. In this context the equation of journalism with terrorism has been widely addressed by Prime Minister Erdoğan in his speeches<sup>334</sup>. As he stated in the joint press meeting with German Chancellor Angela Merkel in February 2013:

“Actually in Turkey, the number of imprisoned journalists does not exceed the number of fingers of a hand. Their cause of detention is not their writings; it is the attempt to mount a coup or being involved in such undertakings or having illegal weapons or being involved in a movement in line with terrorist organization. Keeping in mind that executive, judicial and legislative powers are independent in Turkey, we are obliged to comply with the decision of judiciary. But, please, I want you to know that many of these journalists are not journalists.”<sup>335</sup>

As can be seen above, there is an evident division of opinion regarding the definition and scope of journalism and journalistic activities. Correspondingly, Pierini agrees that the disagreement between the government and civil society organizations about the exact number of imprisoned journalists creates an antagonistic atmosphere that hinders constructive reform<sup>336</sup>.

In this period, high-profile cases such as Ergenekon and KCK (Kurdistan Communities Union) have come to particular prominence since 2008 and 2011 respectively, with leading a steep increase to the number of imprisoned journalists. Briefly, Ergenekon case began with the operations carried out following an

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<sup>333</sup> Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, **Main Findings and Table on Imprisoned Journalists in Turkey** (Vienna, April 2012), 1.

<sup>334</sup> “Erdoğan: Hapistekiler Gazeteci Değil, Terörist”, **Radikal**, 26 August 2013.

<sup>335</sup> “Alman Gazetecinin Sorusuna Kızdı”, **Milliyet**, 25 February 2013.

<sup>336</sup> Marc Pierini, “Press Freedom in Turkey”, **the Carnegie Papers** (January 2013), 1.

investigation relating to hand grenades and explosives found in Istanbul's Ümraniye District, in 2007 and continued with the arrest and trial of many active and retired military officers, intellectuals, journalists and professors. The overall aim was to unveil the "deep state" within the Turkish Republic, to curb the entrenched system of military tutelage and to investigate the alleged criminal activity against the government. However, as Gülsoy states on the basis of a survey named Armed Forces and Society in Turkey conducted in October 2011, Ergenekon investigations had two contradictory effects on Turkish democracy. Firstly on the positive side, the investigation contributed to the declining level of societal trust towards the military that can lead to de-legitimization of the military's interventions in politics and its tutelage. Secondly, the case could also be seen negative on the grounds of increased polarization among political groups, which is not conducive to consolidation thus indicative of an unconsolidated democracy<sup>337</sup>.

Regarding the press freedom, silencing all opposing voices against the ruling party was appeared to be real motivation of the Ergenekon investigation<sup>338</sup>. As indicated by the OSCE Representative on Freedom of the Media, 13 per cent of the imprisoned journalists are directly related to the Ergenekon trials by the year 2013<sup>339</sup>. Many journalists were being accused of publishing news that would create social chaos and prepare grounds for a coup. In this context, journalists have been arrested with the allegation that they were administrating or participating in the alleged Ergenekon terrorist organization. For instance, the two renowned investigative journalists Ahmet Şık and Nedim Şener were arrested and charged with 'belonging to a terrorist organization and inciting the public to hatred'. As the reasons given for the arrests, Şener wrote a book in 2009 about the possible complicity of government forces in the assassination of prominent Armenian journalist Hrant Dink. On the other hand, Şık was writing a book called 'the Army of the Imam' about the Gülen movement's infiltration since the AKP's first electoral victory in 2002, of the bureaucracy and police force. Therefore, it can be seen that political power and domestic political

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<sup>337</sup> Yaprak Gürsoy, "Turkish Public Attitudes toward the Military and Ergenekon: Consequences for the Consolidation of Democracy", **Istanbul Bilgi University European Institute**, Working Paper no. 5 (2012), 6.

<sup>338</sup> Gülşah Akbaş, "An Assessment of the Ergenekon Case", **Center for Policy and Research on Turkey (Research Turkey)**, vol. 3 issue. 3 (March 2014): 6-17.

<sup>339</sup> Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, **Updated List of Imprisoned Journalists in Turkey Including Recent Releases** (Vienna, August 2012), 1-11. Also see Marc Pierini, "Press Freedom in Turkey", **the Carnegie Papers**, (January 2013), 5.

interests became to have a leading role over fundamental rights of the journalists. As Türkan argues alike, interests of political actors limit the power of journalistic elites in Turkey and political power blocks the freedom of the press owing to conflicting positions between political and journalistic leaders<sup>340</sup>.

The trial of Kurdistan Communities Union (KCK), the alleged urban extension of the outlawed Kurdistan Worker' Party (PKK), raised major concerns about free press and political freedoms in this timeframe which began in 2009 and intensified in 2011. An increasing number of journalists and editors, mainly from pro-Kurdish press, were accused of having links with these organizations and imprisoned on terrorism charges on account of the broader clampdown on Kurdish political activity<sup>341</sup>. As marked by the OSCE Representative on Freedom of the Media, 68 per cent of the imprisoned journalists are directly related to the Kurdish issue by the year 2013<sup>342</sup>.

On 20 December 2011, dozens of journalists representing pro-Kurdish media, mainly from Dicle, Etkin, Fırat News Agencies and the Özgür Gündem newspaper, accused of producing propaganda for Kurdish terrorist groups<sup>343</sup>. According to Amnesty International, among many detained writers, publishers, human rights defenders, the detention of publisher Ragıp Zarakolu and Professor Büşra Ersanlı intensified major concerns “since the reason for their arrest appears to be solely due to speeches made to the Peace and Democracy Party Politics Academy and their academic work”<sup>344</sup>. In a speech following those arrests, Minister of Interior İdris Naim Şahin stated that:

“[...] a great number of people support terrorist organizations through their works, paintings, journal articles, poems and other art forms. They even try to demoralize military and police serving for the fight against terrorism by way of subjecting them in their work or art. The

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<sup>340</sup> Işıl Türkan, “Democratization and New Media Dilemmas: A Case Study of Press Freedom in Turkey”, **Irish Studies in International Affairs**, vol. 23 (2012), 27.

<sup>341</sup> “Turkey: Credibility Depends on Rights at Home”, **Human Rights Watch**, 22 January 2012.

<sup>342</sup> Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, **Updated List of Imprisoned Journalists in Turkey Including Recent Releases**, (Vienna, August 2012), 1-11. Also see Marc Pierini, *op.cit.*, 5.

<sup>343</sup> “KCK Arrests Concern Human Rights Defenders”, **the Journal of Turkish Weekly**, 21 December 2011.

<sup>344</sup> “KCK arrests deepen freedom of expression concerns”, Amnesty International Public Statement, <http://www.amnesty.org/es/library/asset/EUR44/015/2011/fr/ef099147-bb4f-485a-a35f-7c774c4233e6/eur440152011en.pdf> [21.05.2014].

backyard of terrorism is Istanbul, Izmir, Bursa, Vienna, Germany, London; it is in university chairs, in associations, non-governmental organizations, and think-tanks [...]<sup>345</sup>

Indeed, the number of imprisoned journalists has increased steadily over the years, from 15 imprisoned journalists in June 2009 to 57, 68 and 95 respectively in the three years that followed<sup>346</sup>. Peter Licursi, analyst from Freedom House, claims that this shows AKP's treat to criticism of its policies regarding Ergenekon and KCK militant group as collusion with those organizations. He adds that "in the long term, this will serve to homogenize the Turkish media landscape, as publications self-censor to avoid incurring massive fines"<sup>347</sup>.

The dramatic decline in Turkey's democratic aspirations necessitated an urgent push to strengthen the democratization impulse, thus, in August 2009 the government announced the Judicial Reform Strategy and put its main provisions to referendum in 2010 with an aim to democratise the judiciary and to increase judiciary's independence<sup>348</sup>. A series of omnibus bills that were widely known as 'judicial reform packages' opened up an extensive reform effort in order to live up to the expectations during the EU accession process and to create a permanent solution to Turkey's frequent convictions for violating certain articles of the ECHR<sup>349</sup>. The first two reform packages that was adopted in March and August 2011 respectively aimed at reducing the workload of the judiciary by decriminalising certain offences which are now subject to administrative fines, introducing legal fees for applicants to Regional Courts of Appeal and the Court of Cassation, and reviewing the competences of courts, the Court of Cassation and the Council of State<sup>350</sup>.

The third and fourth judicial reform packages changed certain articles that are more related with the freedom of press questions. Firstly, the third judicial reform package,

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<sup>345</sup> "İçişleri Bakanı Şahin'den İlginç Sözler", **Milliyet**, 26 December 2011.

<sup>346</sup> "Media Monitoring Report", Independent Communication Network (BIA), <http://www.bianet.org/english/diger/117328-bia-media-monitoring-reports> [21.05.2014]. Also see Senem Aydın Düzgit, Fuat Keyman, "EU-Turkey Relations and The Stagnation of Turkish Democracy", **Global Turkey in Europe**, Working Paper 2, 9.

<sup>347</sup> E. Peter Licursi, "The Ergenekon Case and Turkey's Democratic Aspirations", Freedom House, <http://www.freedomhouse.org/blog/ergenekon-case-and-turkey%E2%80%99s-democratic-aspirations#.U3tcSHZvouQ> [20.05.2014].

<sup>348</sup> Independent Commission on Turkey, **Turkey in Europe: The Imperative for Change** (March 2014), 16.

<sup>349</sup> Naim Karakaya, Hande Özhaş, "Judicial Reform Packages: Evaluating Their Effect on Rights and Freedoms", **TESEV Democratization Program Policy Report Series**, Judicial Reform 5 (November 2013), 5.

<sup>350</sup> Independent Commission on Turkey, **Turkey in Europe: The Imperative for Change** (March 2014), 16-17.

on 2 July 2012, made amendments to some Articles of the Anti-Terror Law, Penal Code and Press Law, replaced the much criticised ‘heavy penal courts with special powers’ with the Anti-Terror Courts and introduced some measures to solve the problem of undue and long pre-trial detention by way of lifting the three year limit for judicial control and allowing pre-trial detention merely on the basis of an actually-committed crime with a strong suspicion and within the framework of proportionality of arrest<sup>351</sup>. In a more detailed manner, the phrase in Article 2 on terrorist offender stating “and they shall be punished as members of a terrorist organization” and Article 6(5) on suspension of periodicals that spread the propaganda of a terrorist organization was revoked from the Anti-Terror Law<sup>352</sup>. Article 220(6) on the ‘committing a crime in the name of a criminal organization’ and Article 220(7) on the ‘aiding a criminal organization’ of the Turkish Penal Code was further amended as it gave judges the option of reducing the punishment. Moreover, the revised Article 26 of the Press Law on the ‘limitation of trial’ rearranged the timeframe to open a lawsuit against the crimes committed via the press as it was increased to four months for daily publications and six months for other publications on condition of judgement of a court verdict. The provisional Article 3 of the Press Law on the ‘continuation of decisions to forbid publication’ also adjudicated that decisions taken by a competent and qualified courts or administration officials before 31 December 2011 to recall printed publications, forbid their publication or prevent their distribution or sale will lose its force of law in absence of a claim within six months of the passage of this provisional article<sup>353</sup>.

The fourth reform package adopted on 11 April 2013 amended certain articles of Anti Terror Law and Criminal Code in order to improve Turkey’s image in the ECHR through preventing violations of and establishing respect for human rights in domestic law<sup>354</sup>. Amendments to Article 6(2) of the Anti-Terror Law established

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<sup>351</sup> Independent Commission on Turkey, *Ibid.*, 17. Also see Senem Aydın Düzgit, Fuat Keyman, *op.cit.*, 15.

<sup>352</sup> “The Bill on Amending Some Laws in Order to Make Judicial Services More Effective and the Act on the Suspension of Cases and Punishments Regarding Offenses Committed by the Press (Law no. 6352)”, *the Official Journal*, 28344 (2 July 2012), Article 74, Article 105.

<sup>353</sup> Naim Karakaya, Hande Özhabeş, “Judicial Reform Packages: Evaluating Their Effect on Rights and Freedoms”, *TESEV Democratization Program Policy Report Series*, Judicial Reform 5 (November 2013), 15.

<sup>354</sup> Fikret İlkiz, “Turkey’s Terror Prevention Act: Source of Problems in Freedom of Expression”, *Perspectives: Political Analysis Commentary from Turkey*, ed. Ulrike Dufner (Istanbul: Heinrich Boell Stiftung Turkey, 2013): 46-50.

certain criteria in considering an action as a crime and stated that those who publish or broadcast announcements or disclosures of terrorist organizations that ‘show methods of force, violence, or threats as legitimate or praise them, or that encourage the adoption of these methods’ can be punished with a custodial sentence of one to three years<sup>355</sup>. The revised Article 7 of the Law covered certain characteristics of the terrorist propaganda that was delineated as legitimization or praise of methods which contain violence, threats, or coercion, or encourage others to use such methods<sup>356</sup>.

However, according to İlkiz, Articles 6 and 7 of the Anti-Terrorism Act still create a constant barrier to freedom of expression and press that should be revoked. As he argues:

“The formula in ‘template’ sentences like ‘show methods of force, violence or threats as legitimate or praise them, or that encourage taking on these methods’ will be used to search for the elements contained in the laws to create an offense in press and propaganda activities. First, it will be determined whether the announcement or declaration belongs to a terrorist organization, and if the organization is indeed a ‘terrorist organization’. Then, it will be determined whether the published announcement or declaration harbours force, violence, or threats. Then, whether the published announcement or declaration was published in order to ‘legitimize’ methods to ‘include force, violence, or threats’ in order to ‘praise,’ ‘encourage’ and ‘suggest’ terrorist activity, and then whether or not it was spread as propaganda will be examined. The seeking out of these activities in ‘publication’ during the implementation of jurisdiction will create problems.”<sup>357</sup>

Therefore, the first and foremost solution is to change the definition of terrorism, terrorist offender, terrorist offense and terrorist organizations since they leave too much room for debate<sup>358</sup>.

In the field of changes to the Criminal Code, the revised Article 215 on the ‘praise of crime and criminals’ added the clause “who, in the case of clear or imminent threat emerges in view of public order” after “anyone” in assessing a crime. The amended Article 220(6) also annexed ‘armed organization’ as limitation of the Article’s scope of criminal organizations; whereas clause 8 of the same Article specified which kinds

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<sup>355</sup> “Law on the Amendment of Several Laws Related to Human Rights and Freedom of Expression (Law no. 6459)”, **the Official Journal**, 28633 (11 April 2013), Article 7.

<sup>356</sup> “Law on the Amendment of Several Laws Related to Human Rights and Freedom of Expression (Law no. 6459)”, **the Official Journal**, 28633 (11 April 2013), Article 8. The article also criminalized hanging pictures or carrying or bearing emblems of a terrorist organization and penalized it by imprisonment of one to five years.

<sup>357</sup> Fikret İlkiz, **op.cit.**, 46-50.

<sup>358</sup> Fikret İlkiz, **ibid.**. Also see Naim Karakaya, Hande Özhabeş, **op.cit.**, 2013, 13.

of propaganda are subject to punishment and was amended to read: “individuals who make the propaganda of an organization or its objectives that seeks to legitimize or praise its violent, coercive, or threatening methods or seeks to encourage others to use such methods”<sup>359</sup>. Lastly, Article 318(1) on ‘discouraging the people from military service’ was amended as follows: “Anyone who encourages or indoctrinates those currently completing their military service to desert or who are yet to serve in a way that would make them refuse to complete their military service shall be sentenced to imprisonment of six months to two years”<sup>360</sup>.

#### **4.3.2. The Degree of Domestic Change: Inertia, But!**

AKP ‘s Europeanization in press freedom due to increasing number of imprisoned journalists, -though there are constant disagreements about the exact number between civil society organization and the government- and the flawed mostly terrorism-related legislation system will be identified as “inertia” in this period. In order to define the situation of lack of change, Radaelli uses the term “inertia” and defines the extent and direction of change as such:

“This may simply happen when a country finds that EU political architectures, choices, models or policy are too dissimilar to domestic practice. Inertia may take the forms of lags, delays in the transposition of directives, implementation as transformation, and sheer resistance to EU-induced change. In the long-term, however, inertia can become impossible to sustain (economically and politically). Therefore, one can submit that long periods of inertia should produce crisis and abrupt change.”<sup>361</sup>

Indeed, high number of legal cases and investigations opened against journalists, undue pressures on newspapers, frequent website bans, political attacks against the press, firing of critical journalists, increasing self-censorship, Turkey’s problematic legislation system regarding organized crime and terrorism, together with unproportionality in the interpretation and application of the existing legal provisions by courts and prosecutor have been raised several times in the annual Progress

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<sup>359</sup> “Law on the Amendment of Several Laws Related to Human Rights and Freedom of Expression (Law no. 6459)”, **the Official Journal**, 28633 (11 April 2013), Article 11.

<sup>360</sup> “Law on the Amendment of Several Laws Related to Human Rights and Freedom of Expression (Law no. 6459)”, **the Official Journal**, 28633 (11 April 2013), Article 13.

<sup>361</sup> Claudio M.Radaelli, “Whither Europeanization? Concept Stretching and Substantive Change”, **European Integration Online Papers**, vol. 4 no. 8 (2000): 14.

Reports<sup>362</sup>. Therefore, given the overview to the legal and practical changes in the field of press freedom and areas of concern introduced by the EU Commission, it is clear that the adaptational pressure fell short of expectations and created a strong institutional inertia that prevents any domestic change.

However, the period is further identified as “inertia, but!” since the period cannot be totally equated with stasis or no-change because of the large number of measures adopted in the judicial reform strategy in 2009. Especially, the third and fourth reform packages introduced steps toward guaranteeing freedom of expression and press, with leading release of many journalists after long periods spent in pre-trial detention. But, freedom of press continued to be restricted in practice since many journalists remained in prison by virtue of the Article 314 on membership of an armed organization together with widespread self-censorship was led through high concentration of media ownership. In particular, as in the 2013 Progress Report stated: “The mainstream media hardly reported on the Gezi Park protests in early June. Columnists and journalists were fired or forced to resign after criticising the government”. All in all, inertia did not necessarily prevent the reform process and domestic change, though whether the judicial packages did really transformed the inert structures is a prevailing question. For this reason, external and internal factors which are likely to account for the pattern of non-compliance and under speed Europeanization will be introduced in the following section to understand the varied change over time.

#### **4.3.3. Exogenous Factors: The EU Context**

The almost half-century old relations between Turkey and the EU came to an impasse that both sides became captive of their well-known paranoia. In the case of Turkey, the double standards and insincerity of the EU have led reluctance to comply, even isolation from the EU. On the other side, Turkey’s real commitments meriting EU accession and challenges to European identity have raised concerns again and again<sup>363</sup>. Therefore, the institutional stagnation of accession negotiations is two-sided phenomena. In the following section regarding the EU side, the credibility

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<sup>362</sup> European Commission, **Turkey 2010 Progress Report** (Brussels, 9 November 2010), 22. **Turkey 2011 Progress Report** (Brussels, 12 November 2011), 27. **Turkey 2012 Progress Report** (Brussels, 10 November 2012), 22.

<sup>363</sup> Aycan Akdeniz, “EU-Turkey Relations: Towards a Constructive Re-engagement”, **TESEV Foreign Policy Program** (October 2013): 9.

and legitimacy aspect of EU conditions will be put forward for the time period given, as the clear, credible and determinate directives and commitments would directly determine the effectiveness of its democratic conditionality on consolidating Turkey's democracy.

#### 4.3.3.1. Credibility

The loss of momentum in Europeanization of Turkey's press freedom agenda could be related to the failures in EU's conditionality strategy which is perceived to lose its merit-based character. While the EU put forward the notion "absorption capacity" in tackling the problems generated by the accession of new member states, the accession of Croatia on July 2013 showed that the Union can still accede new members, though Turkish case already exceeded the likely length of negotiation phase which is between three to five years<sup>364</sup>. In this snail like negotiations, thirteen out of thirty-three chapters were opened, one was provisionally closed in 2006, and eight chapters were blocked by the European Council, whereas six others were blocked by France and Cyprus unilaterally<sup>365</sup>. As can be anticipated, the Cyprus issue remained as a stumbling block in Turkey's accession process since the unilateral veto power was given to Cyprus with its accession, it created an ambiguous environment in which although Turkey successfully harmonized its legislation and implemented reforms in those areas of the blocked chapters, it cannot be a member before taking the will of Cyprus. Thus, this situation did not only decline the credibility of EU conditionality, but also made Turkey accuse the EU of being hypocritical and of applying double standards, so increased the cost of political reforms for the government.

Assertion of demands beyond the Copenhagen criteria was also accompanied by the mixed signals and well-known Franco-German position against Turkey's future membership. Nevertheless, the election of François Hollande to presidency in 2012 created optimism as he gave signals to repair the troubled ties and declared to unblock some of the negotiating chapters with Turkey<sup>366</sup>. Moreover, in his visit in Turkey in 2013, Chief of European Council Herman Van Rompuy stressed on the

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<sup>364</sup> Gamze Avcı, **op.cit.**, 412.

<sup>365</sup> "Current Situation in Turkey's Accession Negotiations", Economic Development Foundation, [http://www.ikv.org.tr/icerik\\_en.asp?konu=muzakeremevcutdurum&baslik=Current%20Situation%20in%20Accession%20Negotiations](http://www.ikv.org.tr/icerik_en.asp?konu=muzakeremevcutdurum&baslik=Current%20Situation%20in%20Accession%20Negotiations) [28.06.14].

<sup>366</sup> "Turkey sees France's Hollande lifting EU veto", **Reuters**, 27 June 2012.

crucial importance of Turkey for the EU and endorsed restart of EU entry talks<sup>367</sup>. The high-level bilateral visits was also continued by Angela Merkel's on February 2013 where she announced her support for the opening of new chapters in the slow-moving EU membership talks –though she remained sceptical about Turkey's full accession-<sup>368</sup>. Overall, Akdeniz claims that “more profound developments lie behind the fresh hope for a constructive EU-Turkey re-engagement” since the EU seems less credible to Turkey due to its deep financial and economic crisis that sweeps over the many countries in the EU<sup>369</sup>. For the year 2012, Derviş stated that: “Turkey is perceived as a country with solid growth performance, moderate inflation, low indebtedness and prudent fiscal and monetary policies”, whereas the Eurozone is going through a virulent crisis, with putting wider European Union into recession<sup>370</sup>. According to Tocci and Bechev, crisis-ridden Europe became vulnerable to “throes of populism, nationalism and euro-scepticism” together with political uncertainty, with leading to “lower appetite of enlargement”<sup>371</sup>. Although, Turkey has still some vulnerabilities due to low domestic saving rate<sup>372</sup> and is economically reliant on the EU, the image of self-confident Turkey is obvious in Erdogan's statement addressing eventual accession of Turkey in 2023: “they probably won't string us along that long. But if they do string us along until then the European Union will lose out, and at the very least they will lose Turkey”<sup>373</sup>. Besides the loss of aspirations and growing confidence, the EU membership grew less credible due to its internal discrepancies after the latest enlargement rounds<sup>374</sup>. For instance, the premature accession of Romania and Bulgaria to the Union in 2007 brought a lot of questions about the credibility of the EU enlargement since the countries are facing persistent problems

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<sup>367</sup> “Van Rompuy endorses restart of EU entry talks”, **Euobserver**, 24 May 2013.

<sup>368</sup> “Merkel discusses Turkey's EU ambitions on visit on Ankara”, **Euronews**, 25 February 2013.

<sup>369</sup> Aycan Akdeniz, **op.cit.**, 3.

<sup>370</sup> Kemal Derviş, “Turkey and Europe: A New Perspective”, **Global Turkey in Europe: Political, Economic and Foreign Policy Dimensions of Turkey's Evolving Relationship with the EU**, ed. Senem Aydın-Düzgit et.al. (Roma: Edizioni Nuova Cultura, 2013): 27.

<sup>371</sup> Nathalie Tocci, Dimitar Bechev, “Will Turkey Find Its Place in Post-Crisis Europe?”, **Global Turkey in Europe: Political, Economic and Foreign Policy Dimensions of Turkey's Evolving Relationship with the EU**, ed. Senem Aydın-Düzgit et.al. (Roma: Edizioni Nuova Cultura, 2013): 34-35.

<sup>372</sup> Kemal Derviş, **op.cit.**, 24.

<sup>373</sup> “EU will lose Turkey if it hasn't join by 2023: Erdogan”, **Reuters**, 30 October 2012.

<sup>374</sup> Çiğdem Nas, “Turkey and the European Union: a Stumbling Accession Process under New Conditions”, **Turkey in the 21st Century: Quest for a New Foreign Policy**, ed. Özden Zeynep Oktav (UK: Ashgate Publishing, 2011), 177.

with corruption and organized crime, what is worse they are still not seen as full-fledged citizens of the EU as they are not fully integrated to job markets<sup>375</sup>.

As a result, although the visa liberalization dialogue and readmission agreement gave hopes to revitalize the moribund relations, EU's conditionality strategy is perceived to be failed and turned to be hypocrisy in the case of Turkey. While the membership prospect is losing credibility, its concomitant reform fatigue and current backsliding in the field of press freedom made Turkey a least likely case for Europeanization for the given time period.

#### 4.3.3.2. Legitimacy

As the clear, determinate and conditional boundaries of membership reward are losing out, the legitimacy of EU conditionality remained notably questioned in the eyes of the public opinion in Turkey. It is claimed that there is no clear consensus between political and technical aspect of the conditionality in which the EU is perceived to apply democratic conditionality in a political –with constantly changing definitions and requirements- framework, rather than in technical and objective way<sup>376</sup>. Herein, the politicization of conditionality, together with an emphasis on open-endedness and absorption capacity devalued the legitimacy at the expense of future gains and interests, thus fed into the ‘they will not accept us anyway’ perception, with growing suspicions based on a ‘hidden agenda’ behind lacklustre negotiation process.

In terms of press related agenda, the European Press Freedom Charter was signed in 2009 to counter increasing worries about infringements of press freedom in the EU and beyond, and to make it a condition for the entry of candidate states in future accessions –though it is not legally binding yet-<sup>377</sup>. However, in the eye of the government, the EU appeared to lose its credibility and legitimacy in Turkey's press freedom debate. As Egemen Bağış, former Minister of EU Affairs and Chief Negotiator criticized the EU being silent regarding certain other journalists and cases filed against Zaman, Yeni Safak, Star dailies and favouring some other circles in the

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<sup>375</sup> “Bulgaria's and Romania's EU membership damaged the credibility in the enlargement”, **Euinside**, 28 December 2009.

<sup>376</sup> Mustafa Aydın, Aslı Toksabay-Esen, “Conditionality, Impact and Prejudice: A Concluding View From Turkey”, **Conditionality, Impact and Prejudice in EU-Turkey Relations**, ed. Nathalie Tocci (Roma: IAI, TEPAV, 2007), 133.

<sup>377</sup> “European Press Freedom Charter Launched”, **Euobserver**, 09 June 2009.

Turkish media<sup>378</sup>. Additionally, he stressed on the situation that the requirements the EU imposes on the candidate states are not sufficiently applied by its own member states while stated that “the EU members are turning their freedom of expression into a handicap of expression and bringing Europe back to Middle Ages”<sup>379</sup>.

As a result the EU is perceived to lose its right to have a say on Turkey’s press freedom debate, with accusing the Union of bigotry and politicizing this issue, while undermining its own violations. Therefore, the EU continued to lose its trustworthiness and legitimacy in the eye of the government.

#### **4.3.4. Endogenous Factors: Domestic Context**

The stalled accession process and the faded credibility and legitimacy of the EU among the Turkish public has led to reduced enthusiasm of the government to pursue reforms in the press field which are repeatedly raised by the Commission reports. Consequently, Turkey went through reform inertia and a visible backsliding on democratization in which endogenous factors have also profound impact on the result.

##### **4.3.4.1. Veto Players**

The AKP in this period emerged as a central veto player, along with the judiciary which appeared to be a very powerful veto player by ruling a law or a provision limiting the content and usage of the journalism. However, the military is excluded from the time period due to its substantially curbed power especially since the Ergenekon investigations that started to be carried out in 2008. Additionally, the main opposition party, CHP, although issued a report in support of the imprisoned journalists and has been oppose to the AKP government in this debate<sup>380</sup>, failed to be effective in political decision-making process in strengthening the free press, therefore it is also excluded from this analysis as well.

##### **4.3.4.1.1. The AKP Government**

Since its second time in office, when the AKP government became less dependent on the EU as a strategic ally and on the EU-prompted restore to fulfil its survival needs

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<sup>378</sup> “Bağış: EU losing credibility in Turkey’s press freedom debate”, **Today’s Zaman**, 01 June 2011.

<sup>379</sup> “Bağış criticizes the EU on freedom of expression, **Anadolu Agency**, 08 February 2012.

<sup>380</sup> Nurettin Demir, Veli Ağbaba, Özgür Özel, “Report on Imprisoned Journalists: World’s Biggest Prison for Journalists: Turkey”, Republican People’s Party (CHP), 2013.

due to its enhanced domestic power, reforms concerning the areas of freedom of expression and press turned to be restricted in a way that the government “turned a blind eye to these reform areas in order to suppress public criticism of its policies and consolidate its rule”<sup>381</sup>. In this respect, the result was a sharp break from “all-out Europeanization drive” to “pick-and-choose” type of Europeanization<sup>382</sup>. For instance, while the reforms such as on the independence of judiciary from Kemalist nomenklatura, civilian control over the military and freedom of religion were referenced increasingly by the AKP government, the reforms on rule of law and fundamental freedoms was often overlooked. In this respect, the scope conditions conducting to lack of change in press freedom debate could be traced back to 2007 when the AKP won a landslide victory and Abdullah Gül, their second in charge, was elected as the new president. According to Özsel et al. by this way, “the AKP appeared to have a much more prominent place and gained the upper hand against all its political rivals”, with its power resulting in an explicit transformation “from a liberal conservative party into a more authoritarian organisation centred on the personal charisma of Erdogan”<sup>383</sup>. Avcı defines the transformation as a “political showdown” that widened the divide between secularists and Islamists<sup>384</sup>. The launch of Ergenekon investigations has regarded to be one of the decisive factors in this context. In its first instance, the trials were perceived as an “opportunity for Turkey to strengthen confidence in the proper functioning of its democratic institutions and the rule of law” by the EU Commission, though concerns were also raised about the juridical transparency<sup>385</sup>. Indeed, over the months that followed the closure case, waves of arrests and large number of suspects were appeared to have nothing in common except being AKP critics, thus rather than a judicial process, Balcı and Jacoby define the investigations as a “political action” which has not only let to wide range of implications on Turkish democratic politics, but also on media industry, civil society organizations, foreign policy and human rights<sup>386</sup>. Regardless of identifying the investigations as revenge or a ‘witch-hunt’ against the political

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<sup>381</sup> Beken Saatcioglu, *op.cit.*, 2014, 93.

<sup>382</sup> Beken Saatcioglu, *op.cit.*, 2014, 87. Also see Ziya Öniş, *op.cit.*, 2008, 40.

<sup>383</sup> Doğançan Özsel, Armağan Öztürk, Hilal Onur İnce, “A Decade of Erdoğan’s JDP: Ruptures and Continuities”, *Critique: Journal of Socialist Theory*, vol. 41 no. 4 (2013): 561.

<sup>384</sup> Gamze Avcı, *op.cit.*, 414.

<sup>385</sup> European Commission, *Turkey 2009 Progress Report* (Brussels, 14 November 2009), 7.

<sup>386</sup> Ali Balcı, Tim Jacoby, “Guest Editor’s Introduction: Debating the the Ergenekon Counter-Terrorism Investigation in Turkey”, *Middle East Critique*, vol. 21 no. 2 (2012): 138.

opponents or self-preservation of the AKP rule, the investigations have obviously reinforced the AKP's power consolidation and rendered it as a significant veto player. In this regard, Somer defines the deterioration in the level of media freedom as a decisive sign in which democratization became victim of the religious/secular confrontation<sup>387</sup>. Although many of the trials resulted in acquittals or releases, they severely restricted the environment of freedom of thought and expression. On that account, the International Press Institute urged the government to restrict the criminalization of speech, to ensure due process and to reduce the inflammatory rhetoric<sup>388</sup>.

In terms of journalistic problems, increased power consolidation of the AKP government is also reflected itself as "way of silencing, punishing or gaining control of the certain media groups" as it can be seen from the case that Doğan Media Group got a colossal tax fine of \$408 million accompanied by \$2.5 billion for allegedly unpaid taxes<sup>389</sup>. The pressure on free media and inconsistency in tax-related procedures have also condemned by the European Commission which stated that "the high fines imposed by the revenue authority potentially undermine the economic viability of the group and therefore affect freedom of the press in practice"<sup>390</sup>.

As a result, although the AKP remained keen on EU membership prospect as it is claimed in the 2023 goals that "despite of the unfair and unfounded opposition of some European states, the necessary steps toward the full membership to the EU will be taken"<sup>391</sup>, the commitments largely stayed on paper which lacked solid implementation of the transferred norms in such a way that "in the end what matters is policy action"<sup>392</sup>. Therefore, given the power considerations and thorny agenda of free press in this timeframe, the AKP as a major veto player was seemed to fail in

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<sup>387</sup> Murat Somer, "Democratization, clashing narratives, and 'Twin Tolerations' between Islamic-Conservative and Pro-Secular Actors", **Nationalism and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue**, ed. Marlies Casier, Joost Jongerden (New York: Routledge, 2011), 31.

<sup>388</sup> International Press Institute, "Measures to Improve Press Freedom in Turkey", **SPEAK UP! Conference on Freedom of Expression and Media in the Western Balkans and Turkey, 17 June 2013** (Brussels: European Commission, 2013):1-2.

<sup>389</sup> Zeyno Baran, **Torn Country Turkey: Between Secularism & Islamism** (California: Hoover Institution Press, 2010).

<sup>390</sup> European Commission, **Turkey 2009 Progress Report** (Brussels, 14 November 2009), 18.

<sup>391</sup> "AB Çalışmalarına Devam Edeceğiz", AK Parti: Hedefler, <http://www.akparti.org.tr/site/hedef/2211/ab-calismalarina-devam-edecegiz> [03.07.2014].

<sup>392</sup> Gamze Avcı, **op.cit.**, 416.

internalizing the adopted EU norms and lacked the necessary incentives to fulfil the effective behavioural adaption.

#### 4.3.4.1.2. The Judiciary

The judiciary appeared to be a significant veto player especially in the previous time frame in order to maintain the secular order and nationalism. In this period, it continued to pursue its primary impact on decision making though in other way around. Although wide range of legislative reforms related with the judicial system were adopted in line with the EU criteria that eventually curtailed its resilient allegiance to the military and limited the authority of military courts, the “politicization of judiciary” is considered as one of the glaring weaknesses of this time period<sup>393</sup>. While the multitude of restrictive legal provisions, their arbitrary interpretation and mindset of the judiciary raised concerns in the press freedom agenda, the Ergenekon trials exacerbated the current stalemate. As the attempts to search out ‘deep state’ in Turkish politics turned to be the largest operation in years with leading to a major setback given the long detention periods for many journalists imprisoned based on the allegations of overthrowing the government and being a member of the terrorist organization. However, the vague phrases in the articles and their restrictive interpretations by the judges in the trials basically led to a situation that further solidified the government’s position in the domestic political context<sup>394</sup>.

The main structural problems of the judicial system in Turkey which remained intact despite of the wide range of reforms in the field ascertained that press freedom and rights of journalists are likely to be overlooked at the expense of securing the state. Accordingly, the lack of solid independence and impartiality were put forward as the main prerequisite to have a fair trial by Işıl Karakaş, judge at the ECHR in respect of the Turkey. She claimed that not only the lengthy trials and detention periods, but also the issue of mentality constitute the major structural problem in the sense that large amount of judges and prosecutors still tend to protect the rights of the state, regime and its institutions rather than those of individuals –i.e. formerly through the body of State Security Courts, then the heavy penal courts with special powers<sup>395</sup>. In

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<sup>393</sup> Ziya Öniş, “Sharing Power: Turkey’s Democratization Challenge in the Age of the AKP Hegemony”, *Insight Turkey*, vol. 15 no. 2 (2013): 107.

<sup>394</sup> Beken Saatcioglu, *op.cit.*, 2014, 95.

<sup>395</sup> “Rule of Law and Freedom of Press under Attack in Turkey”, *Today’s Zaman*, 9 May 2014.

this context, the broken judicial system made Turkey situated in the second place in ECHR violation cases in 2012, with having the worst record on freedom of the press and expression among all members of the Council of Europe<sup>396</sup>. The structural problem of insufficient independence and lack of impartiality were also put forward by Aydın-Düzgüt and Keyman since the Minister of Justice still represents and administers the Council, can decide on the Secretary General, strongly involves in the process of entry into the judicial profession in which also approves inspections against judges and prosecutors and lastly his Undersecretary is still present in the Council meetings<sup>397</sup>. The composition of the High Council of Judges and Prosecutors (HSYK), lack of judicial review over its decisions and the number of Council members elected by the National Assembly have been also criticized by Yazıcı due to the fact that certain provisions contradict with the rule of law and compromise the judicial independence since the process is likely to be controlled by the majority party in the parliament<sup>398</sup>. However, as Özbudun states:

“Achieving impartiality of the judiciary is by far difficult than achieving independence since the independence is rather an institutional matter whereas the impartiality is a psychological orientation. Notwithstanding that the independence is a significant mean to ensure the impartiality, it is not sufficient to fulfil it as a judge is considered to be fully independent vis-à-vis the legislative and the executive powers, though s/he can be predisposed to certain ideological pressures and relations of interest.”<sup>399</sup>

Therefore, from Özbudun’s point forth, the entrenched mindset of the probably more conservative judges, thus the lack of impartiality of the judiciary in conformity with law had considerable impact on undermining the press freedom. Likewise Erözden notes that:

“as long as members of the judiciary are not equipped with a perspective of law based on the principle of supremacy of fundamental rights and freedoms and universal principles of law, it will not be possible to fully implement the principle of democratic state governed by rule of

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<sup>396</sup> “Turkey takes the second spot in ECHR violation cases in 2012”, **Today’s Zaman**, 2 January 2013. Also see Dilek Kurban, Ceren Sözeri, *op.cit.*, 45.

<sup>397</sup> Senem Aydın Düzgüt, Fuat Keyman, *op.cit.*, 16-17.

<sup>398</sup> Serap Yazıcı, “Judicial Reform Project: High Council of Judges and Prosecutors”, **A Judicial Conundrum: Opinions and Recommendations on Constitutional Reform in Turkey**, ed. Serap Yazıcı, TESEV Democratization Program Policy Report Series, Judicial Reform 1 (July 2010): 17-18.

<sup>399</sup> Ergun Özbudun, “Yargının Tarafsızlığı ve Bağımsızlığı”, **Zaman Yorum**, 26 June 2007.

law, regardless of how strong the normative guarantees of judicial independence and impartiality may be.”<sup>400</sup>

Consequently, with reference to the above-given structural problems as the Index on Censorship underlines the long detention periods without receiving a final verdict, though sudden and unexpected release of many journalists from prison showed the opacity of court regulations in this period, thus the uncertain and opaque court rulings had troubling effects on press freedom in Turkey. Additionally, the mindset of judges and prosecutors tend to protect state interest at all cost on grounds of counter-terrorism efforts at the expense of journalistic rights made the judiciary a notable veto player in which inconsistent interpretation of vague phrases hindered the reform process and resulted in low degree of compliance to EU standards.

#### **4.3.4.2. Net Adoption Cost**

The cost of meeting the EU requirements in freedom of press policies is perceived to be politically significant in this timeframe since the society and decision makers increasingly consider that Turkey might not be admitted to EU membership despite of the prospective adjustments in line with EU standards. Therefore the absence of EU membership reward as well as mixed political signals from Turkey-sceptic leaders in Europe not only limited the AKP’s motivation to fulfil the EU’s demands but also its administrative capacity and resources to proceed with the ambitious EU reforms<sup>401</sup>. Likewise, Saatçioğlu draws attention to cost of potential “EU absorption” since Turkey is perceived to be the “costliest” EU candidate, with the perceived cost of enlargement reflected itself on the assertion of informal or non-Copenhagen accession criteria<sup>402</sup>. In consequence of the EU’s anticipated cost of absorbing Turkey, low formal conditionality and entrenched unwillingness estranged two long-standing partners.

On the side of Turkey, reference to EU commitment of the AKP government has diminished especially in the field of press freedom that is already costly for domestic political reasons based on the nationalist sentiments and government’s interests. For

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<sup>400</sup> Ozan Erözden, “The Principle of Rule of Law and Judicial Impartiality with a Dimension Beyond Normative Law”, **A Judicial Conundrum: Opinions and Recommendations on Constitutional Reform in Turkey**, ed. Serap Yazıcı, TESEV Democratization Program Policy Report Series, Judicial Reform 1 (July 2010): 11.

<sup>401</sup> Gamze Avcı, **op.cit.**, 419.

<sup>402</sup> Beken Saatçioğlu, “How Closely Does the European Union’s Membership Conditionality Reflect the Copenhagen Criteria? Insights from Turkey”, **Turkish Studies**, vol. 10 no. 4 (2009): 560.

instance, reforms to facilitate the free use of press might be considered to be at great cost in a precarious environment in which “democratic initiative” is introduced, though its full extent remained unclear since the opposition parties and Turkish nationalists accused the AKP of capitulating to the PKK and undermining Turkey’s national unity, whereas Kurdish nationalists remained unsatisfied with the reforms regarding the demands for constitutional changes and guarantees of their rights<sup>403</sup>. The risks of damaging AKP’s power consolidation between the contradictions among large segments of the society and undermining its ideological/political character limited its administrative capacity on the issue in which the press freedom is often unvalued on grounds of traditional national security concerns and containing critical pro-Kurdish politics<sup>404</sup>. Likewise, Casier et.al. defines “national security syndrome” in which the political elite -mainly the AKP- conceives itself as “both guarantor of the country’s national security and promoter of liberalization”, with the positioning leading it to undermine democracy under the guise of security such as in the case of frequent application of Anti-Terror Law<sup>405</sup>. From this point of view it can be said that domestic interests aimed at securing its place and political cost of reforms have preeminent role that rendered the EU’s transformative power rather limited.

#### 4.3.4.3. Normative Resonance

From Schimmelfennig and Sedelmeier’s point forth, it can be said that domestic factors such as increasing veto power of domestic actors and perceived cost of press freedom reforms inhibit the persuasion of rule adoption, thus limit the persuasive power of the EU<sup>406</sup>. In this regard, conflicting domestic rules with the European ones in an environment which lacks high conditional external benefits gave rise to domestic structures such as adoption costs, veto players and resonance to have detrimental effect on the likelihood of Europeanization, whereas these domestic

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<sup>403</sup> Tozun Bahcheli, Sid Noel, “The Justice and Development Party and the Kurdish Question”, **Nationalism and Politics in Turkey – Political Islam, Kemalism and the Kurdish Issue**, ed. Marlies Casier, Joost Jongerden, (London/New York: Routledge, 2011), 117.

<sup>404</sup> Cuma Cicek, "Elimination or Integration of Pro-Kurdish Politics: Limits of the AKP’s Democratic Initiative”, **Turkish Studies**, vol. 12 no. 1 (2011): 15-26.

<sup>405</sup> Marlies Casier, Joost Jongerden, Nic Walker, “Turkey’s Kurdish Movement and the AKP’s Kurdish Opening: The Kurdish Spring or Fall?”, **The Kurdish Spring: Geopolitical Changes and the Kurds**, ed. Michael M. Gunter, Mohammed M. A. Ahmed (California: Mazda Publishers, 2013), 155.

<sup>406</sup> Frank Schimmelfennig, Ulrich Sedelmeier, **op.cit.**, 676.

factors are supposed to be superseded by application of effective conditionality<sup>407</sup>. Therefore, the factor of domestic resonance continued to be problematic in respect of formal and behavioural adaptation and socialization process in Turkey's accession negotiations. As the likelihood of rule compliance would be facilitated if the rules are in conformity with the existing domestic ones, together with mutual identification between domestic and EU-level actors, the issue of "identity" has come more into prominence since the EU rules are no longer perceived appropriate in the eye of the decision-makers compared with our first time period. In respect thereof, debates on Turkey's "new identity formation" and "reorientation of its international status" became widespread since cultural affinities, religious bonds, solidarity and brotherhood are being stressed primarily in Turkey's relations with Middle Eastern countries, whereas accusations and differences are mainly emphasized regarding Europe<sup>408</sup>. On that account the debates on the new adjustments in Turkey's foreign policy focussed on the notion of so-called "axis shift" due to its rising regional confidence and ambitions. Wieland identifies the situation as a changing approach and rhetoric, namely toward a different emotional discourse while referencing Davutoğlu's statement in his visit to Iraq: "For Turkey, both Syria and Iraq are strategic allies, as well as our brothers and our neighbours. This is a family matter for us, that is why the disputes will be solved as the way brothers solve, through negotiation"<sup>409</sup>. Although AKP's foreign policy agenda remained committed to the EU membership prospect in its official documents, "the enthusiasm got hampered due to the EU's attitude toward Turkey rather than a decline in Turkey's commitment" as Erdoğan claimed<sup>410</sup>. In this respect, Wieland's point is right on the track in the sense that frustrations with perceived EU double standards and "broken promises" regarding Turkey's full-membership status strengthened a trend in which "Turkey is coming to see its intimate bonds as lying not with Europe but rather more with the Arab- Muslim neighbours" in the similar manner that "the European family of states" has been referred by politicians in European countries<sup>411</sup>.

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<sup>407</sup> Frank Schimmelfennig, Ulrich Sedelmeier, **Ibid.**, 684.

<sup>408</sup> Çiğdem Nas, **op.cit.**, 178.

<sup>409</sup> "Ankara, Bağdat, Şam Ortak Mekanizması", **Ntvmcnbc**, 31 August 2009.

<sup>410</sup> "Erdoğan: AB'ye Tam Üyelik Türkiye'nin Stratejik Hedefidir", **Zaman**, 12 August 2010.

<sup>411</sup> Carsten Wieland, "Turkey's Political-Emotional Transition", <http://www.opendemocracy.net/article/turkeys-political-emotional-transition> [09.07.2014].

It is obvious also that there is an ever-diminishing belief about the future EU membership in societal level on grounds of financial crisis in Eurozone and built-in reluctance of European leaders which endangers establishment of normative fit between partners, with conducting to low societal salience of Europe among Turkish population. As the current poll carried out by the German-Turkish Foundation for Education and Scientific Research (TAVAK) shows clearly that around 74 percent of Turkish people believe Turkey will not acquire EU membership<sup>412</sup>. The steep decrease in the percentage of people – from 73 per cent in 2004 to 38 per cent in 2010<sup>413</sup> - who support the membership and take a positive attitude thus reflected itself in low degree of resonance of EU-level norms with that of domestic ones. As a result, Europeanization in the field of press freedom and domestic change are inevitably hampered.

#### **4.3.4.4. Path Dependence: Culture of Implementation**

The logic behind the notion of path dependency was that the influence of domestic legacies of the past are likely to hamper institutional and domestic change since the cost of reversal is high to replace. Therefore, rather than the causative effect of EU conditionality, historical experiences and legacies can be seen as intermediate factors in Turkey's de-Europeanization outcome since the number of jailed journalists is actually went down the memory lane of 1980s as the report prepared by CHP stated<sup>414</sup>. From Jano's point forth, weak administrative capacity can be identified in here, namely government's ineffectiveness in comprehending the press freedom issue outside of the traditional national security policy and lack of comprehension regarding the rule of law<sup>415</sup>. In this respect, difficulties in legal implementation can be related to the comprehension in which supremacy of fundamental rights and freedoms had been often overlooked at the expense of securing the state, regime and its institutions. The case of many journalists who have been on trial under the body of heavy penal courts with special powers which mainly deals with the crimes against state security showed that alternative path is perceived to be costly since these special courts partake of the State Security Courts established by military

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<sup>412</sup> "74 Percent of Turkey lost hopes for EU", **Hürriyet Daily News**, 8 October 2013.

<sup>413</sup> Gizem Ozturk Erdem, "What is left of Turkey's enthusiasm for the EU?", <http://www.nouvelle-europe.eu/en/what-left-turkey-s-enthusiasm-eu> [09.07.14].

<sup>414</sup> Nurettin Demir, Veli Ağbaba, Özgür Özel, "Report on Imprisoned Journalists: World's Biggest Prison for Journalists: Turkey", Republican People's Party (CHP), 2013.

<sup>415</sup> Dorian Jano, *op.cit.*, 86-87.

government in 1982. As Kurban and Gülalp clearly note that the ‘special’ courts are appeared to be unable to go beyond the prevailing security thinking as they are bearing “continuity in mandate, rules of procedure, judges, personnel, archives and case files”<sup>416</sup>. Although these courts are abolished and replaced with Anti-Terror Courts with the third judicial reform package in 2012, the problem of “entrenched mindsets” is unlikely to die out in the short run that may continue to hamper the rule of law<sup>417</sup>. Therefore, it can be said that the issue of press freedom falls victim to securitizing speech act, with leading to securitization in which the press is named as a security problem as can be seen in the long-standing equation of journalism with terrorism<sup>418</sup>.

Likewise, as Çiçek agrees that path dependent character of the government’s approach toward the press freedom issue suffers also from the lack of “deep democratic values” as the government lacks “negotiation and communicative democracy tradition”<sup>419</sup>. Çiçek’s approach therefore is applicable in the sense that rather than negotiating, even accepting the problem, the AKP tended to impose its own proposal on the issue<sup>420</sup>.

All in all, the behavioural adaptation is by no means able to internalize the reforms conducted in the field of press freedom as the inertia is further induced by the domestic legacies of the past, thus weak domestic legal culture. Following path-dependency logic, the implementation remained to be difficult as the Europeanization process is highly impeded and the EU is seemed to lose its leverage due to decreasing political will of the government especially in the areas of fundamental political freedoms and rule of law.

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<sup>416</sup> Dilek Kurban, Haldun Gülalp, “A Complicated Affair - the Court and the Kurds: The Role of the European Court of Human Rights in the Broadening of Kurdish Rights in Turkey”, **The European Court of Human Rights. Implementing Strasbourg’s Judgments on Domestic Policy**, ed. Dia Anagnostou (Edinburgh: Edinburgh University Press, 2013), quoted in Senem Aydın Düzgit, Fuat Keyman, **op.cit.**, 13.

<sup>417</sup> Senem Aydın Düzgit, Fuat Keyman, **Ibid.**, 17.

<sup>418</sup> For further analysis of the concepts of securitization and speech act in relation to Turkey’s accession to the EU, see Catherine Macmillan, “Privileged Partnership, Open Ended Accession Negotiations and the Securitisation of Turkey’s EU Accession Process”, **Journal of Contemporary European Studies**, vol. 18 no. 4 (2010): 448-449.

<sup>419</sup> Cuma Çiçek, **op.cit.**, 22-23.

<sup>420</sup> Cuma Çiçek, **Ibid.**, 23.

#### **4.4. Interim Review**

The model for interactive research is built in this last analysis chapter in order to get a grip on the degree of influence of conditionality and legitimacy at the EU level and various internal dynamics at the local level. The main question whether the high, medium or low level of change is resulted from the Europeanization process or is an example of internal sphere of influence concentrated on the notion of “interaction” since each and every variable, more or less, has an impact area in determining the pattern of Europeanization in Turkey. It is a domain of logic of consequentialism in line with rationalist perspective, logic of appropriateness of sociological outlook as well as logic of path-dependency from the perspective of historicity. Thereby, the Europeanization of press freedom policies necessitates an extensive trilateral vision that counts on possible mediating and hampering factors discussed in this chapter.

## 5. CONCLUSION

Turkey's long-dated road to EU has always been exceptional with reference to its size, geography, economy and identity. Although the wide-spread perception in Turkey centred upon the assumption of being in the "waiting room" of Europe<sup>421</sup> in recent times as the full membership prospect already exceeded the likely length and pace of negotiations comparing to the other CEE countries, the accession talks hardly go off the boil. To date, the accession process has followed a controversial path and seen major ups and downs since the negotiations officially began in 2005. With reference to the different degree and direction of change in Turkey's compliance pattern, the issue of 'press freedom' has chosen as one of the least-likely and sensitive area of reform and it is aimed throughout this study to uncover explanatory factors regarding certain variations over specific time frames based on the variables indicating legal harmonization and practical implementation. Therefore, the first underlying assumption in regard to this study was the variations of compliance with EU norms and rules in the field of press freedom. The variations are structured under three major periods: 2002-2005, 2005-2008 and 2008-2013 and the case of Turkey's press freedom debate allowed us to test main theories and perspectives in Europeanization literature. While I situated the press freedom issue in the context Europeanization process, the degrees of domestic change are found to range between accommodation, retrenchment and inertia respectively.

As the Europeanization process has induced different degrees of change over different time periods, the external and internal variables extracted from rationalist, sociological and historical institutionalism helped us to make sense of the loss of momentum on Turkey's side as a reflection of variety of mechanisms. Given this multifaceted research design, chapter 2 focused on the theoretical framework more in detail while forming our independent variables in line with different institutional

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<sup>421</sup> Bilgin Ayata, the speech delivered at the Global Politics Summer School Turkey "Internal and External Uncertainties: Turkey between the EU and its Exceptionalism" on 05.06.2014, Istanbul.

logics that help operate Europeanization in a candidate country. Chapter 3 put attention at the origins of EU political conditionality in promoting human rights and democracy. Accordingly, the freedom of press is well formed in basic EU documents as a key to open and free society and lifeblood of democracy, though the field is not free of violations that endanger legitimacy of EU rules in the eye of actors in Turkey.

As the study situated on the assumption that legacy of national security and state sovereignty created high adjustment costs in enhancing journalistic rights and freedoms, chapter 4 embraced press freedom in the legal order of Turkey and focused on the structural obstacles on the basis of historical legacies. Therefore, it is acknowledged that strong state tradition, frequent intervention of the military and overbroad terrorism perceptions fed into the structural problems that inhibit to adopt solid reforms in improving the use of press. After giving this framework, chapter 5, 6 and 7 were designed to reveal limits of EU democratic conditionality, dynamics of compliance or non-compliance with an aim to understand the reasons behind different Europeanization patterns in Turkey.

The first time frame, namely 2002-2005, was identified as “accommodation” due to the profound adjustment of existing policies with the numerous reform packages. In order to answer why the domestic change occurred, first, the credibility and legitimacy at the external level, and second, role of veto players, perceived cost of reforms, resonance of EU norms and rules with domestic ones and finally the path-dependent character of practical implementation were analysed. Although the Cyprus issue rendered EU’s effectiveness rather limited, the favourable internal dynamics had considerable influence on the success of EU’s democracy promotion policies and Turkey’s democratization efforts.

In the second time frame which is from 2005 to 2008, the lack of solid implementation and legislative adoption of restrictive phrases engendered the process as “retrenchment”. The variables were applied to understand why the change failed to occur. The losing credibility and legitimacy at the external level together with strengthening veto players, increasing cost of rule adoption, decreasing resonance and path-dependent behaviour at the domestic level were the main factors in de-Europeanization pattern.

Lastly the third time frame, i.e. 2008-2013, is widely identified with increasing amount of imprisoned journalists and worsening of journalistic rights. Due to the resistance to harmonize and change in line with EU norms and rules, the period is named as “inertia”. The hypocrisy in applying political conditions, double standards and unreliableness caused the EU’s effectiveness to be highly scant. On the other hand, endogenous factors failed to be favourable in the sense that the mindset of the AKP government as well as the judiciary was highly restrictive. Moreover, the net adoption cost was perceived to be high, the normative resonance was largely hampered, thus the implementation culture reflected the domestic legacies and sensitiveness of the past. However, the judicial reform strategy is announced in 2009 with couple of reform packages since then. At the time of writing this section (mid 2014) it can still be said that improvements in journalistic activities should be continued, with shaking the very foundations of the consideration which equates terrorism with journalism.

Consequently, with reference to previously asked research question: “does the EU have leverage on questions of freedom of press in Turkey? If so, what are the internal and external mechanisms that drive this process?”, it could be said that the EU has certainly been a strong driving force in Turkey’s democratization process as a focal reference point in the eye of Turkish policy-makers. Accordingly, given the rationalist perspective, increasing reference has been given to the EU membership perspective which has also helped empower the AKP government especially in its first term in office. Yet the EU leverage is not enough in itself. In this point, the study showed that although the EU incentive has essentially been an important triggering force in democratic progress in the course of accession talks, there is no sole correlation between the credibility of EU conditionality and behavioural adaptation of Turkey in the issue of press freedom as the reform process relatively persisted in the second time frame despite of fading credibility and discriminative signals over controversial terms on the EU side. Therefore as on the other side, the slow-down in press-related reforms is more of a result of ongoing interaction between variety of internal and external factors in which structural obstacles and domestic dynamics should also be put effectively into the research. As in the above-mentioned point about EU harmonization reforms that helped empower AKP government, it should also be pointed out that this is the ‘survival needs’ in an

environment with strong military-judicial secular tradition, specifically the internal dynamics, which made the reform process that effective<sup>422</sup>. Therefore, the subtle mix of domestic and external forces is likely to conduce a profound Europeanization, that is to say, both at the formal and behavioural level. However, with reference to historical perspective, path-dependent dynamics are largely in action considering the press freedom debate in Turkey regardless of facilitating factors extracting from rationalist or sociological perspective since the historical knowledge and preferences made in the past acted as strong conditions for change. In regards to Levi's description based on "tree" metaphor, "the branch on which a climber begins is the one she tends to follow"<sup>423</sup>, return from initial decisions is hardly likely as in the case of Turkey with strong historical sensitivities and nationalist backlash about Cyprus problem, Kurdish issue, alleged Armenian genocide and most recently attempts to overthrow the government, endangers the use of free press on these certain issues<sup>424</sup>. That is why path dependency is found important to operate for non-compliance pattern in given time frames.

As a major limitation, so an avenue for further research in the future, the legal framework and the amendments in the legislation affecting the press freedom, thus the dynamics that count for these amendments were analysed in this study while keeping the unfair competition in the media market and concentration of media ownership out of the analyses. That is why, in order to ensure free and independent press in Turkey, thus full harmonization and compliance with EU directives, not only the criminal legal system should be restored, but also the commercialization of media sector should be concerned, along with enhancing journalistic profession and saving journalists' right to unionise. By this means, Europeanization of media-state relations could be further brought to light hereinafter.

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<sup>422</sup> Beken Saatçioğlu, 2014, 88.

<sup>423</sup> Margaret Levi, 1997, 28.

<sup>424</sup> Marcie J. Patton, 2007, 345.

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## **CURRICULUM VITAE**

### **BURCU CEREN GÖYNÜ**

#### **Contact Information**

Tel: +90 (534) 413 21 34

E-mail: burcugoynu@gmail.com

#### **Work Experiences**

November – December 2012: Short term intern / researcher at the Institute for Peace Research and Security Policy in HAMBURG / GERMANY

August – September 2009: Human resources intern in Havelsan A.Ş. ANKARA

July 2009: Foreign relations intern in Ministry of Culture and Tourism ANKARA

July 2010: Foreign relations intern in Turkish Standards Institution (TSE) ANKARA

#### **Education and Training**

October 2014 - University of Hamburg HAMBURG / GERMANY

The Faculty of Business, Economics, and Social Sciences / M.Sc. Philosophy, Economics, Politics (PEP)

October 2012 – April 2013 University of Hamburg HAMBURG / GERMANY

Institute for Political Science / Political Science Department

September 2011 – December 2014 Yıldız Technical University İSTANBUL  
3.78/4.00

Political Science and International Relations Department (M.A.)

September 2007 - June 2011 Hacettepe University ANKARA 3.48/4.00

International Relations Department (B.A.)

September 2003- June 2007 Menemen Anatolian High School İZMİR 4.96/5.00

#### **Foreign Languages**

Turkish (native), English (advanced), German (intermediate)