

# The Pandora's box: democratization and rule of law in Turkey

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**Abstract** A prominent question in the literature on democracy is concerned with the role of external factors in stimulating the process of democratization and uploading rule of law. This paper tackles the following questions: How does the political conditionality of an international organization—the EU in this case—stimulate democracy in third countries? Equally important, does conditionality always have a positive impact and could it be possible to witness the EU undermining democracy in an unexpected manner? This paper addresses these questions through an analysis of the Turkish democracy in the light of its accession to the EU and through an application of the EU membership conditionality by looking at rule of law in Turkey. The general contention in the political conditionality literature is that the EU enables an acceding country to adopt its democratic principles, and facilitates transition to democracy, while strengthening rule of law. However, the Turkish transformation seems to challenge this contention. This paper proposes that the EU's political conditionality in bringing about political transformation in Turkey as a membership precondition unexpectedly illuminated the underlying anti-democratic tendencies and tensions in Turkish politics. The democratization process in Turkey since 1999, partly stimulated by the EU, has opened up a Pandora's box releasing the conflict between the secularists and religious conservatives in Turkey that has long been suppressed. This paper analyzes these cleavages through the prism of EU political conditionality with regards to rule of law.

## Introduction

On March 20, 2014, then Turkish Prime Minister Recep Tayyip Erdoğan declared “We will ban Twitter regardless of the reactions from the international community”<sup>1</sup> and

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<sup>1</sup>Terrence McCoy, “Turkey bans Twitter and Twitter explodes,” *The Washington Post*, March 21, 2014. [http://www.washingtonpost.com/news/morning-mix/wp/2014/03/21/turkey-bans-twitter-and-twitter-explodes/?tid=hp\\_mm](http://www.washingtonpost.com/news/morning-mix/wp/2014/03/21/turkey-bans-twitter-and-twitter-explodes/?tid=hp_mm)

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within hours, Twitter went dark in Turkey. This ban came along within a series of political changes and laws adopted to curb freedom of expression in Turkey, leading many observers of Turkish politics to question the supremacy of rule of law in the country. These concerns with rule of law reached a new dimension on March 3, 2015 when Erkan Ala, the Minister of Interior Affairs, declared “we do not recognize the Turkish Constitution.”<sup>2</sup> This was the first time in Turkish political history that an elected official declared his superiority over the constitutional basis of the Turkish Republic. Both of these declarations summarize the views of the officials from the Justice and Development Party (AKP) toward rule of law in Turkey. The developments in Turkish politics since 2011 point out to a gradual slide into authoritarianism (Müftüleri-Baç and Keyman 2012). Specifically, the curtailments of freedom of media, the cases against high-ranking military officials without due process, the banning of social media sites, and measures taken to curb the autonomy of the judiciary in Turkey since 2011 indicate a deterioration in rule of law.

Yet, this is highly perplexing because Turkey has been actively adopting political reforms ranging from measures on basic rights and liberties to civil–military relations at a great pace since 1999. These legal changes ultimately led to the opening of accession negotiations with the European Union in 2005 (Öniş 2007). As a result, Turkey was labeled as a prime example of Muslim country with democratic institutions in place, upholding rule of law and with the potential to influence other countries in its region. So, what happened in the process of democratic consolidation in Turkey? How was a promising case of democratic development reversed in a matter of years? Specifically, how did a candidate country negotiating for EU accession experience serious violations of rule of law? Is it because the accession process lost its credibility in the eyes of the Turkish government, leading to a loss of momentum for legal changes, or is it because the process of political transformation led to a backlash of authoritarian forces? This paper addresses these questions by looking at the ongoing challenges in Turkey with regard to the notion of rule of law, specifically since 2011.

The democratization process in Turkey since 1999, partly stimulated by the EU, has opened up a Pandora’s box of authoritarian tendencies. First, the process of political changes to fulfill the political aspects of the EU’s accession criteria pushed the conflict between the secularists and religious conservatives in Turkey that has long been suppressed into the open. This is partly because there is a clear tradeoff between democratization and secularism in Turkey (Özbudun 2014; Toprak 1980; Kalaycıoğlu and Çarkoğlu 2007). As a consequence of the political liberalization process, the conflict between the secularists and Islamists as the most visible and dominant cleavage in Turkey began to shape rule of law, political reforms, Constitutional debates, political struggles, and gender equality. What needs to be stressed here is that the institutional changes that aimed at further democratizing Turkey unleashed conservative reactionary forces in the Turkish society organized around the Islamist ideology. This has further led to an unexpected outcome as Turkish politics witness a new wave of authoritarianism through the electoral hegemony of one political party, the Justice and Development Party (Müftüleri-Baç & Keyman 2012). While some scholars labeled the ongoing restructuring in Turkey as one of “illiberal democracy” (Zakaria 2003;

<sup>2</sup> ‘Erkan Ala: Anayasayı tanımiyoruz’, *Hürriyet Turkish daily news*, March 3, 2015. <http://www.hurriyet.com.tr/gundem/28344069.asp>.

Keyman 2013), it seems almost certain that the drift into authoritarianism seems to have eroded rule of law in the country.

This paper first analyzes the relative role that rule of law plays in the European Union's political accession criteria, then analyzes the historical determinants of the political cleavages in Turkey through its interactions with the European political system, and then proceeds onto an discussion of the secularist versus Islamist cleavage, and finally analyzes the impact of the political reforms adopted to meet the EU's political criteria on this cleavage, specifically with regards to rule of law. While the democratic transformation was underway, an expected outcome of this process was the strengthening of the rule of law system in Turkey (Gursoy 2012; Müftüler-Baç 2005; Noutcehva & Aydin-Duzgit 2012), yet the Turkish experience since 2011 is to the contrary. Specifically, the blatant disregard of rule of law in the imprisonment of secularists in Ergenekon (2007) and Balyoz cases (2010), the arbitrary banning of Twitter and YouTube in 2014, and the adoption of a law on the judiciary in 2013 effectively aiming to eliminate its independence all point out to a deterioration in upholding rule of law principle in Turkey. Since upholding rule of law as the supreme norm is the key to a liberal democracy, these specific examples also illuminate the rising authoritarianism, while attesting to the emergence of an illiberal democracy (Zakaria 2003; McLaren and Cop 2011) in Turkey. This is a key contribution of this paper to the rule of law debates, by highlighting the challenges in the Turkish case; the paper aims to shed a different light on the EU's ability to uphold rule of law in acceding states, specifically in terms of the limits of its transformative power (Börzel & Risse 2012).

## **The European Union and rule of law promotion in candidate countries**

Various scholars have addressed rule of law as the key to understand the process of democratization, specifically with an emphasis on the role of external factors in this process (Linz 1990; O'Donnell et al. 1988; Diamond et al. 1988). The material incentives that intergovernmental organizations such as World Trade Organization (WTO), North Atlantic Treaty Organization (NATO), ASEAN, and Organization for Security and Cooperation in Europe (OSCE) carry in the form of international loans, benefits, and membership privileges are the tools at their disposal to foster democratization. Similarly, membership in the European Union is among the highest possible material incentives. In other words, international organizations are able to bring about political change through conditionality (Schimmelfennig and Sedelmeier 2005). This has been a source of scientific inquiry specifically for the European Union as the EU differs from other international organizations in terms of the magnitude of its political conditionality and the rewards it has at its disposal (Börzel and Risse 2012). Of these external factors, the European Union emerges as the key international organization with preconditions for accession in the area of rule of law and democracy (Zielonka and Pravda 2001). In particular, upholding rule of law in candidate countries is greatly motivated by the membership incentive that the EU accession negotiations bring (Schimmelfennig and Sedelmeier 2005). As a result, the process of membership negotiations impacts the applicant country's political

process in a significant fashion. It is within this theoretical framework that Turkey's transformation needs to be analyzed.

Turkey is an interesting case study to assess the impact of the European Union on upholding rule of law in a country that has not yet become a member (Schimmelfennig and Scholtz 2008). The political conditionality of the EU on Turkey has intensified after the European Council's 1999 decision to elevate Turkey into candidacy status. The Helsinki Council presidency conclusions<sup>3</sup> explicitly stated the conditions, from civilian control of the military to rule of law that Turkey needs to fulfill in order to begin accession negotiations. As a result, Turkey underwent significant political changes from 1999, reaching its peak in the 2002–2005 period with the ultimate aim of catching up with the Central and Eastern European countries. The main rationale behind this peak was the election of the AKP government in 2002 which campaigned around the EU accession goal and worked vehemently toward it until the negotiations were finally opened in 2005. An important concern in this time period was also to make sure that Turkey would not be excluded from the EU's enlargement process while the Central and East European countries joined the EU. It is due to the political changes in this period that motivated the Commission in its 2004 Progress Report to state "Turkey *sufficiently* fulfils the Copenhagen criteria."<sup>4</sup> Consequently, accession negotiations were opened in October 2005. Nonetheless, the European Commission included a reference in its Accession Negotiations Framework document for Turkey adopted in 2005 stressing the continuity of political reforms as absolutely necessary, and warning that if Turkey drifts away from its political commitments, then the whole accession process could be suspended.

The Union expects Turkey to sustain the process of reform and 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...In the case of a serious and persistent breach in Turkey on the principles of democracy.... the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations.<sup>5</sup>

This is how the Turkish political changes were impacted through its membership negotiations, with the greatest impact felt on the application of the principles of rule of law.

In order to understand the impact of the EU on Turkey's experience with rule of law, one needs to go back and assess the political cleavages in Turkey, the main political cleavage in Turkey, namely, between the secularists and the Islamists, and the role it plays in shaping democratic transition, which is addressed in the next section.

<sup>3</sup> Helsinki European Council Presidency Conclusions, December 10–11, 1999. [http://www.consilium.europa.eu/en/uedocs/cms\\_data/docs/pressdata/en/ec/acfa4c.htm](http://www.consilium.europa.eu/en/uedocs/cms_data/docs/pressdata/en/ec/acfa4c.htm),

<sup>4</sup> The European Commission, Progress Report 2004, 1. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/tr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/tr_tr_2004_en.pdf)

<sup>5</sup> Negotiations Framework, Principles Governing Negotiations, the European Commission. [http://ec.europa.eu/enlargement/pdf/turkey/st20002\\_05\\_tr\\_framedoc\\_en.pdf](http://ec.europa.eu/enlargement/pdf/turkey/st20002_05_tr_framedoc_en.pdf)

## Turkey, rule of law, and the cleavage between secularists and Islamists

According to Mardin (1972), the Islamist and secularist cleavage began to emerge at the end of the nineteenth century in the last decades of the Ottoman Empire. The cleavage deepened in the early years of the Republic when Turkish political development followed a process of structural transformation, with its main characteristics—nationalism, secularism, and statism—set from 1923 to 1946 (Kalaycıoğlu and Sarıbay 2000). Most prominently, the symbols of Islam such as the Arab alphabet, the headscarf, and religious attire were changed and all references to religion in public life were removed. The main issue of contention was over the separation of state and religious affairs (Toprak 1980). The key turning point for this cleavage came in 1924 with the reforms that abolished the “Caliphate,” and adopted the principle of “laicism” (separation of state and religious affairs). Throughout the reform process of the modern Turkey, the opposition coming from Islamic groups was silenced by then one party rule—the Republican People’s Party—CHP (Kalaycıoğlu and Sarıbay 2000). These reforms did not actually eliminate the Islamic tradition in Turkey but they heavily repressed it. The role of Islam in Turkish politics remained relatively suppressed until the 1980s when “a struggle between the secular and Islamist elites began to emerge in the post-1980 period” (Göle 1997; 47).

Over the past 100 years of Turkish politics, different political actors and parties struggled over these notions which finally culminated in the Islamist-oriented Justice and Development Party’s (AKP) coming to power in 2002 with an overwhelming majority. As “the AKP is a Muslim democratic party and is seen as a party with Muslim roots,”<sup>6</sup> its emergence as the most powerful political actor in Turkish politics carries repercussions for the Islamist and secularist cleavage. In the 2011 general elections, the AKP received 50 % of the votes with almost 90 % of the electorate going to the polls (Müftüler-Baç and Keyman 2012). This was their third consecutive victory, after 2002 when they first came to power with 34.7 % of the votes and again reelected in 2007 with 47 % of the votes. The AKP has steadily increased its electoral support and became a dominant party in Turkish politics in a matter of 10 years (Hale and Özbudun 2010). However, their electoral support declined to 40.8 % in the 2015 general elections, preventing them to form a majority government.

The AKP initially supported the EU accession process actively adopting political reforms from 2002 to 2008 (Tocci 2005; Müftüler-Baç 2005). However, as sweeping political reforms were adopted, Turkish politics look as if it is becoming more Islamist-oriented (Çarkoğlu 2007), with slowing down of reforms after 2008 and a visible break in 2013 (Keyman 2013). Despite an initial commitment to the democratization process, the AKP since 2011 has become increasingly authoritarian (Özbudun 2007) and adopted measures clearly violating the principle of rule of law (Tezcur 2009). This is partly why the AKP’s turn away from the EU process and violations of rule of law in Turkey since 2011 are particularly alarming (Noutcehva and Aydın-Duzgıt 2012).

The AKP with its initial EU accession goal went on to adopt political and economic changes in Turkey. In addition, its ability to put together a majority government enabled it to pass previously controversial reform packages through, such as the headscarf issue,

<sup>6</sup> Şahin, H, “Müslüman Demokratlar?” *Turkish Daily Newspaper Radikal*, 8 November 2002, 15.

the right to religious education, and the elimination of the military's presence from civilian institutions. The AKP's rhetoric was that these reforms were necessary to fulfill the political aspects of the European Union's accession criteria and to democratize Turkey. This was reflected by Recep Tayyip Erdoğan—Turkish Prime Minister from 2003 to 2014—as, “We aim for EU accession in order to increase the living standards of our people and to enhance democracy in Turkey.”<sup>7</sup>

To do so, various Turkish governments adopted series of legal reforms which altered the political landscape in the country in accordance with the EU's rule of law. In 2001, a new Civic code, in 2003 new Labour Law, and in 2004 a new Penal Code were adopted. Specifically, the 2001 Civic Code replaced the 1926 Civic Code and addressed key issues of gender equality, the new labour law aimed at increasing the welfare of the working classes to the level of their European counterparts, and the new Penal code aimed to harmonize Turkish criminal code in accordance with the European *acquis*. Even though the 2001 Civic code was adopted by the previous government, the AKP governments adhered to the basic principles there. Similarly, in August 2002, before the AKP was elected to power, the government in power at the time, a coalition government, eliminated death penalty from the Turkish criminal code in an attempt to fulfill a key political criterion under the Copenhagen criteria (Müftüleri-Baç 2005). From 2001 to 2008, a total of 14 Constitutional Amendments were adopted along with 9 Harmonization packages to the EU *acquis*.

In all of these legal changes, a key concern was to guarantee upholding of rule of law and adjust the Turkish legal structure to the EU countries. From 2005 to 2008, the Turkish parliament adopted 148 laws in an attempt to adjust to the EU's political conditionality. However, since 2008, there has been a slowing down of the political reforms, parallel to the deterioration of the accession process (McLaren and Cop 2011). The stalling of the negotiations process decreased the pace of political reforms in Turkey and the EU began to lose its role as an anchor for political change. Despite this recent slowing down of political change, one could still think of the 2002–2005 period as the golden age of political transformation in line with the EU political conditionality (Tocci 2005 ; Muftuler-Bac 2005; Özbudun 2007; Kubicek 2011). However, it is not only the slowing down of legal reforms which is particularly important for the purposes but also the reversal of the reforms after 2011 (Noutcheva and Aydın-Duzgit 2012). It is, of course, not clear as to whether it is the underlying Islamist and secularist cleavage that is leading to a reversal of reforms, and violations of rule of law.

The main issues in Turkish politics that highlight the differences between the diverging political groups and shed light onto the secularists versus Islamists cleavage are the process of democratization, most notably freedom of speech, rule of law, secularization, and related to that, gender equality. All of these issues cut across the major cleavage in Turkish society and politics that seems to destabilize the democratization process. (Hale and Özbudun 2010; Çarkoğlu and Rubin 2006).

A case in point is with regards to headscarves. Traditionally, in Turkish public life, symbols of religiosity such as the headscarf were not tolerated because they are seen as a threat to the secular regime in Turkey (Cindoğlu and Zencirci 2008; Fisher-Onar and

<sup>7</sup> AGSP (2002) <http://www.euturkey.org.tr/index.php?p=23357&l=1>, November 20.

Müftüler-Baç 2011). That was, itself, an example of illiberal democratic rule as well. The AKP government changed the laws with regards to the headscarf on a stage-by-stage basis. First, it adopted a series of legal changes in 2008 that allowed university students to wear headscarves at school, and then later on as part of the democratization package adopted in 2013, public servants were allowed to wear their headscarves to work; both of these legal changes were important in granting individual rights and liberties. However, the debates over this liberalization with regards to headscarves in public spaces turned out to be an explosive issue over which serious violations of rule of law were committed. As the secular and Islamist cleavage deepened over the symbolic role of the headscarf, the AKP government began to act in an illiberal fashion to suppress the domestic opposition.

The debates over the headscarf issue turned violent in 2006 with an attack against Danıştay (Council of State)—the highest administrative court in Turkey—with a lone gunman murdering one of the judges. The attack against Danıştay was seemingly a response to its ruling sanctioning headscarves for public officials claiming that this constitutes a violation of Turkish law. In response to the ruling, *Vakit*, a leading religious newspaper, printed detailed information on the Danıştay judges<sup>8</sup> while Erdoğan criticized Danıştay's decision as, "They (Danıştay judges) will soon interfere inside our houses, *Efendi* (Sir) this is not your business, but it is the business of Diyanet—the State Department of Religious Affairs."<sup>9</sup> Then Turkish President Ahmet Necdet Sezer condemned the attack as, "This is an attack against the secular character of the Turkish Republic."<sup>10</sup> The attack was important as it illustrated the depth of the secularist and Islamist cleavage and indicated that when a legally binding ruling by a state institution is adopted, which is not to the liking of the government, the government questions the validity of that ruling, and more dangerously a pro-government newspaper could point to these legal professionals as targets to be eliminated.

The turmoil between the secularists and Islamists became explosive in 2007 when the AKP nominated Abdullah Gül, then Foreign Minister, for the prestigious position of the Presidency.<sup>11</sup> Since the office of the Presidency is seen as the epitome of political power in Turkey, the secularists resisted Gül's nomination because of his religious conservative background and his wife's headscarf. The secularists organized mass demonstrations against the Islamisation in Turkey arguing "Secular Turkish state is under attack." Their sentiments were matched by the Turkish Armed Forces, seen as the main guardian of secularism in Turkey, as the Chief of Staff openly stated, "The main problem stems from the fact that Secularism sits at the center of the debate. The Turkish Armed Forces has a stake involved and if necessary, will make its position clear."<sup>12</sup> This was an effective warning to the AKP as well as an indication of the continued military presence in Turkish politics. The EU was not happy about the military's involvement as communicated by Olli Rehn, and then the European Commissioner for enlargement: "The Military should stay out of politics and the presidential elections

<sup>8</sup> "Vakit manşetten deşifre etti," *Radikal, Turkish Daily newspaper*, 18 May 2006, 1.

<sup>9</sup> "Lanetlenesi Olay," *Hürriyet Turkish Daily newspaper*, 5 May 2006, 16.

<sup>10</sup> "Sezer: Saldırı demokratik ve laik Cumhuriyet'e" *Radikal Turkish Daily newspaper*, 18 May 2006, 6.

<sup>11</sup> Berkan, I. "Cumhurbaşkanı Abdullah Gül," *Turkish Daily Radikal*, 25 April 2007, 3.

<sup>12</sup> *Radikal Turkish Daily newspaper*, 28 April 2007, 14.

are a test-case for the military's respect for democracy."<sup>13</sup> The crisis was resolved when Gul was elected in the Parliament with a majority for a 7-year term as the President of the Turkish Republic in accordance with legal principles. However, the attempts to prevent his election to the office of the Presidency and the reactions of the armed forces illustrated that despite many political reforms, rule of law is still fragile in Turkey, yet not necessarily due to the government's action this time. The 2007 crisis over the Presidential elections led to the adoption of a new Constitutional amendment where the electoral rules on the Presidential elections were revised. Accordingly, instead of the Turkish Parliament electing the President, the electoral law on the Presidency was amended to have the general public elect the President.<sup>14</sup> The first such presidential elections were held in August 2014 resulting in the election of Recep Tayyip Erdoğan to the office of the Presidency.

The year 2008 brought a new wave of turmoil between the secularists and the Islamists, again over the headscarf issue. In February 2008, the Turkish parliament voted to adopt a Constitutional Amendment that would enable women to wear their headscarves when they attend institutions of higher education.<sup>15</sup> However, various political groups in Turkey viewed this as the governing party's attempt to manipulate democratic principles to get rid of secularism and to advance religious authoritarianism in Turkey.<sup>16</sup> Thus, by 2008, the AKP found itself as targets of the secularists in the country with the accusations that they are trying to dismantle the main founding principle of modern Turkey—secularism—by instrumentalizing the EU accession process (Kubicek 2011; McLaren and Cop 2011; Ozbudun 2014). The 2006 Danistay attack, the constitutional crisis over the election of the President in 2007, and the 2008 headscarf decision along with multiple statements from the AKP leaders formed the basis of these accusations. What happened next is highly telling in terms of assessing rule of law in Turkey. Under the 1982 Turkish Constitution, the Political Parties Act allows the prosecution of political parties and their subsequent closure if they are found to be violating the basic principles of the modern Turkish Republic. The highest organ of the Turkish judiciary, the Constitutional Court, decides upon such party closures when asked to evaluate political parties and their actions. In accordance with this legal stipulation, in 2008, a public prosecutor petitioned for opening a case against the AKP asking for its closure in the Constitutional Court. The case against the AKP was an important turning point for both democratic consolidation and upholding rule of law as a party that receives 50 % of the national votes was now under investigation for acts against the secular character of the state. Yet, the Political Parties Act and the Turkish Constitution allow party closures in Turkey if they are engaged in activities against the territorial integrity and the basic founding principles of the Turkish state. Similar closure cases were brought against religious parties in the 1990s—the predecessors of the AKP, the Welfare Party, and the Virtue Party as well as the Kurdish nationalist parties—leading to their closures. In addition, the Constitutional

<sup>13</sup> Smith, H. and Temko, N, "Turkey faces military crisis," *The Observer*, April 29 2007, <http://www.guardian.co.uk/world/2007/apr/29/turkey.eu/print>.

<sup>14</sup> <http://www.kgm.adalet.gov.tr/tasariasamalari/kanunlasan/2012yili/kanmetni/6271k.htm>

<sup>15</sup> Turenc. T. "AKP için büyük yanlış" *Turkish Daily Newspaper*

*Hürriyet*, 28 April 2008, <http://www.hurriyet.com.tr/gundem/28344069.asp>

<sup>16</sup> Türenc, T. "Başbakan laikliği dilim dilim doğuyor." *Turkish Daily Newspaper* *Hürriyet*, 28 January 2008, 9.



Court and the Turkish military were seen as the protectors of secularism, one of the basic pillars of the Turkish Republic. However, here was an example of a democratically elected party with half of the electorate supporting it, adopting measures that are perceived to be detrimental for secularism, yet the state institutions response to these actions were either in the form of a military declaration or a judicial case. This situation raised an interesting question: To what extent can a democratically elected party change the basic pillar of the Turkish Republic, and when this party begins to take steps against rule of law, what kind of actions are possible to stop this within the very confines of rule of law? A case against the AKP, therefore, was an important signal and a serious political development with significant repercussions on both democratic development and supremacy of law in Turkey.

This requires a few words on the Constitutional Court which acts as the judicial guardian of the Constitution, with the power to close down political parties that violate the Constitution. In democracies, the closures of political parties—especially one with such a high popular support—are highly problematic. The EU already voiced its discontent when Rehn stated: “If the AK Party is closed, then this will lead to a suspension of the accession negotiations.”<sup>17</sup> According to Dağı, “It is crystal clear that secularists have abandoned the ideal of democracy. They at large view democracy as a system that brought conservative (for them Islamist) political parties into power” (Dağı 2009). That is why, by their reliance on the Court, the secularists were perceived as using non-democratic measures to get rid of an Islamist party that had 50 % of the votes. The Constitutional Court finally ruled in July 2008<sup>18</sup> that the AKP would not be closed, but due to its activities against the secular character of the Turkish state, it would be penalized (Dağı 2008). The AKP had a narrow escape with the Constitutional Court deciding against its closure. Nonetheless, this also constituted a break within the secularist tradition, with the Constitutional Court openly supporting democracy (Sancar 2007), even if it meant the empowering of the Islamists and the AKP government.

The 2008 closure case acted as the main basis of the Constitutional Amendment adopted in 2010 as part of the Constitutional changes which revised the rules for party closures in line with the EU rules (Shambayati and Kirdis 2009; Tezcur 2009). In 2010, the AKP drafted Constitutional amendments on the 1982 Constitution, seen by many as a product of the secularist military's rule. The EU continuously expressed the need to replace the 1982 Constitution with a civilian Constitution in order to further cement the democratic reforms. The AKP's position was that the Constitutional changes adopted by the referendum would energize the EU accession process.<sup>19</sup> However, the secularists opposed the Constitutional changes based on the argument that the proposed changes would further strengthen the hands of the Islamists. Thus, they found themselves in a paradoxical situation, where if they supported fully the democratization process in Turkey, the Islamists would get stronger. The Islamists, on the other hand, started on a road that took them further away from democracy and rule of law, and paved a new road onto illiberal democracy. A referendum was held on September 12, 2010—the same date of the 1980 takeover—and 52 % of the Turkish public voted yes to the

<sup>17</sup> Zaman, *Turkish Daily Newspaper*, 31 March 2008, <http://www.zaman.com.tr/haber.do?haberno=671427>

<sup>18</sup> “AK Parti Kapatilmasin karari cikti”, *Turkish Daily Newspaper Milliyet*, July 30, 2008. <http://www.milliyet.com.tr/karar-font-color-red-bugun-mu—font-aciklanacak-siyaset/siyasetdetay/30.07.2008/972729/default.htm>

<sup>19</sup> Balci, K. “AB uyeligimiz ve Referendum,” *Zaman Turkish Daily Newspaper*, 2 August 2010.

Constitutional amendments. The results indicated an even split within the Turkish society between the supporters of the AKP and those opposing it, it would not be far-fetched to claim that the opposition was mainly composed of the secularists.

This divide became even more pronounced after 2010 when two judicial cases were opened against high-ranking military officials as well as prominent journalists in two different cases—*Ergenekon* and *Balyoz*. In both of these cases, military officers were accused of plotting against the government, and the cases involved the highest-ranking generals (Gursoy 2012; Jenkins 2014). Interestingly, the public prosecutors in the *Ergenekon*<sup>20</sup> case used the above mentioned *Danıştay* attack in 2006 against the military, accusing the generals to instigate the attack in order to create societal turmoil. These trials, however, led to a decline in the military's power in Turkish politics, a fervent support of secularism. To turn to the *Ergenekon* case, in 2007, a secret arsenal of weapons, and alleged plans for assassinations and attacks to destabilize the Turkish society were discovered in former military officials' houses. The allegations basically revolved around the idea that a group of people have colluded to formulate plans to destabilize the democratically elected AKP government, leading to their demise. In particular, the case became notorious with the rounds of raids and arrests in early dawn to the homes of the secularists—among them journalists, TV station owners, and business people as well as civil society representatives. A particularly disturbing episode in the case was the 2009 raid against Turkan Saylan, an elderly medical doctor at the terminal stage of her cancer. She was the founder of two NGOs, *The Fight Against Leprosy* and *Support to Modern Life*, the former working for the eradication of leprosy in Turkey, and the latter for the education of young girls. When the police raided her home<sup>21</sup> and the offices of these NGOs and arrested dozens of its workers, the case was perceived as a strategy to intimidate secularists, and to repress societal opposition to the AKP rule, indicative of an illiberal democratic system. Similarly, when two journalists—Nedim Şener and Ahmet Şık—were arrested in 2011 for their alleged involvement in the *Ergenekon* case, their mistreatment became a source of outrage. When the Prime Minister Erdogan was questioned in 2011 as to why these journalists were arrested, as they have only written articles and books, he plainly stated “Sometimes a book is more dangerous than a bomb,”<sup>22</sup> signaling a disregard for non-violent expression of opinion as well as the Turkish Penal Code. As a whole, the *Ergenekon* case led to the imprisonment of secular journalists, civil society representatives, military officers, writers, and academicians for up to 6–7 years without being charged clearly. More importantly, even the evidence used by the prosecutors for these arrests turned out to be fabrications, where in some cases the evidence was planted in the homes of the accused by the prosecutors themselves. Not only were these people imprisoned without legal charges, their experience with the justice system in Turkey constituted prime examples of violations of due process (Shambayati and Kirdis 2009). Then Prime Minister Erdogan summarized the AKP's role in the trials with his

<sup>20</sup> *Ergenekon* case—tied together to the *Balyoz* case—involved the arrest of leading journalists, military officers, and academics accused of plotting to overthrow the AKP government by instigating societal hatred. Both cases turned out to be fabrications to remove the opposition leaders from positions of power in 2013,

<sup>21</sup> *Turkish Daily newspaper VATAN*, 13 April 2009, <http://www.gazetevatan.com/turkan-saylan-neye-uzuldu-232967-gundem/>

<sup>22</sup> <http://t24.com.tr/haber/erdogan-bazi-kitaplar-vardir-ki-bombadan-daha-tesirlidir,150308>.

declaration: “I am the public prosecutor for *Ergenekon*.”<sup>23</sup> In itself, this declaration showed the fusion between the executive and the judiciary in Turkey. The blatant disregard for due process in the prosecutors’ case and the violations of individual rights for the sake of collecting evidence indicated the strengthening of illiberal democracy in Turkey.

The *Ergenekon* case reached its peak in 2012 with the arrest of Ilker Basbug, the former Chief of Staff, who worked closely with the AKP officials. Basbug, accused of being the leader of a terrorist group, was subsequently sentenced to life imprisonment in 2013. The sentence was overruled in March 2014 when the Constitutional Court revoked the decision. Similarly, all those who have been arrested and imprisoned under the *Ergenekon* case were released in 2014 when they applied to the Constitutional Court, arguing that their rights to fair trial and due process were violated. After their release, most of them applied to the European Court of Human Rights.

In 2010, another high-profile case erupted, the *Balyoz case* which involved the arrest of 351 high-ranking military officers who were accused of plotting against the AKP government. Despite the lack of evidence, and the many irregularities in the case, these high-ranking officers were locked up from 2010 until June 2014, when they were finally released based on the Constitutional Court decision that their rights to fair trial were violated. Interestingly, when these officers were released from prison, Erdogan declared, “These officers need to know who released them from prison, they would not have been released even when and if the ECtHR rules that their legal rights have been violated,”<sup>24</sup> implying that it is his government that is the main force behind their release, but also probably their arrests.

Both of these cases, *Ergenekon* and *Balyoz*, are important in illustrating the limits of rule of law and problems with due process in Turkey. The AKP government felt threatened with the 2007 Constitutional crisis and the 2008 closure case and saw the Turkish military along with its coalition partners in the secular state institutions as responsible for these developments. The trials of the generals, as well as the secular elite in these two cases, and their subsequent imprisonment were seen by many as outright violations of rule of law.<sup>25</sup> The cases were prosecuted with flimsy or non-existent evidence, and the lawyers of the accused were prevented from gaining access to that evidence, so no defense against accusations of the prosecutors’ office could be formed. What is more, some of the final prosecution decisions were based on evidence from secret witnesses and a CD containing evidence for plans of a coup d’état against the AKP government. From 2010 to 2013, these cases were prosecuted based on this evidence, leading to lengthy sentences for those accused in 2012, and a Court of Appeals confirming these sentences in 2013. However, most of that evidence turned out to be fabricated by the end of 2013 (Jenkins 2014). The Constitutional Court unanimously ruled in June 2014 that “the convicted suspects’ rights were violated concerning digital data and defendants’ testimony.”<sup>26</sup> The lack of credibility in the

<sup>23</sup> “Evet, Ergenekon’un savcısıyım,” *Turkish Daily newspaper Vatan*, 16 July 2008, <http://www.gazetevatan.com/-evet-ergenekon-un-savcisiyim-189246-siyaset/>.

<sup>24</sup> *Turkish Daily Newspaper Hurriyet*, June 22, 2014. <http://www.hurriyet.com.tr/gundem/26663520.asp>.

<sup>25</sup> “Top judge meets with lawyers of Balyoz convicts, *Today’s Zaman*, May 9, 2014. [http://www.todayszaman.com/national\\_top-judge-meets-with-lawyers-of-balyoz-convicts\\_347406.html](http://www.todayszaman.com/national_top-judge-meets-with-lawyers-of-balyoz-convicts_347406.html)

<sup>26</sup> *Hurriyet, Turkish Daily newspaper*, June 18, 2014. <http://www.hurriyetdailynews.com/top-turkish-court-paves-way-for-retrial-of-balyoz-coup-case-convicts.aspx?pageID=238&nid=67961>

prosecution, however, was not shared by the AKP government who cheered on the illegal tapings of conversations, fabrication of evidence, and the witch hunt of officers and intellectuals who were critical of the AKP government.<sup>27</sup> This was a serious blow to rule of law in Turkey. These cases raised the question about the extent to which the judiciary was separate and autonomous from the executive, specifically the wishes of the AKP leaders themselves. These two cases were particularly important in demonstrating the arbitrary nature of political prosecutions, and the lack of judicial independence. It became clear that when the government perceives possible dissidents whose voices are seen as threatening, these people would be jailed without evidence (Jenkins 2014, Gursoy 2012). In short, these cases illustrated a disregard for rule of law.

A further example for the disregard for rule of law was provided with the 2012 education reform bill. In 2012, the AKP government adopted a change in the education system undoing the education reform enacted by the secularists for secondary schools in 1997. The 1997 education reform has closed down the Imam Hatip lycees middle schools, extending the primary school system into 8 years. The 2012 education reform reversed this decision and reopened the middle school level of these religious schools. This caused a significant uproar in the country, yet Erdoğan defended the changes as, “this is because we want to raise a religious generation.”<sup>28</sup> However, the adoption of this education reform was done quickly, and without due process that was required under Turkish law. This turned out to be a clear case of violating of due process in legislative procedures in Turkey (Sancar 2007; Shambayati and Kirdis 2009), cementing the perception that the AKP’s rule now constituted an illiberal democracy manipulating the legal procedures as it saw fit.

Yet, the AKP government presented all of the above reforms as democratic changes in Turkey and claimed that those in opposition are the real anti-democratic forces. A particularly important point that the AKP emphasized was that it won 50 % of the popular vote, and this gave them the mandate to rule as they saw fit, a defense of majoritarianism in its essence. On the other hand, the groups that opposed the AKP centered their argument on the notion that the AKP government’s practices are detrimental to the secular tradition in Turkey, as well as rule of law.

These violations of rule of law reached a new peak with the Gezi protests in June 2013 and the corruption scandal of December 2013. At the end of May 2013, a group of environmentalists camped out in Gezi Park, the last remaining small green space in center city Istanbul protesting the demolition of the park to build a shopping mall. Their protest was heavily repressed by the AKP government, but this became a significant turning point for Turkish politics (Arat 2013). The AKP government’s decision to go ahead with the demolition of the Park despite a court decision to halt it, another instance illustrating the limits of rule of law (Taşpınar 2014), and to deal with the public protests in a very harsh manner acted as a wake-up call not only for the long-term supporters of the AKP but also among its own cadre. The AKP’s former minister of culture, Ertugrul Gunay, summarized this view as, “That imperious style, which rejected dialogue during the Gezi Park protests, abandoned democracy and drifted

<sup>27</sup> “Erdoğan: Kirli planlara asla prim vermeyeceğiz,” *Dunya Turkish Daily Newspaper*, January 23, 2010. <http://www.dunya.com/erdogan-kirli-planlara-asla-prim-vermeyecegiz-75823h.htm>

<sup>28</sup> “Erdoğan ‘dindar nesil’i savundu,” *Radikal Turkish Daily Newspaper*, 6 February 2012.

toward an authoritarian rule. Now Turkey is at a very grave threshold. We are drifting away from the rule of law toward an arbitrary rule.”<sup>29</sup>

The final breaking point for rule of law in Turkey came in December 2013 with a legal investigation launched into the AKP ministers' and their families' involvement in corruption. Erdogan labeled the operation as a judicial coup and dismissed all charges against those close to him as fabrications. The government responded to these charges by removing 2000 police officers from office and reshuffling of all prosecutors involved with the investigation. In addition, the AKP adopted legal changes on the independence of judiciary and internet law. But, more importantly, the AKP's reactions revolved in establishing a new legal order that would institutionalize the executive's control over the judiciary and all kinds of media outlets. The AKP government was taken by surprise by the corruption operation as it counted upon the changes adopted with the Constitutional reform package of 2010<sup>30</sup> which gave the judiciary an area of autonomy. For example, with these reforms, public prosecutors could investigate politicians suspected of abuses of power. However, this autonomy was now seen detrimental to the AKP interests. The AKP government responded by adopting new legal procedure, a decree obliging all prosecutors and police officers to inform the government of any ongoing investigations. Yet, when the decree was declared as unconstitutional by the Supreme Council of Judges and Prosecutors (HSYK) leading to its annulment by Danistay, the AKP government perceived this as an open threat to its existence. This led to an attempt to restructure the HSYK with the governmental amendments finally adopted on February 14, 2014 in the parliament despite opposition parties' resistance. The Council of Europe was stern in its condemnation with Nils Muiznieks, Commissioner for Human Rights in the Council of Europe stating, “Proposals to curb powers of High Council of Judges & Prosecutors represent serious setback for the independence of the judiciary in Turkey.”<sup>31</sup> With the newly proposed decree, the HSYK was made accountable to the Minister of Justice, i.e., the executive branch and all possible independent inquiries by the judiciary were tied to the executive branch's approval. The HSYK was already presided by the Minister of Justice, leading to the European Commission's criticism that “Turkey needs to consolidate the achievements of the 2010 constitutional amendments, in particular that more than half of the members of the Council are judges chosen by their peers from all levels of the judiciary, and address the shortcomings such as the role given to the Minister of Justice and to the Undersecretary of the Ministry.”<sup>32</sup>

These developments radically altered legal separation of powers in Turkey with increased executive control over the judiciary bringing an effective end to rule of law in Turkey. The European Commission reacted immediately, arguing that all these changes and measures adopted raise serious questions about judicial independence in Turkey as

<sup>29</sup> Interview with the Minister of Culture, Ertugrul Gunay, *Taraf*, January 2, 2014. <http://www.al-monitor.com/pulse/politics/2014/01/turkey-ex-minister-resignation-arbitrary-rule.html>

<sup>30</sup> For the full text of the Constitutional Amendments adopted, see <http://www.anayasa.gen.tr/5982.htm>

<sup>31</sup> “Europe criticizes Turkish government,” *Turkish Daily newspaper Today's Zaman*, January 8, 2014. <http://www.todayszaman.com/news-336111-europe-criticizes-turkish-govt-move-to-curb-hsyk-power.html>.

<sup>32</sup> European Commission Progress Report on Turkey's Accession to the EU, 2013, p.12. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/turkey\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf).

well as upholding rule of law. In March 2014, Daniel Hölting, the Venice Commission's spokesperson, stated: "The independence of the judiciary is a fundamental value of the Turkish Constitution. If the law is brought to the Constitutional Court, the Venice Commission believes that the Court will play its role of guarantor of the Turkish Constitution and its basic values."<sup>33</sup> The opposition party, CHP, applied to the Constitutional Court stating that the new HSYK law violates the Turkish Constitution, and the Court decided accordingly, annulling the changes adopted in the Parliament. However, the AKP government clearly demonstrated its intent to control the judiciary, overthrowing the principle of separation of powers, due of process and rule of law. As a consequence, the independence of state institutions in Turkey declined in a parallel fashion to the increased power of the AKP as the majoritarian government.

It is also because of the corruption scandal that the AKP government adopted a ban on both Twitter and YouTube, trying to prevent the spread of rumors about its ministers and to curtail all forms of communications on the social media. Interestingly, both of these bans were subsequently lifted by the Constitutional Court when individuals applied to the Court claiming that their individual rights were being violated. It is without doubt that the Constitutional Court remained the main independent vestige in Turkish judiciary and political system trying to control the AKP government's arbitrary rule. Interestingly, Hasim Kilic, then President of the Constitutional Court, voted against the closure case of the AKP in 2008 and ruled on the HSYK, Twitter, and YouTube bans in 2014. Yet, this time Erdogan labeled Kilic as an undemocratic force, working against the "national will." In short, the political developments after 2011 indicate an increased control of all state institutions as well as civil society organizations by the AKP government. All forms of opposition and dissent are effectively blocked and censored, a case in point being the 2014 internet censure, and there is a constant pressure on the media outlets.

An important logic underlying these developments is the ongoing political struggles in Turkey, between the secularists and Islamists, and now the supporters of the AKP versus its opposers. Within the Turkish political scene, one could conceptualize the role of the EU's political conditionality as a catalyst that induced change in Turkey. The unexpected consequence of this process was that the religious conservatives and Islamists seemingly became the main force behind political reforms, democratization, and Turkey's EU membership whereas the secularists were perceived to be the defenders of the status quo and the main opposition to Turkey's EU membership. However, once the Islamists consolidated significant power in their own hands, the independence of state institutions, the legal changes made in line with the EU norms, and the political rhetoric of the AKP leaders changed drastically. Unexpectedly, Turkey found itself in the grips of majoritarian authoritarianism with a strong element of arbitrary rule.

<sup>33</sup> Serkan Demistas, "Venice Commission urges Turkish Constitutional Court to annul judiciary bill," *Turkish Daily Hurriyet*, March 6, 2014. <http://www.hurriyetdailynews.com/venice-commission-urges-turkish-constitutional-court-to-annul-judiciary-bill.aspx?pageID=238&nID=63242&NewsCatID=339>.

## Conclusion

This paper analyzed the Turkish democratization process as stimulated by its EU accession process, and the challenges in upholding rule of law, specifically in the light of the drift into authoritarianism and increased disregard for rule of law in the country. The main cleavage in Turkey between the Islamists and the secularists is the underlying factor paving the way into this drift. In the post-1999 period, the debates in Turkey intensified over the political reforms that need to be adopted in order to fulfill the political aspects of the Copenhagen criteria for its accession to the EU. The sweeping political changes led to the opening of accession negotiations in 2005. This paper proposed that the EU conditionality stimulated the political transformation in Turkey and led to the surfacing of the suppressed conflict between secularists and Islamists, unexpectedly highlighting illiberal forces in the country. This conflict, in turn, was directly reflected in upholding rule of law in Turkish politics. In its contestation of the positive implications of political conditionality, the paper provides an alternative view to the role of international organizations in promoting political change. The slide into authoritarianism in Turkey is an unexpected consequence of international organizations, with the EU's impact on democratization leading to just the opposite result of unleashing illiberal forces. Consequently, the paper highlights an important revelation for the democratization and political conditionality literature by contesting the more-or-less accepted notion that external factors of democratization tend to be positive. This is precisely why this paper raises the question of the limits of EU political conditionality in stimulating democratization in acceding states, especially with regard to the rule of law.

When Turkey began to adopt the EU-inspired political reforms and democratize, previously suppressed elements came to the fore front, mainly the Islamist tendencies. This is because the EU membership process strengthened the hands of the political reformers in Turkey and acted as a catalyst to facilitate political changes. The EU accession process, viewed in this light, makes this political cleavage more visible and opened up a Pandora's box in Turkish politics. The main dilemma here is with respect to the secularism versus democracy trade-off in Turkey. When the AKP came to power in 2002, it became the most effective actor pushing for democratization and found itself engaged in a political struggle with the secular actors over the control of state institutions. Furthermore, the AKP reforms led to an increased role of Islam in Turkish politics, which turned out to be the natural result of the democratization process in Turkey. One should note that what is at stake is the right to dissent and/or the loss of freedom of expression for those who are not among the Islamists.

This is why this paper aimed at an analysis of the violations of rule of law in the Turkish case, clearly demonstrating the limits of EU's political conditionality. The political conditionality of international organizations and their ability to bring about political change have largely been treated as a positive impact on countries in democratic transition. The EU emerges in this literature as a unique organization which is able to impact upholding rule of law principles with the political rewards at its disposal, mainly the prospect of membership. However, this paper argued that a paradoxical outcome is also possible as the adjustment process to the political conditions, and the resulting process of democratization might end up uncovering anti-democratic tendencies. The previous works on political conditionality have stressed the relatively positive impact of the EU

on promoting democracy. However, this paper's analysis uncovers a previously unexplored area of political conditionality. This is why it constitutes an addendum to this literature. Turkey clearly emerges as a case study for violations of rule of law, perplexing in its implications.

The blatant disregard for rule of law in Turkish politics is highly telling. The 2008 closure case against the AKP in the Constitutional Court, the *Ergenekon* and *Balyoz* cases and trials, the 2013 Gezi protests, and the December 2013 corruption scandal all add up to demonstrate the slide into a political system where rule of law is no longer a priority. This is surprising given the EU's insistence on rule of law as the primary basis for democratization. So what went wrong in Turkey? Is this a typical example of creeping of authoritarianism or is the political cleavage between secularists and Islamists the key culprit? An important point of contention here is that as Turkey democratizes in line with the EU accession criteria, symbols of religiosity get stronger; this might mean that Turkey is not destined to remain secular. This constitutes the main dilemma that Turkish politics faces, and this is why the Turkish case is an important illustration for the complexities of democratization in a Muslim country, even when that country has been Europeanized for centuries. This brings us to a much larger question: In a country, where the majority adheres to Islam and believes in its application in public and private life, does democratization end up with a sacrifice in secularism? Is it possible, then, through the EU accession process that the Turkish democratization ended up empowering the Islamists who now use their newly found eminence to violate rule of law, in order to extend their hold of office? This seems to be the main paradox that Turkey currently faces.

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