TRANSFORMATION OF TURKISH SOVEREIGNTY CULTURE IN LIGHT OF THE EUROPEAN UNION ACCESSION PROCESS SINCE 1999

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THE TRANSFORMATION OF TURKISH SOVEREIGNTY CULTURE IN LIGHT OF THE EUROPEAN UNION ACCESSION PROCESS SINCE 1999

ABSTRACT

From the early times international system and its inherent bedrock, sovereignty, have been in an everlasting process of transformation. Beginning with the security concerns the transformation process has come under the influence of economic, socio-cultural and technological concerns as a natural result of globalization, and over time it has turned into the competition of nation-states which try to conform to the needs of modern times and to have a right to say in contemporary world order. However, the demand of existing as an effective world actor in the modern world requires nation-states not only to join in inter- or supranational institutions but also to curtail their sovereignty rights. The failure of absolute sovereignty in meeting the modern epochal needs has eventually led to the reconfiguration of the concept as shared / limited sovereignty under a supranational identity, thereby making absolute character of the concept illusional.

With its post-modern understanding of sovereignty, the EU, since its establishment, has created a *sui generis* structure based on a supranational legal system that requires member and candidate states to undergo an institutional, political, economic and legal transformation. Unlike international law and classic interstate organizations where states curtail, to a degree, their sovereignty to cooperate, the legal system of the Union creates a post-modern order, in which each member states pool their sovereignty to compromise. What makes the EU a union is this 'pooled sovereignty' principle. This *sui generis* structure of Europe leads to the reconfiguration of national sovereignty concept under a supranational identity as it requires member and candidate states to partially transfer or share their sovereignty rights in some sensitive issues and to put their domestic policies and institutions into harmony with the EU standards, thereby eroding conventional norms of sovereignty

and opening a post-Westphalian and post-national era. In this sense, with its determination to Europeanization, Turkey is evolving and reconfiguring its traditional parameters, especially experiencing a revolution in the national sovereignty conception.

Throughout the republican history, having been devoted to evolve into a westernized and civilized nation, Turkey has undergone a radical change since it was given a candidate status for the EU in the Helsinki Summit of 1999. Especially during the 2000s, with the rise of the Justice and Development Party (AKP) Turkey, started a gradual transformation of domestic political culture on its path to the EU accession process through the steps taken towards the democratization and civilization in line with the EU-motivated reforms and Copenhagen Criteria. Breaking the taboos of its history which are the keystone of traditional state ideology imposed by the so-called safeguard of the stability and security of the state, conservative Kemalist bloc Turkey is today facing its reality. On its road to Europeanization, Turkey has achieved a lot by significant legal regulations and constitutional amendments, which have brought forward a radical change in the mentality of the Turkish people and in their perception of sensitive issues such as national sovereignty and national independence. Henceforth the EU demands touching upon traditionally sensitive issues such as the recognition of cultural differences which would lead to redefinition of national identity are no longer perceived as a source of threat, rather a source of consolidating democracy; the role of military in Turkish politics is losing its legitimacy in the eyes of the society and the rule of law in the judiciary is being strengthened. Turkey is experiencing a revolution in the domestic political sphere by eliminating the non-democratic elements in front of the national sovereignty at the same time while sacrificing its sovereign rights in order to be a part of a supranational entity. What we are witnessing is the regeneration of Turkey; therefore, it is inevitable that as long as Europe continues to reconfigure itself, Turkey will experience a further change.

HALİME ÇETİN **July 2010**

1999 SONRASI AVRUPA BİRLİĞİ ÜYELİĞİ SÜRECİNDE TÜRKİYE'DE EGEMENLİK KÜLTÜRÜNÜN DÖNÜŞÜMÜ

ÖZET

Uluslararası sistem ve doğal yapıtaşı egemenlik kavramı ilk ortaya cıktıkları tarihten itibaren sürekli bir dönüşüm süreci içerisine girmişlerdir. En başta mutlak egemenliğin başarısızlığının doğurduğu güvenlik kaygılarıyla başlayan bu dönüşüm süreci zamanla küreselleşmenin neden olduğu ekonomik, sosyokültürel ve teknolojik kaygılar etkisi altına girmiş; ulus-devletlerin çağa ayak uydurma ve yeni düzende söz sahibi olabilme yarışına dönüşmüştür. Fakat modern uluslararası sistemde etkin bir devlet olarak varlığını sürdürme isteği, ulus-devletin ulusüstü ya da uluslararası kuruluşlara katılımını ve dolayısıyla mutlak egemenlik yetkilerinden taviz zorunluluğunu da beraberinde getirmiştir. Mutlak egemenliğin günümüz ihtiyaçlarına cevap vermede yetersiz kalması ve gereken huzur ve barış ortamını koruyamaması egemenlik kavramının mutlak kimliğinden sıyrılıp sınırlı egemenlik olarak yeniden tanımlanmasını kaçınılmaz kılmıştır.

Kendine özgü egemenlik anlayışıyla Avrupa Birliği kuruluşundan bu yana üye devletlerin siyasi, ekonomik ve hukuki bir dönüşüm içersine girmesini gerekli kılan ulusüstü hukuk düzenine dayalı yine kendine has bir yapının mimarı olmuştur. Devletlerin işbirliği amaçlı egemenliklerini kısıtladıkları uluslararası hukuk ve klasik uluslararası kuruluşların aksine Birliğin hukuk düzeni her bir üye devletin uzlaşma amaçlı bir takım egemenlik haklarını devretmeleriyle oluşturdukları postmodern bir dünya yaratmıştır. Işte bu 'egemenlik devri' ilkesi Avrupa Birliği'nin bir birlik haline gelmesinin sağlayan olmazsa olmazı haline gelmiştir. Avrupa Birliği'nin bu kendine özgü yapısı üye ülkelerin ve hatta aday ülkelerin kendi normları ile uyumunu hassas konulardaki egemenlik haklarından fedakarlık etmelerini gerektirerek gercekleştirmekte, böylece geleneksel egemenlik anlayışı yerine ulusüstü bir egemenlik anlayışı getirmektedir. Bu bağlamda, Avrupa'da yerini almak isteyen Türkiye de kendi geleneksel parametrelerini yeniden şekillendirmekle birlikte özellikle ulusal egemenlik anlayışı açısından da bir devrim sürecine girmiştir.

Cumhuriyet tarihi boyunca batılı devletler arasında medeni bir millet olarak yer alma hedefinden ödün vermemiş olan Türkiye 1999 Helsinki Zirvesi sonrası girdiği Avrupa Birliği'ne adaylık maratonunda köklü bir değişime doğruda yol almaya başlamıştır. Özellikle Adalet ve Kalkınma Partisi'nin 2000'li yıllarda tek başına yönetimi ele almasıyla Birliğe üyelik yolunda gerçekleştirilen demokrtikleşme ve sivilleşmeye yönelik reformlarla Türkiye'nin politik kültürü zamanla dönüşüme uğramaktadır. Ülkenin güvenliğini ve düzenini sağlamama görevini üstlenmiş olan muhafazakar Kemalist gruplar tarafından dayatılmış olan geleneksel devlet ideolojisinin temel yapı taşını oluşturan tarihi tabular bu süreçte kırılmakta ve Türkiye kendi gerçeğiyle yüzleşmektedir. Yapılan ve yapılmakta olan yasal düzenlemeler ve anayasal değişiklikler Türk milletinin zihniyetinde de köklü bir değişim başlatmış ve ulusal bağmsızlık ve egemenliğin algılanışını tarihi sürecinden farklı daha demokratik ve özgürlükçü bir anlayışı yönlendirmiştir. Avrupa Birliği'nin kültürel farklılıkların tanınması gibi ulusal egemenliği hedef alan değişiklikleri gerektiren hassas konulara dokunması artık bir tehdit kaynağı olarak değil demokrasiyi güçlendirmeye yönelik bir gereklilik olarak algılanmaktadır. Böylece iç politikadaki askeriyenin rolü halkın gözündeki meşruiyetini kaybetmeye başlaması, hukuk devleti ilkesinin yargı açısında da güçlendirilmesi, devletin değil bireyin temel olduğu bir systemi de beraberinde getirmektedir. Bu açıdan Türkiye hem ulusüstü bir kurumun parçası olmak için egemenlik haklarından fedakarlık yapmakta hem de iç politikada millet egemenliğinin önündeki antidemokratik pürüzleri de ortadan kaldırmaktadır. Aslında Türkiyen'nin yeniden doğuşuna şahitlik ediyoruz demek yanlış olmaz. Öyle ki Avrupa kendisini yenilemeye devam ettikçe Türkiye de evrimine devam etmesi kaçınılmazdır.

CONTENTS

LIST OF TABLES

ACRONYMS

AKP	: Justice and Development Party
ANAP	: Motherland Party
AP	: Accession Partnership
ASALA	: Secret Armenian Army for the Liberation of Armenia
ASEAN	: Association of Southeast Asian Nations
CHP	: Republican People's Party
CoE	: Council of Europe
CUP	: Committee of Union and Progress
DGM	: State Security Courts
DP	: Democrat Party
DSP	: Democratic Left Party
EC	: European Community
ECB	: European Central Bank
EEC	: European Economic Community
ECHR	: European Convention on Human Rights
ECJ	: European Court of Justice
ECSC	: European Coal and Steel Community
EUtHR	: European Court of Human Rights
EMU	: Economic and Monetary Union
EURATOM	: European Atomic Energy Community
GATT	: General Agreement on Tariffs and Trade
G8	: Group of Eight
G20	: Group of Twenty

Ibid.	: Ibidem
ICISS	: International Commission on Intervention and State Sovereignty
IGOs	: Intergovernmental Organizations
ILO	: International Labor Organization
IMF	: International Monetary Fund
MBK	: National Unity Committee
MEPs	: Members of the European Parliaments
MHP	: Nationalist Movement Party
NAFTA	: North American Free Trade Agreement
NATO	: North Atlantic Treaty Organization
NGO	: Non-governmental Organizations
No.	: Number
NPAA	: National Program for the Adoption of the *Acquis*
NSC	: National Security Council
OPCAT	: Optional Protocol to the UN Convention against Torture
OSCE	: Organization for Security and Cooperation in Europe
op. cit.	: Opere Citato / the Work Cited
ÖSYM	: Student Selection and Placement Centre
p.	: Page
pp.	: Pages
PKK	: Kürdistan Labor Party
QM	: Qualified Majority
QMV	: Qualified Majority Voting

RtoP	: Responsibility to Protect
RTÜK	: High Audio-Visual Board
TEC	: Treaty Establishing the European Community
TEU	: Treaty on European Union
TGNA	: Turkish Grand National Assembly
TFEU	: Treaty on the Functioning of the European Union
TSK	: Turkish Armed Forces
UN	: United Nations
UNSC	: United Nations Security Council
US	: United States
USA	: United States of America
USSR	: Union of Soviet Socialist Republics
UYAP	: National Judicial Network Project
Vol.	: Volume
vs.	: versus
WTO	: World Trade Organization
WWI	: First World War
WWII	: Second World War
YARSAV	: Union of Judges and Prosecutors
YAŞ	: Supreme Military Council

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INTRODUCTION

From the early times international system and its inherent bedrock, sovereignty, have been in an everlasting process of transformation. Beginning with the security concerns the transformation process has come under the influence of economic, socio-cultural and technological concerns as a natural result of globalization, and over time it has turned into the competition of nation-states which try to conform to the needs of modern times and to have a right to say in contemporary world order. However, the demand of existing as an effective world actor in the modern world requires nation-states not only to join in inter- or supranational institutions but also to curtail their sovereignty rights. The failure of absolute sovereignty in meeting the modern epochal needs has eventually led to the reconfiguration of the concept as shared / limited sovereignty under a supranational identity, thereby making absolute character of the concept illusional.

With its post-modern understanding of sovereignty, the European Union, since its establishment, has created a *sui generis* structure based on a supranational legal system that requires member and candidate states to undergo an institutional, political, economic and legal transformation. Unlike international law and classic interstate organizations where states curtail, to a degree, their sovereignty to cooperate, the legal system of the Union creates a post-modern order, in which each member states pool their sovereignty to compromise. What makes the EU a union is this 'pooled sovereignty' principle. It is true that international relations today are post-Westphalian and post-national, and that economic prosperity and democracy are crucial areas for cooperation among the units of the international system.[1] It is also true that the world is increasingly global, in that the EU, with its emphasis on post-national norms and values, is an important actor that constitutes a crucial point of reference for the creation of democratic global governance.[2] In this sense, with its determination to Europeanization, Turkey is evolving and reconfiguring its

[1] Fuat Keyman and ZiyaÖnis, "Helsinki, Copenhagen and Beyond. Challenges to the New Europe and Turkish State", M. Ugur & N. Canefe (eds.), *Turkey and European Integration. Accession Prospects and Issues*, Routledge, London, 2004, p. 181.
[2] *Ibid.*

traditional parameters, especially experiencing a revolution in the national sovereignty conception.

The primary aim of this study is to examine the gradual transformation of Turkish political culture on its path to the EU accession process in light of the steps taken by the government towards the democratization and civilization. To better analyse this process, the first part of the study examines the dynamic structure of the concept of sovereignty. Sovereignty has been one of the most debated key issues in international relations especially since the formation of nation-state system. Since it constitutes a concept rather than a word, it still does not have a commonly-recognized definition in spite of a considerable number of connotations stated in dictionaries and encyclopaedias. It has different retrospective and prospective referents; what we need is to fit the concept to the current context to facilitate our understanding of international contemporary discourse, instead of sticking into a generally held set of formulated definitions of sovereignty. With the aim of conceiving and fitting the term to the shifts observed in the present century properly, we must have an indeed look at the changing norms of the concept from past to present. Sovereignty had to pass through a long evolutional process to be able to have several doctrinal frameworks in the past although it must be understood as a dynamic concept stemming basically from the clash between the theory and practice - that goes hand in hand with the constantly evolving and overlapping political needs. That's why; it needs to be consistently reconfigured in the context of growing transnational networks and globalization. The dynamic evolution of sovereignty and its effect on current issues like transfer, loss and limitation of sovereignty, the historical background and the theoretical origin of the concept are dwelled on in detail.

In the second part of the study after a description of the concept 'political culture' as the abstract basis of political systems, a brief overview of the various aspects of political culture and cultural prerequisites forming and reforming the concept and a description of founding tenets of Turkish political culture and its evolutionary process are examined in order to facilitate our perception of Turkish sovereignty culture transforming on its path to the EU membership. Within the broad parameters of the Kemalist modernization project, Turkey was able to make a

transition to a democratic political order in the immediate post-war period. Nevertheless, the established democratic order could not meet the needs of the society in terms of recognition and participation. In this ideological state based on the extreme nationalist and secularist values of Kemalism some segments of Turkish people were deprived of active political participation. Consequently this strictly ideological state found itself under challenge because of the arbitrariness of artificial Kemalists claiming to act in the name of raison d'etat, and both domestic and international demands for the political transformation favoring an extension of religious and ethnic rights have led the existing government to start a political renaissance.

The third part of the study analyses the basic tenets of the European Union. The idea of circumscribing the sovereignty rights of the nation states first appeared with the efforts to protect the democratic order based on human rights after the World War II. For instance, the Charter of United Nations (UN) has limited member states' right to use of force similar to the binding decisions of the European Court of Human Rights established in 1950 to monitor respect of human rights by states. The age of globalization, besides nation-states, creates new actors, so that they are acting on behalf of the states and even becoming more effective in international arena. These internationally operating actors are international, supranational organizations and transnational co-operations. Among these institutions, supranational organizations which are the main focus of this study have more influence on state sovereignty than other international organizations like the UN. Known as the only supranational organization, the European Union has a distinctive character with its post-modern sovereignty perception and legal system. After the examination of the evolution of post-modern sovereignty in the EU, a close look is taken at the concept of supranationalism.

The fourth part of the study focuses on the changes observed in the transformation process of Turkish sovereignty culture and basic tenets. How recent domestic and external changes affect the nature of sovereignty culture in Turkey will be examined particularly in light of Turkey's candidacy for EU membership beginning from the 1999 Helsinki Summit. Mentioned in the Chapter II, the basic Kemalist principles and values that have formed the very essence of the Turkish

political culture contradict the 21st century European values. Yet the EU accession is seen as an ultimate point of Turkish modernization process which started with the founding of the Republic in 1923, and thus, as a candidate for the EU membership, Turkey has to fulfil what is required on its path to the EU, which may cause values of Turkish political culture to go under a radical transformation.

With respect to my topic, through the comparison of different sovereignty perceptions applied in these conflicting structures, how effective the EU can be in transforming the sovereignty culture in Turkey and to what extend Turkish sovereignty culture may transform are the basic questions to be answered here. In that sense, the post-modern identity and sovereignty in the EU characterized with supranational features will be examined in the first part of this study; under the pressure of Copenhagen criteria, the accelerated efforts to consolidate democracy and legitimacy in Turkey since 1999 – constitutional amendments to eliminate the military norms in the 1982 Constitution and its role in Turkish politics; and the extension of individual freedoms, human rights and the respect for sub-identities – will help to find the answer of the question in the conclusion: To what extend the EU can transform sovereignty culture of Turkey?

I will base my study primarily upon the classic sovereignty which can be classified as internal and external sovereignty - in Krasner's definition, the former is directly related to domestic sovereignty and indirectly Westphalian and interdependence sovereignty whereas the latter corresponding to Westphalian and thus related to international legal sovereignty and interdependence sovereignty, which Krasner named conventional sovereignty. In the case of the EU, nation-states compromise their Westphalian sovereignty to fulfil the common legal norms such as Copenhagen criteria, which necessitates interdependence and mutual control, which leads the erosion of the classic form of sovereignty.

The development of the diplomatic relations of the Ottoman Empire with other European states in the 17th century had effects on the Ottoman state identity; similarly, sovereignty culture of the Republic of Turkey, due to the EU accession process, has frequently been transformed by religious and cultural toleration, minority and human rights, legitimacy, all of which are the ways to justify intervention in the domestic authority structures of other states. In other words,

conventional sovereignty is itself a source of dispute today; however, some states that are sensitive about their sovereignty struggle against transforming their traditional sovereignty norms such as the foremost example, Turkey.

CHAPTER I:

UNDERSTANDING SOVEREIGNTY AS A DYNAMIC CONCEPT

Sovereignty has been one of the most debated key issues in international relations especially since the formation of nation-state system. Since it constitutes a concept rather than a word, it still does not have a commonly-recognized definition in spite of a considerable number of connotations stated in dictionaries and encyclopaedias. It has different retrospective and prospective referents; what we need is to fit the concept to the current context to facilitate our understanding of international contemporary discourse, instead of sticking into a generally held set of formulated definitions of sovereignty. With the aim of conceiving and fitting the term to the shifts observed in the present century properly, we will have an indeed look at the changing norms of the concept from past to present.

1.1 Sovereignty: As a Political Concept from Past to Present

Sovereignty had to pass through a long evolutional process to be able to have several doctrinal frameworks in the past although it must be understood as a dynamic concept stemming basically from the clash between the theory and practice - that goes hand in hand with the constantly evolving and overlapping political needs. That's why; it needs to be consistently reconfigured in the context of growing transnational networks and globalization. In order to better analyze the dynamic evolution of sovereignty and its effect on current issues like transfer, loss and limitation of sovereignty, it is worth briefly dwelling on the historical background and the theoretical origin of the concept.

1.1.1 The Evolution of the Doctrine of Sovereignty

The term *sovereignty*, which has played a central role in the development of modern states, was firstly mentioned in the 12th century; however, it gained its first political and scientific meaning during the 13th century in France when the king was defined as sovereign and the kingdom as sovereignty by Philippe de Beaumanoir. Therefore, it is not wrong to say that sovereignty, to a great extent, originated in French idea.

Sovereignty, however, has become a hot debate issue since the late medieval times. Thus, it is crucial to examine the theories of sovereignty from medieval to modern ages in order to better understand the dynamic structure and transformation process of the concept, which contributed very much to the evolutionary process of the modern democratic sovereignty. However, I will not go into details about medieval theories since during medieval times sovereignty was mostly explained in context of theocracy and primarily *potestas* (exercise of power) dimension of the concept rather than *auctoritas*[3] dimension (the source of power, authority prior to power) constituted the focus of the medieval scholars who did not make a distinction between the state and the king; instead, identified them with one another.[4] But classic sovereignty, which appeared towards the end of 16th century, places both *potestas*

[3] Camilleri classifies authority into three parts: moral authority, customary authority and coercive authority. In the case of the European Unioni auctoritas (authority to rule) is based on moral values such as keeping a peaceful environment against a bloody history and protecting human rights. But potestas (coercive authority) of the EU is limited by decisions regarding human rights or trade.
Joseph A. Camilleri, and Jim Falk, *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World*, Edward Elgar Publishing Limited, England 1992, p. 60, quoted in Eric Engle, "Beyond Sovereignty? The State after the Failure of Sovereignty", *ILSA Journal of International & Comparative Law*, Vol. 15, No. 1, Fall 2008, p.36.

[4] This division between *auctoritas* and *potestas* seems to be connected to the fall of the Roman Empire and the growth of the church, the former losing power, the latter maintaining authority: a decline of the imperial forces, but a preservation of religious institutions. These institutions had no power but could legitimize the brutal conquerors. In any case, the ruler is he who unites these two principles. *Ibid,* p. 37.

and *auctoritas* of the political power at the center and forms a duality of two terms in a single body. At the same time it was firstly used in East Europe as a political and practical tool to resolve the internal political, social and religious conflicts in the area.

The complex history of the concept can present a more precise explanation to the constantly changing meaning of sovereignty. The three broad historical movements impacted the evolution of the term drastically: the transition process to modern state system with the Peace of Westphalia in 1648 resulting in the development of sovereign states and the exercise of democratic sovereignty theories through the French Revolution of 1789, and the period after the Second World War, which caused the emergence of international institutions such as the European Integration culminating in the restriction of sovereign state, and the end of the Cold War which has highlighted the significance of the protection of human rights. In a broader sense, as David Held called, the regime covering the period of international law and regulation from 1648 to the early twentieth century constitutes the classic regime of sovereignty, which is the emergence of a society of states first in Europe, and therefore largely Eurocentric, and later across the globe and can also be referred as the 'Westphalian Regime'.[5] Thus beginning from the seventeenth century, with its complex structure, the interstate system aimed to secure the order of sovereign states in the international society. While the classic regime highlighted the external sovereignty, which was the bedrock of developing a global order of states, the second half of the twentieth century, witnessing the establishment of new transnational and

[5] David Held and Anthony G. McGrew, "Chapter 14: The Changing Structure of International Law: Sovereignty Transformed?", *The Global Transformations Reader: An Introduction to The Globalization Debate*, Cambridge: Polity Press, 2003, p.162.

supranational organizations together with the worldwide democratic ideas, put more emphasis on constrained sovereignty which is considered the means of balance between the states and the altered political and legal landscape.

The general perception is that the concept of sovereignty as it is thought of today, particularly as to its 'core' of a monopoly of power for the highest authority of what evolved as the 'nation-state', began with the 1648 Treaty of Westphalia.[6] It was at the Peace of Westphalia in 1648 that Europe consolidated its long transition from the Middle Ages to a world of sovereign states.[7] The fundamental principles of the sovereign nation-state were agreed upon during the signing of the Peace of Westphalia ending the struggle, the Thirty Years' War between the proponents and opponents of the authority of Pope and the Church of Rome. The Peace Treaty redefined the relationship of people to their rulers thereby bringing a new approach to the political system besides drawing definite territorial boundaries of countries. States agreed not to interfere in other states' prerogatives, be they religious or secular, and compromised that all citizens of a nation were subject to first and foremost to the rules of their own governmental authority. As Davutoglu stated, the Peace of Westphalia is regarded as the threshold of all social and political developments observed since the 12th century on the ground of establishing a direct connection between the internal authority and territorial boundary, and defining the notion of mutual recognition of nation-states.[8] With the Peace of 1648, classic modern sovereignty took its place in common international norms, which started to

[6]John H. Jackson, "Sovereignty-Modern: A new Approach to an Outdated Concept", *The American Journal of International Law*, Vol. 97, 2003, p.786.
[7]Daniel Philpott, "Sovereignty", *Stanford Encyclopedia of Philosophy*, First Published May 31, 2003; Substantive Revision Mar 17, 2009, http://plato.stanford.edu/entries/sovereignty/, (15 January 2009).
[8]Ahmet Davutoglu, "Küreselleşme ve AB-Türkiye İlişkileri Çerçevesinde Ulusal Egemenliğin Geleceği", *Anayasa Yargısı Dergisi*, Vol. 20, 2003, p. 48.

emanate gradually and led to the distinction between internal and external sovereignty norms.[9] In this way, the basic tenets of the doctrine of classic sovereignty emerged - territorial boundary, autonomy, internal authority and mutual recognition. Sovereignty was first articulated mostly in form of internal sovereignty by the philosophers of the 16th and 17th centuries due to the political and social changes seen in that era - whereas external side of the concept stayed in the background – but remained merely a matter of theory until 18th century. The French Revolution in 1789 was the starting point of the transition of theoretical basis of sovereignty to practical stage and the end of the First World War, which brought the dynasties in many areas to an end, made national sovereignty concept a fundamental form of polity. The fundamental document of the French Revolution, The Declaration of the Rights of Man and of the Citizen, based the source of sovereignty upon nation aside from describing the individual liberty and equality as the first natural right of man.[10] In that sense, the French Revolution is considered as a positive step since it enabled the collapse of inequalities theoretically and the transfer of sovereignty residing solely in a monarch to the nation.[11]

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[9]Yusuf Şevki Hakyemez, *Mutlak Monarşiden Günümüze Egemenlik Kavramı: Doğuşu, Gelişimi, Kavramsal Çerçevesi ve Dönüşümü*, Ankara: Seçkin Press, 2004, p. 90.

[10]The Declaration of the Rights of Man and of the Citizen, Approved by the National Assembly of France, August 26, 1789, http://www.hrcr.org/docs/frenchdec.html, (15 January 2009).

1. Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good…

3.The principle of all sovereignty resides essentially in the nation. Nobody nor individual may exercise any authority which does not proceed directly from the nation.

6.Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.

[11] Hakyemez, *op.cit.,* p.51.

Having taken its full shape in 1648, the shift in Europe from the medieval world to the modern one continued with the gradual restriction of the sovereign state, which began to spread after the collapse of colonial empires. Due to the fears of the bloody consequences of Nazi genocide, a radical redesign of international system was required. Therefore, after World War II (WWII), intergovernmental organizations rapidly expanded across the globe. As a result of the signing of a series of international agreements by nation states under the auspices of the UN, through which their citizens' human rights would be guaranteed, circumscribed sovereignty replaced the concept of classic sovereignty in the contemporary international system. The following decades after WWII have witnessed the emergence of international organizations facilitating interstate governmental relations regarding the fields of trade, monetary policy or security, and simultaneously the recognition of many of the former colonies as independent, sovereign and the equals of European states. However, due to the arbitrarily drawn boundaries and the lack of capable governments, those new states could not achieve to be fully sovereign. Consequently sovereignty was described as based on territorial boundaries but not on any governmental capacity, because as Biersteker and Weber stated, it was the only means for so many colonies to become independent quickly.

Ultimately sovereign state system was able to gain an international dimension at the end of struggles over authority under the influence of the Reformation and the Renaissance movements, which subsided with the triumph of secular authority, and as a result of the upcoming events, which triggered the concept of modern sovereignty. World Wars and the 19th century theories like Hegelian national sovereignty and Weberian tradition of monopoly on coercion strengthened and

standardized the concept in the literature of world politics. 'The end of the Cold War and the possibilities of a New World Order increased the attention to sovereignty, because they raised questions about many old assumptions, including those made about state sovereignty.'[12] Thus, in spite of the ambiguous structure, a 362 year-old concept emerged, which always displays changes within the changing historical discourse from the colonial and post colonial to the post Cold War period.

1.1.2 Theoretical Origin of the Classic Sovereignty

The 16th century was the time when Europe started to change fundamentally. Evolved from the transition period from the medieval times to modern times, the collapse of feudalism, the emergence of absolute monarchies, secularism and the concept of modern state as a result of Protestant reformation movements and the Enlightenment had obvious influences on the scholars of that age.

The doctrine of sovereignty served as a useful theory to explain monarch's legal and political claims relating to their fight to make and enforce laws free from papal authority.[13] The reinforcement of the absolute sovereignty, which means the reformation of the church through the king's power, natural law and social contracts, was thought to be the only way to secure an order of states by the influential figures of the age such as the French Philosopher Jean Bodin and Thomas Hobbes, who strongly supported the absolute sovereignty which is unlimited, timeless, unique, and such as the symbols of liberal thought highlighting the restriction of the power and

[12] Thomas J. Biersteker, and Cynthia Weber, (eds.)., *State Sovereignty as Social Construct*, New York, 1996, p. 1.
[13]Scot Macdonald, and Gunnar Nielson, "Linkages Between the Concepts of Subsidiarity and Sovereignt"y*, The European Community Studies Association Fourth Biennial Conference*, Charleston, May 1995.

defence of the individual rights like John Locke and Jean-Jacques Rousseau, who was the first to posit the concept of popular sovereignty.

Before Bodin(1530-1596), the concept was not able to have its own distinctive meaning since there existed a dual structure divided between divine and secular powers during the Middle Ages. Bodin described a theory of sovereignty which is his primary contribution to political science of his day. He defines sovereignty: 'Majesty or sovereignty is the most high, absolute, and perpetual power over the citizens and subjects in a Commonwealth, which the Latins call *Majestas*'.[14]

The 16th century had become a new term for sovereignty with Bodin's ideas like the Divine Right of Kings, which had been totally abandoned by the early 20th century. According to Bodin, the lack of a strong government was the main reason for civil conflicts in France in 1500s. Therefore Bodin pointed out an absolute sovereignty and an internal supremacy which is an indivisible, unforfeitable and an unlimited right. Although he supported the absoluteness of the sovereignty, at the same time he preferred the type of sovereignty in which sovereigns rule the state according to basic constitutional rules (leges imperii) - laws of realm - and natural and divine laws. According to Bodin, the constitutional laws of the realm, especially those that concern the king's estate being, like the salic law, annexed and united to the Crown, and rules of natural or divine law like honouring covenants or mercy and justice cannot be infringed by the prince[15]. Therefore, absoluteness of sovereignty was described by Bodin with the sovereign's competence to declaring law and ruling

[14] Jean Bodin, *Six Books of the Commonwealth: Book I - The Final End of the Well-ordered Commonwealth*, "Chapter VIII: Concerning Sovereignty", translated by M.J.T-ooley, 1955, p.84, http://www.constitution.org/bodin/bodin_.htm., (18 January 2009).
[15] *Ibid*., p.34.

independent from any internal or external interference excluding *jus gentium*[16]. Thus, true hereditary monarchies constitute the basis of his idea though he accepts that democracies and aristocracies can also become sovereign. Bodin also stated that 'even though one insists that absolute power means exemption from all law, there is no prince in the world who can be regarded as sovereign, since all the princes of the earth are subject to the laws of God and of nature, and even to certain human laws common to all nations.'[17] The main problem with Bodin's sovereignty concept is the lack of any institution to control whether the sovereign fulfils its liabilities and the inconsistencies in his theory of absoluteness – in which he limited the power of the king with divine and constitutional laws though he defined absoluteness as an inevitable characteristic of sovereignty. Why Bodin asserted this description of sovereignty was to solve the chaotic situation at the time: Weakness of the Prince (sovereign ruler) against the groups supporting their own thoughts and interests (feudal lords). In this sense, it cannot be denied that sovereignty always has to adjust itself to ongoing political, social and cultural changes and problems encountered.

Bodin asserted that the sovereign had the absolute and everlasting power which is the ultimate authority in decision making; therefore, though the sovereign can place absolute power in a privileged juridical group of people, it is not irretrievable, so the ultimate power is eternally vested in the true sovereign itself. Thus, it seems not wrong to say that Bodin's sovereignty definition inspired the current hypothesis that the member states delegating or sharing powers with the EU

[16]The Latin phrase "*ius gentium*" refers to the law of nations in the more comprehensive and modern sense, a body of law purporting to represent what various domestic legal systems share in the way of common answers to common problems. Jeremy Waldron, *Foreign Law and the Modern Ius Gentium*, '*Harvard Law Review'*, Vol. 119, No. 1, Nov., 2005, p. 133.
[17] Bodin, *op.cit*., p.30.

keep being the real masters of the treaties at the same time while increasing their supranational liabilities.[18] From all this it is clear that the principal mark of sovereign majesty and absolute power is the right to enforce laws regardless of the subjects' consent.[19] Making a conceptual distinction between political power and sovereignty, Bodin affirmed that judiciary or executive administration used by delegates did not constitute the core of sovereignty but merely legislative power.

Hobbes (1588-1679) was likewise one of the scholars of the period of civil wars and also stated that the only power competent to declare laws was not the estates but the true sovereign.[20] The core and intend of the laws could be defined only by the sovereign; however, the laws did not bind the sovereign, for the ruling power had right to amend and withdraw laws whenever he wanted. Hobbes also pointed out a contract between the sovereign, who preserved internal security and order, and the people who surrendered the power and authority to rule to the sovereign. For Hobbes, the people established sovereign authority through a contract in which they transferred all of their rights to the Leviathan, which represented the abstract notion of the state. The will of the Leviathan reigned supreme and represented the will of those who had alienated their rights to it.[21] 'It belonged therefore to the Sovereign Power, to be Judge, or constitute all Judges of Opinions and Doctrines, as a thing necessary to Peace, thereby to prevent Discord and Civil

[18] Ece Göztepe, *Avrupa Birliği'nin Siyasal Bütünlesmesi ve Egemenlik Yetkisinin Paylaşılması Sorunu*, Ankara, 2008, p. 29.
[19] *Ibid.*, 36.
[20] As a similar case supporting the idea of Hobbesian idea of a true sovereign against conflicts, 'the modern-day European Union is a direct result of a determination among European politicians to prevent future violent conflicts in Europe after World War II. The original aim was to tie countries together by forging closer industrial and economic cooperation. Since then, the EU's responsibilities have grown in response to new challenges and many more countries have joined.', *The History of the European Union*, www.aueb.gr/statistical-institute/european-citizens/history_en.pdf, (18 January 2009).
[21] Danial Philpott, 2003, *op.cit.*

War.'[22] In that sense, the true sovereignty belongs to the EU whose judiciary branch, European Court of Justice was established to observe international agreements negotiated by the EU, and to interpret EU treaties and legislation. In spite of its attempt to settle differences between the national and the union's laws, eventually the decisions of the Court overrule those of national courts, thereby expanding the EU's domain.[23]

Hobbes firmly posited that sovereignty cannot be shared or divided; otherwise, the security of the state is threatened by equal powers. However, he does not make a distinction between the law of nature and civil law. He was the first major scholar to posit that natural law did not exist and that laws were merely the commands of the sovereign and divine laws had no legal significance for the sovereign.[24] Hobbesian sovereignty, therefore, shows a more absolute and democratic characteristic than Bodin's theory.

Eventually sovereignty started to be secularized firstly through the separation of ecclesiastical factors from mundane state power into enable internal security and external peace, and unity of medieval feudalist powers against the pope, secondly through the Hobbesian philosophy: firstly 'civil law and the consent of the governed'

[22]Thomas Hobbes, *Leviathan*, The Project Gutenberg E-Book of Leviathan produced by Edward White, and David Widger, "Part II: Commonwealth, Chapter 18: The Rights of Sovereign" by Institution, p.91, 2009, http://www.gutenberg.org/files/3207/3207-h/3207-h.htm#2H_4_0196, (16 January 2009).

[23] However, some debate over that this constitutes a proof of transformation and transfer of state sovereignty since democratic legitimacy is provided by the fact that the Court consists of 27 judges appointed for a renewable term of six months by the member states including 8 assisting advocates-general. Moreover, Lisbon entered into force on January 2009, and it is possible that the number of Advocates-General may – on the condition of the court-request – be increased to 11, and six will become permanent members by the six biggest states, while the other five will rotate between the other member states. But the supremacy of supranational courts over national courts still remains.

[24] Scot Macdonald, and Gunnar Nielson, *op.cit*., p. 2.

instead of 'divine rights of king' and, *civitas* - which is called 'commonwealth' by Rousseau- as defined in the following:

> 'The only way to establish a common power that can defend them from the invasion of foreigners and the injuries of one another, and thereby make them secure enough to be able to nourish themselves and live contentedly through their own labours and the fruits of the earth, is to confer all their power and strength on one man, or one assembly of men, so as to turn all their wills by a majority vote into a single will. That is to say: To appoint one man or assembly of men to bear their person; and everyone to own and acknowledge himself to be the author of every act that he who bears their person performs or causes to be performed in matters concerning the common peace and safety, and all of them to submit their wills to his will, and their judgments to his judgment. This is more than mere agreement or harmony; it is a real unity of them all. They are unified in that they constitute one single person, created through a covenant of every man with every other man, as though each man were to say to each of the others: 'I authorize and give up my right of governing myself to this man, or to this assembly of men, on condition that you surrender to him your right of governing yourself, and authorize all his actions in the same way'.[25]

The evolution of the doctrine of sovereignty always encountered paradoxes in itself. The main problem is the ongoing clash between the legal theoretical definitions of the concept and its political practice by states. The history presents the evidence that sovereignty had to be redefined since there had been many practical political events particularly in Germany and England until the middle of 18th century, which were in conflict with Bodin and Hobbes' sovereignty definitions.[26]

After the Renaissance, the following centuries witnessed a debate between those who argued that governments were created to rule regardless of popular

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[25] Thomas Hobbes, 'Leviathan', *Part II: Chapter 17: The causes, creation, and definition of a commonwealth*, August 2007, p.79, http://www.earlymoderntexts.com/f_hobbes.html., (16 January 2009). Similar to Hobbesian Leviathan, the EU where member states are unified contentedly and in harmony and appointed one as a voice of all on grounds of various matters, is an 'all in one' organization on the condition of transfer of their sovereignty rights and transformation of their sovereignty culture.

[26] Göztepe, *op.cit*., p.22.

consent, justified by the theory of sovereignty, and those who said that governments rest on consent, justified by theories of individualism or popularism.[27] With the decline of the kings power at the end of the 18th century, political scholars like John Locke (1632-1704) and J. J. Rousseau (1712-1778) came up with the idea that supreme power had to belong to a state and the people had to be the source of supreme power in that state. Holding a few beliefs in common with Bodin and Hobbes, Jean-Jacques Rousseau in his book 'Social Contract' in 1762 maintained the idea of indivisible and unforfeitable sovereignty; however, unlike Hobbesian theory of unconditional transfer of power to the leader, he supported that sovereignty was directly derived from and vested in society and that's why; the people made a contract and ceded their power to the sovereign in return for protection of their safety. Namely, laws are derived from general will (*volonte generale*) and sovereignty is no more what society transfers to monarch and cannot retrieve. Prior and following to the American Revolution, probably the greatest social contract thinker, Rousseau represented a radical shift from absolute sovereignty with his theory of direct democracy in the philosophy of his time. Known as the 'father of true democracy' and dedicated to equality principle, Rousseau believed that people living in the state of nature come together voluntarily for a common aim, not out of fear or greed; therefore, they do not need to surrender all their rights to a sovereign. He thought that people cooperate and compass for others thereby developing a state of general will, which is an entity concerning and serving its citizens as in the very recent example of the supranational organization, the EU, in which member states

[27] Bernard Crick, "Sovereignty", *International Encyclopedia of the Social Sciences*, Vol. 15, David L. Sills (ed.), New York, 1968, p. 78.

compromise their sovereignty on equal footing. The origin of the Union, which functions as an abstract representative entity created by the commonwealth of its concrete members and eliminates all the regional, ethnical, religious or racial differences between members by integrating them and does not serve particular interests, but common aims, seems to be affected by the theory of the Social Contract.[28]

The idyllic theory, substitution of popular sovereignty for sovereignty of the monarch had become the corner stone of many modern democracies. In that sense, Rousseau initiated the idea that the concepts of democracy and sovereignty should be handled together in modern nation-state systems.[29]

The Fundamental Documents of American and French Revolutions, Virginia Bill of Rights[30] and Declaration of the Rights of Man and of the Citizen, were based

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[28] …This sum of forces can arise only where several persons come together: but, as the force and liberty of each man are the chief instruments of his self-preservation, how can he pledge them without harming his own interests, and neglecting the care he owes to himself? This difficulty, in its bearing on my present subject, may be stated in the following terms—The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before." This is the fundamental problem of which the *Social Contract* provides the solution. …the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others. …if the individuals retained certain rights, as there would be no common superior to decide between them and the public, each, being on one point his own judge, would ask to be so on all…Finally, each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has. If then we discard from the social compact what is not of its essence, we shall find that it reduces itself to the following terms—*Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole.…* Jean-Jacques Rousseau, "Chapter VI: The Social Compact", *The Social Contract and Discourses*, translated with an Introduction by G.D. H. Cole (London and Toronto: J.M. Dent and Sons, 1923), http://oll.libertyfund.org/title/638/70990 on 2009-10-2.

[29] Ece Göztepe, *op.cit.*, p. 36.

[30] Virginia Bill of Rights, June 12, 1776

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

on fundamentals of Social Contract, especially on democratic popular sovereignty, and they did accept the principle that sovereignty could be transferred and represented the general will of the people. Hence, the liberty rights became the only limit to exercise of sovereignty. Since the beginning of the 19th century, particularly after the introduction of the liberal theories such as the division of powers by Locke and Montesquieu who thought that the consent of the governed was not enough for the legitimacy of the sovereign power, and the protection of individual rights under constitutional laws theorized by Kant, the concept of sovereignty based on an absolute and indivisible power in a state started to wane in the age of democracy.[31] Instead the expansion of fundamental rights and freedoms has gained importance. From then on supreme authority of a state was restrained by constitutional laws and absoluteness was replaced by the separation of powers.[32]

In this new phase of sovereignty in the 19th century the introduction of constitutional state[33] followed the transformation of sovereignty of monarch into sovereignty of nation. Natural law had turned into a more liberally democratic tool which limited the competencies of the sovereign rather than legitimized the absolute monarchy. Subsequently, the question, 'Where does sovereignty lie?' found its modern theoretical basis particularly after the introduction of representative democracy by Emmanuel Sieyes as a way of exercising popular sovereignty during the French Revolution. The period between 16th and 18th centuries in the West

[31] Today participation in an international treaty or membership of a global organization may already affect both the absoluteness and indivisibility of sovereignty.

[32] Halil İbrahim Aydınlı, "Egemenlik Kavramının Tarihsel Gelisimi Perspektifinden İktidarın Sınırlandırılması Tartışması", *C.Ü. İktisadi ve İdari Bilimler Dergisi*, Vol. 5, No. 1, 2004, p. 81, http://www.cumhuriyet.edu.tr/edergi/makale/859.pdf, (20 February 2009).

[33] In order to secure the freedom of its citizens, a constitutional state binds the whole political structure to the rule of law thereby keeping all state power under the control of the courts.

Europe was, in fact, the transformational process of the concept in its core, form and practice.

Recently sovereignty has come into question again under the umbrella of all above-mentioned principles with respect to the EU integration and enlargement process, in which all the member and candidate states such as Turkey are to keep the balance between the nation-state system and the changing transnational networks while reconsidering the concept of sovereignty, its content and the ways to exercise it.

1.1.3 The Bedrock Principles of Classic Sovereignty: External versus Internal Sovereignty

> Virtually all of the earth's land is parceled by lines, invisible lines that we call borders. Within these borders, supreme political authority typically lies in a single source—a liberal constitution, Hobbes and Bodin and Grotius first wrote of the modern version of the principle in the sixteenth and seventeenth centuries; by the middle of the seventeenth century, states across Europe practiced it. A generation ago, the sovereign state captured nearly the entire land surface of the globe when European colonies received their independence. Sovereignty has come closer to enjoying universal explicit assent than any other principle of political organization in history.
>
> Daniel Philpott, 2001[34]

The concept of sovereignty corresponds to the word *hakimiyet* in Turkish, which is originally Arabic. But the name, *sovereignty*, was actually derived from the Latin term *superanus, which means 'supreme',* through the French term *souveraineté*; therefore, at its core sovereignty means the equivalent of supreme power.[35] For the early meaning of sovereignty, or as expressed by Krasner, for

[34] Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*, New Jersey: Princeton University Press, 2001, p.3.
[35] "Sovereignty", *Encyclopedia Britannica Online*,

conventional sovereignty, 'classic' or 'absolute' were the modifiers which were replaced by contemporary modifiers such as 'shared' or 'circumscribed', have replaced them in today's globalized world.

The Signing of the Declaration of Independence and the Constitutional Convention after the American Revolution in 1776, and the Declaration of the Rights of Man and of the Citizen after the French Revolution introduced the theory of popular sovereignty, which turned into the form of national sovereignty later[36], which makes it possible for a nation to be governed through representative democracy. Thus the Revolution almost solved the problem in terms of the source of sovereignty (auctoritas)[37] while that solution raised questions about the exercise of sovereignty (potestas) since sovereignty is a type of authority relationship, which must contain some measure of legitimacy and an obligation, understood by both parties, for B to comply with the wishes of A.[38] The people who is the source of sovereignty and has a direct right to exercise it through *direct democracy*, in which sovereignty is not placed in the assembly of representatives but of all citizens, or through *representative democracy*, in which an independent ruling body of elected representatives are in charge of representing citizenry for an election period or through *semi-direct government*, where sovereignty is shared by government and

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http://www.britannica.com/EBchecked/topic/557065/sovereignty, (13 January 2009).

[36] The nation is an abstract entity normally linked to a physical territory and its past, present, and future citizens, whereas the people refers to a mass of politically active citizens living on a physical territory and in a definite period of time. *National Sovereignty*, http://en.wikipedia.org/wiki/National_sovereignty, (25 February 2009), Göztepe, op.cit., p. 49.

[37] Authority is a social relationship in which A wills B to follow A and B voluntarily complies, Kim Lane Scheppele, andKarol Edward Soltan, *The Authority of Alternatives*, 'Authority Revisited', 1987; Power may be a foundation of authority, but authority does not itself rely upon the exercise of coercion, R.S. Peters, *Authority*, 'Political Philosophy', 1967, quoted in David A. Lake, "Reflection, Evaluation, Integration: The New Sovereignty in International Relations", *International Studies Review*, Vol. 5, No. 3, 2003, p. 304.

[38] *Ibid.*

citizens thereby unifying the direct democracy with representative democracy, and citizens can sometimes directly participate in legislative processes through referendums.[39] Direct democracy is a type of exercise of popular sovereignty whereas representative democracy, which is the form of almost all democracies in today's world, and is a tool of decision making in national sovereignty.[40] In practice, mostly representative democracy has become an obligation because it is hard to apply direct democracy with its core meaning in any part of the world today. Ultimately, the theory of representative democracy based on *mandat representatif* (representative mandate), which was firstly posited by Emanuel-Joseph Sieyes in his book 'Quest-ce que le Tiers Etat' (What Is the Third Estate?) published in 1789, constitutes the base for the theoretical fundamentals of the fact that modern nation-state's sovereignty is exercised through the constitutional institutions. From then on new question marks over sovereignty appeared on the scene.[41]

Since the emergence of the modern state system, sovereignty has primarily served as the legitimate and juridical basis of the existence of governments and states through its practical functions – prevention of the religious interference with the domestic affairs of states in the 17th century, and combating to stop the problem of

[39] Kemal Gözler, *Anayasa Hukukuna Giriş: Genel Esaslar ve Türk Anaya Hukuku,* Bursa: Ekin Press, 2004, p.120.

[40] The most authoritative theorist of direct government and the founding father of participatory democracy, Rousseau, denied that the delegates could have a legislative power, but he did not deny delegated politics…The difference between direct and representative government pertains to the forms of delegated power rather to whether government uses election or not. Nadina Urbinati, 'Representative Democracy: Principles and Genealogy', Chicago: The University of Chicago Press, 2006, p. 61.

[41] Nowadays, it is a hot debate issue if the EU needs any theoretically new doctrine within the framework of the above-mentioned tenets of sovereignty during the integration process. Meanwhile, what Turkey, as a candidate, should do is to keep a balance on a juridical and diplomatic level between fundamental principles of sovereignty and the possibilities of a new form and function of the concept in view of her nation-state structure and the difficulties of the political geography., Göztepe, *op.cit.,* p. 39.

nationalism and of colonialism in the 19th and 20th centuries.[42] 'Beginning with the medieval conflict between pope and emperor, European's efforts to determine what belonged to God and what belonged to Caesar powerfully and persistently shaped the sovereign's claims to domestic authority and international autonomy'.[43] Eventually the concept entered into a new era, which necessitates a change in the norms of classic sovereignty in the context of the 'domestic-international dichotomy and the crucial interplay between the two'.[44] Aside from varied point of views to harmonize national law with international law, diverse dimensions of the concept began to prevail over time, which makes finding a universally agreed definition for the polysemic concept, sovereignty, highly problematic. During the early evolutionary stage of the concept internal dimension was the point that was emphasized by the political philosophers. Yet at its maturity-stage external dimension broke out and is now included in the contemporary definitions.

Acquirement of the two dimensions of sovereignty through the analysis the bedrock standards will provide us with a better review of transformation process of sovereignty in the world states and particularly in Turkey on its road to the EU. The doctrine of sovereignty developed in two distinct dimensions: the first concerned with the 'internal', the second with the 'external' aspects of sovereignty.[45] 'The words do not describe exclusive sorts of sovereignty, but different aspects of sovereignty that are coexistent and omnipresent.'[46] Sovereignty is the recognition by

[42] Hakyemez, *op.cit*., p.62.
[43] James J. Sheehan, "The Problem of Sovereignty in European History", *American Historical Review*, Vol. 111, No. 1, Feb. 2006, p. 5.
[44] Janice E. Thompson, "State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research", *International Studies Quarterly*, Vol. 39, No. 2, Jun. 1995, p. 214.
[45] Held, *op.cit.,* p.162.
[46] Philpott, 2003, *op.cit.*

internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory.[47] The classical international law definition of sovereignty also includes recognition factor. Thus, supreme authority is exercised over a certain territory at the same time without any external interference with sovereign's internal governance. In that sense, two faces of sovereignty – internal supreme authority and external independence – are like flip sides of the same coin since these two are indigenously joined and complementary parts of one another.

1.1.3.1 Internal Face of Sovereignty: Internal aspect of sovereignty which is inherently concerned with public law and thus constitutional law is the first emerged shape of the concept. At its core, it typically means the possession of absolute and ultimate authority over a fixed population within a certain territory. In David Held's words, internal sovereignty is the exercise of the supreme command over a particular society by a person or political body, established as sovereign. When the historical conditions under which internal sovereignty emerged are taken into consideration, it is obvious that this definition was thought as a way of strengthening the authority of monarchies against the feudal lords and a way of achieving domestic order at the time. In early modern times, French theorist Jean Bodin thought that sovereignty must reside in a single individual and both he and English philosopher Thomas Hobbes conceived the sovereign as being above the law while later thinkers differed, coming to envision new loci for sovereignty, but remaining committed to the principle.[48]

[47] Thomson, *op.cit.,* p. 219.
[48] Philpott, 2003*, op.cit.*

Over the centuries diverse authorities became the holder of sovereignty: in past monarchies or dictators were the ultimate authority; today governments ruling through constitutions rightly exercise the highest authority. In other words, governments have the right to enjoy ultimate and absolute sovereignty, be a monarchy, an aristocracy or a democracy. Internal face of the concept gives a state the right of effective control over the claimed territorial space, which is redefined by Stephen Krasner as domestic sovereignty. So existence of a sovereign state depends on such a control. Robert H. Jackson stated that before 1945, internal sovereignty was typically a prerequisite for recognition by the international community and since that time, it has become increasingly separated from the second face of sovereignty. David A. Lake defines sovereignty internally as the ultimate or highest authority within a state while he also asserts that internal sovereignty implies a hierarchic relationship between the sovereign and subordinates, whoever they may be, thereby renaming internal sovereignty domestic hierarchy.

According to Hakyemez, internal sovereignty is a composite of two aspects: the classic norms of sovereign power - supremacy, absoluteness, unlimitedness and indivisibility - and competences of sovereign authority. These competences of a sovereign may include the capabilities like law and decision making, monopoly of coercion and enforcement, which enable states to be their own masters over a bounded territorial space and over its citizenry. With this respect, internal sovereignty can be used interchangeably with positive sovereignty. Positive sovereignty as Schwarzenberger puts it, is not a legal but a political attribute if by 'political' is understood the sociological, economic, technological, psychological, and similar wherewithal to declare implement, and enforce public policy both

domestically and internationally.[49] A positively sovereign government is one which not only enjoys the rights of non-intervention and other international immunities but also possesses the wherewithal to provide political goods for its citizens.[50] In other words, with its internal sovereignty a state has the right to self determination and implement its own legal order.[51] Then the most important feature of sovereignty is possibly the character of the holder of supreme authority over a territory, which can be modified with some distinctive characteristics:

- *Internal sovereignty is indivisible:*

> Far from being separated from the people, sovereignty emanates from them. The prince derives his function only from the inalienable right of the people to govern themselves. There is no other authority than that invested in the people — no authority in the form of the transfer of power from the people to the prince, but, rather, in the form of a delegation of power that the people never cease to possess intrinsically and substantially.
>
> Allain de Bonoist[52]

The idea of indivisible sovereignty originates with Jean Bodin in 1576, who concluded that if sovereignty was absolute, it could not be divided between branches or levels of government or between different actors. This view was echoed by other theorists, especially Hugo Grotius.[53] As Hugo Grotius, the Dutch theorist and the father of the modern conception of sovereignty, wrote, 'sovereignty is a unity, in

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[49] Georg Schwarzenberger and E.D. Brown, *A Manual of International Law*, 1976, pp.54-55 quoted in Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World*, New York: Cambridge University Press, 1990, p. 29.

[50] *Ibid.*

[51] Jürgen Habermas, *Die Einbeziehung des Anderen. Studien zur politischen Theorie*, Frankfurt a.M, 1996, quoted in Hakyemez, p. 80.

[52] Allain de Bonoist, "What is Sovereignty", Translated by Julia Kostova from "Qu'est-ce que la souveraineté?" in *Éléments*, No. 96, November 1999, p.113.

[53] David A. Lake, "Delegating Divisible Sovereignty: Some Conceptual Issues", Prepared for the Workshop on *Delegating Sovereignty: Constitutional and Political Perspectives*, Duke University Law School, March 3-4, 2006., p.2.

itself indivisible'.[54] Therefore, the classic view of Westphalian sovereignty which was established in the Peace Treaty, composed of the Treaties of Münster and Osnabrück, is widely taken to be indivisible.

What is meant by indivisibility is two dimensions of political power, the source of sovereign authority (auctoritas) and the exercise of power (potestas) are not separate units but rather a single unit. Therefore, both the holder and the source of sovereignty reside in the people. Duguit also defines the indivisibility of sovereignty as a single sovereign authority within a certain territory.

The idea of indivisibility was born with the idea of sovereign states in the middle of the internal unrest and civil wars in order to centralize the secular state against feudalism and the Church. Indivisibility of centralized authority was seen as the way to guarantee stability in their world. It was asserted in opposition to plausible rival principles – especially the heteronomy of feudal states without a single authoritative apex, in the age of Bodin and Hobbes, and colonialism and group loyalties, in the contemporary era.[55]

In the constitutions of some states like France[56] and Turkey, the indivisible structure of the republic is emphasized. Since 1961 Constitution of the Republic of Turkey, the indivisible character of sovereignty has been stated and through its formulation in the third article of 1982 Constitution[57] had deep effects on shaping the

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[54] Quoted in Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism, and Order in World Politics*, New York: Cambridge University Press, 2002, p. 44.

[55] Lake*, op.cit*., 2006, p.4

[56] ***Article 1.*** France shall be an indivisible, secular, democratic and social Republic.
Article 3. National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof.

[57] ***Article 3.*** The Turkish state, with its territory and nation, is an indivisible entity.
Article 6. Sovereignty is vested fully and unconditionally in the nation.

political culture of Turkey as a unitary state.[58] In contemporary world, however, sovereignty is practically all too divisible since it is challenged by delegation, division of powers or federal state system. Though formal-legal doctrine assumes that sovereignty is indivisible and, therefore, cannot be delegated to others, recent international relations research has demonstrated that, in practice, sovereignty is divisible and, in fact, has been frequently divided.[59] Therefore, sovereignty can, on the contrary, be divided and shared in practice.

- *Sovereignty is absolute:*

Bodin and Hobbes envisioned sovereignty as absolute, extending to all matters within the territory, unconditionally.[60] Internally the absoluteness of the concept refers to unlimitedness of sovereign authority within its territorial borders, which was again established in order to reinforce the centralized monarchies and protect the national order and security. Externally it refers to unlimitedness of state sovereignty in interstate relations. Absoluteness refers not to the extent or character of sovereignty, which must always be supreme, but rather to the scope of matters over which a holder of authority is sovereign.[61]

Until the 20th century, the absolute structure of the concept was preserved whereas today sovereign authority is circumscribed in some matters through human rights and the principle of rule of law. Therefore, what now in domestic law exists is not absolute but restrained sovereignty.

The Turkish Nation shall exercise its sovereignty through the authorised organs as prescribed by the principles laid down in the Constitution.
The right to exercise sovereignty shall not be delegated to any individual, group or class. No person or agency shall exercise any state authority which does not emanate from the Constitution.

[58] Hakyemez, *op.cit*., p. 83.
[59] Lake, 2006*, op.cit.*, p. 1.
[60] Philpott, 2003*, op.cit*.
[61] *Ibid.*

With respect to the European Union (EU), its member states are not absolute sovereign authorities in some matters like trade policies or social welfare policies since they share sovereign rights to comply with the law of the Union whereas they exhibit absoluteness in the matter of self defence.

Over the past several decades, the theory of absolute national sovereignty has served as the lynchpin of the existing international order; however, such a societal model is valid only as long as it accurately depicts and explains human behavior.[62] The quintessential modifier of classic sovereignty has entered into a new phase of circumscription under the influence of international and supranational organizations like the United Nations (UN), the EU and International Criminal Court.

- *Sovereignty does not subject to forfeiture:*

As sovereignty is a *sine qua non* of an existence of a state, it cannot be forfeitable. Unforfeitable characteristic of sovereignty refers to the inalienability of sovereign right of the people to another person or a body. Today sovereign power is exercised through representative democracy, in which representative political body exercises sovereignty for a limited election time on the consent of the governed. Therefore, unforfeitable sovereignty does not mean that sovereign power cannot be delegated or represented since in representative government sovereign authority does not lose or give up its sovereign rights but rather delegate some of its competences to the representative body as in the case of the EU.

[62] Bertrand de La Chapelle, "Beyond Absolute Sovereignty: New Foundations for a Global Polity" prepared for *Global Environmental Governance: the Post-Johannesburg Agenda,* Yale Centre for Environmental Law and Policy: New Haven, 23-25 October 2003, p. 3

- *Sovereign power possesses the supremacy*:

The existence of supreme power refers to effective control over a settled territory and *summa potestas* over all groups and individuals in that territory. In that sense sovereign power is the ultimate authority in making laws, governing and enforcement.[63] As Lake and Walt highlighted in a domestic political system there is a hierarchic relationship between the sovereign and subordinates. Thus the sovereign has the highest authority and does not recognise any other power over itself. On the other hand, this characteristic of sovereign power is also challenged by constitutional state system since governments have responsibility to comply with the rule of law and constitutional rules.

- *Sovereignty possesses the monopoly of coercion*:

In the Weberian tradition, a monopoly on the major, organized forces of violence is the hallmark of the state.[64] This kind of monopoly that provides states with building power and control over nonstate actors was achieved by the late 19th century. There can be diverse types of use of violence such as rebellions, terrorism or private organizations, which challenges the sovereign authority's monopoly on coercion. Nonrecognition of any other authority over itself in terms of use of violence within a territory is the key to internal sovereignty; therefore, even non-Weberians suggest that 'effectively-patrolled territory' is a prerequisite for recognition as a sovereign state.[65] Since a state's prime function, policy making, depends on the monopolization of coercion in its borders, it must exclude external

[63] Hakyemez, *op.cit*., p. 86.
[64] Max Weber, *The Theory of Social and Economic Organization*, New York: Free Press, 1964, p. 154, quoted in Thomson, *op.cit*., p. 225.
[65] Richard K. Ashley, "The Poverty of Neorealism", *International Organization*, Vol. 38, No. 2 Spring, 1984, p. 272.

actors, namely other states and domestic rebels. Democratic legitimacy of the monopoly of coercion distinguishes the state from terrorists. The three century-old history of state building has witnessed the processes of pacifying domestic resistance. Today international law supports states against societal competitors, thereby lending domestic autonomy.

1.1.3.2 External Face of Sovereignty: The state has been the chief holder of external sovereignty since the Peace of Westphalia in 1648, after which interference in other states' governing prerogatives became illegitimate.[66] According to Bull, externally, sovereignty entails the recognition by other similarly recognized states that this entity is 'one of them' and, thus, is an inherently social concept.[67] Recognition on the part of other states implies a relationship of formal equality in the society of states. Thus, mutual recognition and the equality of nation states in international society constitute the heart of external sovereignty. The concept of equality of nations is linked to sovereignty concepts because sovereignty has fostered the idea that there is no higher power than the nation-state, so its 'sovereignty' negates the idea that there is a higher power, whether foreign or international (unless consented to by the nation-state).[68] Similarly, Lake argues that this second face of sovereignty constitutes the anarchy characteristic of relations between states.[69] So externally, states are independent in all matters of domestic policy and have the right to self determination in regard to internal politics, which is the focus of international

[66] Philpott, 2003*, op.cit.*
[67] Hedley Bull, *The Anarchical Society: A study of Order in World Politics*, New York: Columbia University Press, 1977, quoted in "The New Sovereignty in International Relations" by D.A. Lake, 2003, p. 305.
[68] John H. Jackson, *op.cit*., p. 782.
[69] In his essay "The New Sovereignty in International Relations" Lake defines anarchy not as the absence of authority but as a relationship comprised of authoritative actors who do not themselves possess authority over one another.

law. Hinsley posited that external dimension of sovereignty is both a quality that political societies possess in relationship to one another and associated with the aspiration of a community to determine its own direction and politics without undue interference from other powers.[70]

The more importance transnational relations in international society have gained, the more frequently external sovereignty appears on the scene. Over time diverse dimensions of external sovereignty emerged: With the Peace of Westphalia and the emergence of interstate law external sovereignty was first mentioned as the principle of non-intervention in state's domestic affairs; with decolonization process from the 15th through the 19th centuries drawing borders demarcating territorial spaces has been critical for recognition of new sovereign states while the changing international system and the rapid rise of international institutions after world wars have strengthened the norm of equality of nation-states. Therefore, external sovereignty has been conceived in various forms of expressions: juridical sovereignty as expressed by Robert Jackson, international legal sovereignty as configured by Stephen Krasner, or in Alan James' words, constitutional independence – a state's freedom from outside influence upon its basic prerogatives. Krasner defined conventional (classic) sovereignty by dividing external sovereignty into two principles:

- *International legal sovereignty* which is the mutual recognition of juridically independent territorial entities (sovereign states) with associated rights of membership in international organizations, diplomatic immunity, and the right to

[70] F.H.Hinsley, *Sovereignty*, Cambridge, 1986, quoted in David Held, p. 162.

voluntary enter into mutually acceptable agreements or treaties.[71] The classic norms of external sovereignty are summarized by Krasner under the umbrella of internal legal sovereignty: *independence*, which has been replaced by state autonomy or, in Krasner's word, juridical independence in contemporary international system, and *the formal equality of nation-states* which necessitates *mutual recognition* in the society of states, thereby contributing to international peace. The equality of nation-states is based on the idea that all states are on equal footing with one another before international law in context of diverse interstate matters such as an entrée into international agreements or organizations. The Charter of the UN highlights the equality principle as the fundamental principle of the organization in Chapter 1, Article 2.[72] Therefore, external sovereignty does not show a hierarchic characteristic since international law is binding to all sovereign states.

On the other hand, politically, the equality principle can be violated particularly in relations between weak and strong states under the mask of recognition. While external recognition plays a crucial role in constituting state sovereignty, it remains unclear just who must do the recognizing – a majority of states, the Great Powers, all states, a core of elites, a hegemonic power, or something else.[73] Albeit the equality of nation states was introduced as a legal standard of international law after the Westphalian Peace, practically sovereign state model can be reconfigured in light of a state's power, strategic importance and situation in

[71] Stephen D. Krasner, "The Exhaustion of Sovereignty: International Shaping of Domestic Authority Structures", *Institut du développement durable et des relations internationales*, Paris, April 2003, p. 1.
[72] *The Charter of the UN*: *Article 2*. The Organization is based on the principle of the sovereign equality of all its Members., http://www.un.org/en/documents/charter/chapter1.shtml, (23 April 2009).
[73] Thomson, 1995, *op.cit*., pp. 219-220.

international relations.[74] In that sense, Krasner asserts two faces of external sovereignty: recognition of political entities that are not juridically independent or coercion of a state to participate in an international agreement. For instance, the member states of the EU are no longer juridically independent entities; they are subject to decision of the European Court of Justice (ECJ) and in some cases policies within the Union are determined by qualified majority voting. Yet the member states of the EU still enjoy international recognition.[75]

Similarly, states have independence in interstate relations. But their competences are restrained by international law; therefore, states do not have absolute independence in the contemporary interstate system and only have autonomy to decision making rather than unlimited independence.[76] On the other hand, Hakyemez highlighted the problem of the concept: Sovereignty refers to supreme and ultimate authority and power; however, in international relations a state's power is not final or supreme, which implies a relationship of formal equality; therefore, external sovereignty should be replaced by independence.[77]

- *Westphalian sovereignty* which is the principle of non-intervention in the internal affairs of other states implying that the domestic authority structures of every state are autonomous or independent; they ought to be determined by indigenous actors within rights, religious toleration, human rights, and international stability, all of which have been used to justify intervention in the internal affairs of other states.[78] Thus, albeit the principle of non-intervention implies that a state has independence

[74] Hakyemez, *op.cit.,*p.96.
[75] Krasner, 2003*, op.cit.,* p.1.
[76] Ali Fuat Başgil, *Esas Teşkilat Hukuku*, Vol. 1, Istanbul, 1960, p. 179, quoted in Hakyemez, *op.cit*., p. 98.
[77] Ibid., p. 99.
[78] Krasner*,* 2003, *op.cit.,* p. 2.

and external sovereignty, it cannot be practiced absolutely in contemporary international system. Particularly after WWII, the emergence of human rights as a subject of concern in international relations has effected sovereignty and introduced humanitarian intervention, which constitutes an exception for non-intervention principle stated in the Charter of the UN. Great Powers have persistently intervened militarily in Third World states without latter losing their sovereignty.[79]

An international system is made up through an assemblage of states that have internal and external sovereignty, which enables sovereign states to participate in diplomacy, in interstate cooperation or trade. As Lake stated the two dimensions of sovereignty cannot exist without the other; therefore, sovereignty is an attribute of units which, entails relationships of both hierarchy and anarchy.[80] Similarly, Waltz makes a distinction between international systems with regard to their ordering principles, and he compares the hierarchic realm of domestic politics and the anarchic realm of international politics by drawing a strict line between the two:

> Structural questions are questions about the arrangement of the parts of a system. The parts of domestic political systems stand in relations of super- and subordination . . . . Domestic systems are centralized and hierarchic. The parts of international political-systems stand in relations of coordination. Formally, each is the equal of all the others . . . . International systems are decentralized and anarchic.

Briefly, in his book entitled 'The Global Transformations Reader' David Held draws a very good framework for classic sovereignty: 'The classic regime of sovereignty highlights the development of a world order in which states are nominally free and equal; enjoy supreme authority over all subjects and objects within a given territory; form separate and discrete political orders with their own

[79] Thomson, 1995, *op.cit*., p. 225. Yet violations can take part in a masquerade of non-intervention law when strong states follow their political interests.
[80] Lake, *op.cit*., p. 305.

interests (backed by their organization of coercive power); recognize no temporal authority superior to themselves; engage in diplomatic initiatives but otherwise in limited measures of cooperation.'[81]

1.2 Do the Norms of Classic Sovereignty Change in Modern International System?

> …Over the past half millennium, these claims have taken extraordinarily diverse forms — nations asserting independence from mother states, communists seeking freedom from colonialists, the *vox populi* contending with *ancien regimes*, theocracies who reject the authority of secular states, and sundry others. It is indeed a mark of the resilience and flexibility of the sovereign state that it has accommodated such diverse sorts of authority.
>
> Daniel Philpott, 2003

From its earliest days the standards of classic sovereignty, which had a theoretical rise with the ideas of Bodin, Hobbes and Rousseau, and had a global expansion practically with the outbreak of the French Revolution, have also met with doubters; classic sovereignty with its absolute and unlimited authority resembles Leviathan, whose first concern is its own life.[82] However, the pragmatic dimension of globalization and today's concern subjects - human rights, democracy and rule of law - help citizens ensure their freedoms and protect them against governments even through international organs, which resulted in circumscription of sovereignty.

Since 1789, nations have been the holders of *auctoritas* (source of sovereignty) while governments exercise *potestas* (power) upon the consent of the governed. Yet the changing standards of the world order, particularly after the Holocaust, *potestas* (in interstate relations the rights of sovereign states) started to be

[81] Held, 2003, *op.cit*., p. 162.
[82] Mehmet Ali Ağaoğulları, *Halk ya da Ulus Egemenliğinin Kuramsal Temelleri Üzerine Birkaç Düşünce,* AÜSBFD, Vol. 44, No: 1-4, 1986, p . 152, quoted in Hakyemez, 2004, *op.cit*., p. 104.

abridged both internally and externally by two most significant amendments – human rights conventions and the growth of the supranational organizations, in particular, the EU – whereas *auctoritas* (the source of sovereignty) remains unchanged.

1.2.1 The Tension between Classic Sovereignty and Globalisation:

> It is the myth of Westphalia, rather than Westphalia itself, on which today's understanding of the principle of sovereignty rests.
>
> David A. Lake[83]

The bedrock of nation state and classic sovereignty was established in a chaotic environment and as a consequence of religious wars ended in the Treaty of Westphalia which centralized absolute monarchies in order to maintain order and peace. Aiming to settle peace and rest again, the Treaty united faith with state by establishing the principle that the people had to obey the religion of their king, which constituted the fundamental characteristic of 16th and 17th centuries. 'By the middle of the 19th century, codes and constitutions, administrative regulations, and judicial decisions had turned the making of sovereign claims into a legal process.'[84] Beginning with the appearance of written constitutions not only the limits to the sovereign's power were set though the checks and balances but also a limit to the competences of the government's authority was defined against arbitrary rule. Once constitutions and the fixed territorial borders engaged intensively in sovereignty, sovereignty was transformed by its amalgamation with national self-determination. At the same time, when 'states made their sovereign claims in the name of the nation, these claims became more urgent and, more difficult to achieve.'[85] During the early period of 20th century association of sovereignty with self-determination was always

[83]Lake, 2006, *op.cit*., p. 2.
[84] Sheehan, *op.cit*., p. 8.
[85] *Ibid.*, p. 10.

weighted with conflicts in Europe as in the history of multinational empires, which resulted in world wars of 1914 and 1939. The crisis faced by the European states produced the crisis of National Socialism under the leadership of the Nazi movement, which increase the tension between sovereign powers and nations due to the claims of absolute sovereignty. Sovereign states were victorious at the end of WWII and afterwards the restoration of pre-war states started.

'The sovereign states system that came to dominate Europe at Westphalia spread worldwide over the next three centuries, culminating in the decline of the European colonial empires in the mid-20th century, when the state became the only form of polity ever to cover the entire land surface of the globe.'[86] However 'the historical experience shows that the nation state, the successor to the religious state, was also bloody, which explains why the nation state is being replaced by international and sub-national organizations.'[87] Although the concept had led to domestic order, 'the same concept meant anarchy internationally because states were unrestrained by international law.'[88] 'The idea of self-determination has been haunting the world since 1918, the famous fourteen points of President Wilson, and the idea that a nation has to live in its own state has lead to very different outcomes, such as peaceful or violent independence movements, or even ethnic cleansing.'[89] The huge gap between what was expected from the doctrine of sovereignty and what the messy political atmosphere practically allowed led to two bloody wars of world states; after 1945 a bipolar world order with two new superpowers, the United States

[86] Philpott, 2003, *op.cit*.
[87] Engle, *op. cit*., p. 38.
[88] Macdonald and Nielson, *op.cit*., p. 3
[89] Adrián Tokár, "Something Happened. Sovereignty and European Integration", *Extraordinary Times: IWM Junior Visiting Fellows Conferences*, Vol. 11, No. 2, Vienna, 2001, p. 2.

and the Soviet Union emerged and changed the character of sovereignty. With the fear of American influence, the Soviet threat, in order to avoid another war, states in the west, particularly revitalized Germany decided to participate in international agreements in which they accepted effective limitations on their sovereignty in return for entrée into the society of European states. In the 19th and 20th century, 'rising nationalism was coupled with the internalization of the sovereignty concept which has an international, external aspect describing a state's independence;'[90] consequently, a new epoch started for the concept which is obliged to be redefined within the framework of the principles of contemporary international arena.

Traditional norms of sovereignty do not comply with the modern norms of contemporary international systems; there is always a clash between outdated norms of sovereignty and the emerging modern system; classic meaning of the concept rejects the principle of division of powers, and was considered to be the way to provide individuals with a more secured position in relation to tyrannical systems of absolute monarchies, and is, thus, incompatible with federal state system and with transformed international atmosphere due to the economic, political, sociocultural, environmental or technological globalization. The possible resolution would be to recognize international and supranational organizations as the legitimate entities that are an inherent result of increased interstate relations. 'The exogenous world circumstances, in turn, have resulted in greatly enhanced interdependence, which often renders the older concepts of "sovereignty" or "independence" fictional… In addition, these circumstances often demand action that no single nation-state can satisfactorily carry out, and thus require some type of institutional "coordination"

[90] *Ibid.*

mechanism.'[91] Some of these circumstances generate a tension between conventional sovereignty, on the one hand, and globalization, on the other hand, since Westphalian sovereignty is under erosion due to the fact that states restrict their own sovereignty by participating willingly in international agreements and assuming obligations.[92] The result is a powerful tension between incapability of traditional essence of sovereignty and changing needs of sovereign entities rendered with globalization.

As time passes, circumstances and thus norms of sovereignty change. So, it is not wrong to say that sovereignty constantly climbs through various levels until it reaches the advanced level that responds to the epochal needs of the human being. For instance, the growth of democracy and human rights caused the concept to pass another level in this global game, which has created a deviation from the established rules of sovereignty. But this shift from the classic view is merely limited to exercise of political power since the source of sovereignty is still vested in the nation, which contradicts the indivisible structure of classic sovereignty. Both the limitation of competences of a parliament through checks and balances in a state and the idea of shared sovereignty within a supranational organization clash with the classic view.

Although by the end of the 20th century globalization and thus the changing international system started to effect sovereignty radically, transformation of classic sovereignty, as above-mentioned, had already started through the limitations to absolute character of the concept - the rule of law and constitutional state system. In fact, this is not the first time for states to be subject to globalization; there have been many regional globalization processes – during colonialism and industrialization -

[91] Jackson, 2002, *op.cit.,* p.782.
[92] This international coordination leads sovereignty to be renamed compromised sovereignty because from now on , sovereignty starts to be shared between states and supra- or international institutions.

since the 15th century. Globalization in the modern era is, nonetheless, distinct from others in terms of prominent features; therefore, the already circumscribed sovereignty is still transforming.[93] The Nation-state is mostly transformed by the last version of globalization whereas the other two in previous centuries reinforced and strengthened its existence. [94]

In this century globalization gained an economic side, which has led to the growth of unaccountable market forces, multilateral institutions to manage the global economy including the International Bank for Reconstruction and Development (the World Bank), and the International Monetary Fund (IMF), mobility of capital and customs union in 1970s. 'The International Monetary Fund and the World Bank, both established in 1945 have lent money to sovereign states and have been imposing structural conditions on them, requiring more than simple repayment of the loan.'[95] Globalization is accelerated through technological changes, especially when World Trade Organization (WTO) and its predecessor General Agreement on Tariffs and Trade (GATT) regulating the tariff rates facilitated a series of developments in trade, industry or economy in order to remove the limitations to free trade by integrating national economies in the international economy through foreign direct investment, capital flows, migration, and the spread of technology. Transnational corporations and private firms competed against nation-states and succeed in transcending the national borders regarding free mobility of capital. For instance, economic policies of EU member states are managed by the Europe-wide decisions and monetary

[93]Davutoğlu, *op.cit*., p. 50.
[94] According to Erdoğan, the primary threat led by globalization is to the traditional exercise of political authority rather than to the existence and nature of nation-states. Mustafa Erdogan, "Küresellesme, Hukuk, ve Türkiye", *Liberal Düsünce*, Vol. 7, No. 25-26, 2002, p. 55.
[95] Adrián Tokár, *op.cit*. p. 3.

functions are carried out by European Central Bank (ECB). Hence globalization preeminently has transformed conventional international system in the spheres of economy, culture, technology, environment and politics into a new form of integrated states through a global network of communication and trade. Subsequently, globalization is the reason lying behind the fact that 'some functions that have traditionally been considered the responsibility of national entities'[96] are transferred to international actors, which transformed an independent nation-state into an interdependent entity.

Modern globalization has also affected state system by abridging absolute sovereignty of nation state through the growth of human rights and international institutions, especially, supranational organizations, which have created contemporary interstate relations. In that sense, some reflections of sovereignty in state – symbols like flags, and national origins, marches or political culture and formal legal definitions – start to stay in background whereas international and supranational institutions are increasing as legitimate and coercive entities. Then it is not wrong to say that the most prominent effects of modern globalization are the growth of human rights and the emergence of supranational organizations monitoring the states' functions in various areas, which they are incapable of managing on their own. Therefore, 'the core problem is the globalization-caused need to develop appropriate international institutions.'[97] These contemporary arrangements caused by globalization are transforming every little point of the traditional system: from the status of nation-states to the art of war. 'To cope with the challenges of instant

[96] Krasner, 2003, *op.cit*., p. 5.
[97] Jackson, 2003, *op.cit*. p. 799

communication, and faster and cheaper transportation, combined with weapons of vast and/or mass destruction, the world will have to develop something considerably better than either the historical and discredited Westphalian concept of sovereignty.'[98]

Human Rights:

Violations of human rights during the period of WWII highlighted the importance of human rights in international arena and pioneered the rise of international organizations like the UN and the supranational organizations like the EU whose main aim is to keep peace and rest in the world by monitoring respect for human rights by member states. 'It was in 1948 that the vast majority of states signed the Universal Declaration of Human Rights, committing themselves to respect over 30 separate rights for individuals.'[99] As a principle of international order, sovereignty is enshrined in the Charter of the UN as in the League Covenant: In Article 2(4) attacks on independence and territorial integrity are prohibited, and in Article 2(7) non-intervention in matters within the jurisdiction of any state is declared. 'Once again, the sovereignty state was defined as the normative way of organizing political space.'[100] Though the principles are not legally binding and enforcing, it was the first attempt to limit states' abilities regarding their domestic matters with universal obligations. Yet the real curtailment of sovereignty came with the European Convention on Human Rights (ECHR), formally entitled European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, which primarily aims to protect human rights and fundamental freedoms in Europe.

[98] John H. Jackson, 2002, *op.cit*., p. 802
[99] Philpott, 2003, *op.cit.*
[100] Sheeman, *op.cit*., p. 13.

Thus, human rights gained a more legal character. The ECHR has given not only the states but also the individual the entry ticket into the international arena so that anyone who feels his or her rights have been infringed under the Convention by a state can take a case to the Court in case of inability to obtain a remedy before a national court. Supranational organizations, therefore, threaten state sovereignty may have a much more significant effect than international organizations since they, with the aim of integration, enforce member states not only to comply with supranational law but also put the domestic laws into harmony the Union law and thus competences of legislative, judicial and executive bodies in some areas are transferred to the Union's organs.[101]

Over decades, through declarations and covenants human rights have also been promoted in other parts of the world. The Article 21 of the Universal Declaration of Human Rights in 1948 asserted the democratic legitimacy as a core value for a sovereign state and it became binding when the Council of Europe (CoE) has explicitly connected democratic legitimacy with state and made it a condition for membership. The contemporary principles – the rule of law, and democracy - curtailed classic sovereignty by limiting the sovereign power through constitutions and by monitoring the sovereign's actions through judicial bodies.

During the end of 20th century ethnic conflicts intensified and thus a new page was turned over regarding human rights: a need to protect the existence of specific national identities. After the declaration based on the protection of identity of minorities by the UN General Assembly, the Organization for Security and

[101] Hakyemez, *op.cit.*, p. 116. As Held posited, the European agreement, in allowing individual citizens to initiate proceedings against their own governments, is a most remarkable legal innovation.

Cooperation in Europe (OSCE) have adopted a series of instruments affirming minority rights and founded the office of High Commissioner for National Minorities to provide 'early warning' and 'early action' with respect to 'tensions involving national minority issues'.[102] Similarly, in context of the EU accession process, Turkey has started a democratic opening to Kurds, which is the largest ethnic group in the country.

On the other hand, 'only a practice of human rights backed up by military enforcement or robust judicial procedures would circumscribe sovereignty in a serious way; progress in this direction began to occur after the Cold War through a historic revision of the Peace of Westphalia, one that curtails a norm strongly advanced by its treaties — non-intervention.'[103] In the context of the Cold War, 'US-Soviet rivalry paralyzed the United Nations Security Council (UNSC) and it rarely acted in defence of these principles.'[104] Therefore, during the Cold War peacekeeping operations were usually upon the consent of the target state, otherwise they were illegitimate.

Beginning from 1990s, political operations, some of which involved military intervention, in several cases such as Iraq, Somalia, Haiti, Rwanda, Kosovo and Iraq were carried out by the UN or other international organizations without the consent of the target government as a remedy to settle conflicts. On the other hand, the episodes have proven that nothing much was done to prevent the violations of human

[102] J. Crawford and S. Marks, "The Global Democracy Deficit: An Essay on International Law and Its Limits" in D. Archibugi et al. (eds), *Re-Imagining Political Community: Studies in Cosmopolitan Democracy*, Cambridge: Polity Press, 1998, pp. 76-77, quoted in Held, 2003, p. 169.
[103] Philpott, 2003, *op.cit.*
[104] Eric Brahm, "Sovereignty", *Beyond Intractability*, Guy Burgess and Heidi Burgess (eds.), Conflict Research Consortium, University of Colorado, Boulder, September 2004, http://www.beyondintractability.org/essay/sovereignty., (19 March 2009).

rights in those conflict zones when some national interests of states were in question though the end of the Cold War caused the Security Council to promote human rights over the protection of state sovereignty. The respect for human rights has become an important prerequisite for the entrée into the society of states since 1990s. Yet, the genocide in Rwanda shows that states are reluctant to risk more than their troops and to consider those cases as the preceding sample of justified intervention for the fear of being the next target of intervention whereas the United States' (US) bombings in Iraq and The North Atlantic Treaty Organization's (NATO) intervention in Kosovo stand as proof of the failure of eliciting the UNSC endorsement. 'By way to contrast, both the European Community (EC) and the US stated that recognition of new states in Eastern Europe and the former Soviet Union would depend not only on their respect for borders and control of nuclear weapons, but also on democratization and respect for ethnic minorities, which could constitute the norms of contemporary sovereignty.'[105]

With the introduction of a set of principles under the title of The Responsibility to Protect (RtoP) in 2001 by the International Commission on Intervention and State Sovereignty (ICISS), convened by the Government of Canada at the behest of the former UN Secretary General Kofi Annan, classic sovereignty is explicitly revised. Based on the idea that sovereignty is a responsibility rather than a privilege, the report outlined that the international community has the responsibility to prevent mass atrocities with economic, political, and social measures, to react to current crises by diplomatic engagement, more coercive actions, and military

[105] Janice E. Thompson, *op.cit*., p.229.

intervention as a last resort, and to rebuild by bringing security and justice to the victim population and by finding the root cause of the mass atrocities.[106]

In January 2009, three pillars of RtoP were outlined in a report called *Implementing the Responsibility to Protect*.[107] Thus, 'the document proposes a strong revision of the classical conception by which sovereignty involves a "responsibility to protect" on the part of a state towards its own citizens, a responsibility that outsiders may assume when a state perpetrates massive injustice or cannot protect its own citizens and serves as a manifesto for a concept of sovereignty that is non-absolute and conditional upon outside obligations.'[108]

Supranational Organizations - The EU as the most prominent example:

> The historical roots of the European Union lie in the Second World War. Europeans are determined to prevent such killing and destruction ever happening again. Soon after the war, Europe is split into East and West as the 40-year-long Cold War begins. West European nations create the CoE in 1949. It is a first step towards cooperation between them, but six countries want to go further.
>
> A peaceful Europe – The beginnings of Cooperation[109]

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[106] The International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, http://www.iciss.ca/pdf/Commission-Report.pdf, (19 March 2009).

[107] *Implementing the Responsibility to Protect,* http://globalr2p.org/pdf/SGR2PEng.pdf, (19 March 2009).

Pillar one: The protection responsibilities of the State

(a)Pillar one is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.

Pillar two: International assistance and capacity-building

(b) Pillar two is the commitment of the international community to assist States in meeting those obligations. (building capacity to protect their citizens from mass atrocities and assistance to those, which are under stress.)

Pillar three: Timely and decisive response

(c) Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection.

[108] Philpott, 2003, *op.cit*.

[109] 1945 -1959A peaceful Europe – The Beginnings of Cooperation, http://europa.eu/abc/history/1945-1959/index_en.htm, (15 March 2009).

Aside from the deadly debacle of 1914-1945, the emergence of a series of transborder issues ranging from economic and technological globalization to terrorism and the protection of environment raised a question about the capability of nation-states in dealing with these global matters. Due to the increasing economic and social developments states have problems to control their territorial boundaries, which is one of the central norms of classic sovereignty. Furthermore, the importance of militarized national security is waning due to the invention of nuclear weapons and the wars of mass destruction. As a result, a radical reconfiguration of international system became a necessity.

Over time, a range of international, private and supranational organizations have emerged to conduct global issues on behalf of states. Ceding sovereignty to supranational institutions has also provided states with practical benefits. One of the most prominent supranational organizations founded in the European continent is the European Union. The EU promised to create a positive interdependent cooperation mechanism between European states that became exhausted by their bloody competition and violent history. Thus, European integration took its place among the global factors that has led not only to the circumscription but also transfer of state sovereignty.

With the Treaty of Paris six states established the European Coal and Steel Community (ECSC) in 1950 through which they have formed a common international authority over their coal and steel industries. One of the bodies of the Union, Council of Ministers, is a cabinet composed of ministers of each state and the principal decision making body of the Union. Over decades, the project proposed by the founders of the modern European model was developed through the Treaty of

Rome, Maastricht Treaty and finally through the Lisbon Treaty. In its evolutionary process, the Union has deepened with the accession of new member states and formed a common economic zone through customs union, and then reconfigured the powers of supranational body. With the aim of integration the supranational union forms a joint action system by pooling the core principles of sovereign states; that is to say, by fringing on their right to freely act. All decisions of the ECJ are binding to all member states and over the national law and unlike other global organizations, besides monitoring and managing monetary or trade functions of states, the Union enforces member and candidate states to amend their constitutional systems in accordance with the Union's judicial decisions. Thus, having ceded some of their competences to the Union, the EU member states can no longer enjoy the absolute sovereignty.

'The existence of the EU and the long period of peace and rest in the European continent raised a question about a global model similar to the EU: If this model of trade and interdependence making war less likely is correct, then how is the model to be applied globally?'[110]

1.2.2 Reconfiguring the Concept of Sovereignty

> There exists perhaps no conception the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon.
>
> Lassa Oppenheim[111]

Having been defined as supreme authority by Bodin and Hobbes, the concept of sovereignty 'as it is thought of today, particularly as to its 'core' of a monopoly of

[110] Engle, *op.cit*., p. 43
[111] Lassa Oppenheim, *International Law: A Treatise*, Ronald F. Roxburgh (ed.), 3th ed., Vol. 1-Peace, New Jersey: The Lawbook Exchange, Ltd., 2005, p. 129.

power for the highest authority of what evolved as 'nation-state', began with the 1648 Treaty of Westphalia.'[112] The end of the Thirty Years' War and the restoration of feudal structures within bordered spaces the Westphalian model of the concept and thus absolute sovereignty were born, which is being currently challenged throughout the globe by 'limited government and expanded civil rights for individuals'.[113] The current president of the Council on US Foreign Relations, Richard N. Haass, defines classic sovereignty and mentions the need for the re-evaluation of its outmoded standards:

> Historically, sovereignty has been associated with four main characteristics: First, a sovereign state is one that enjoys supreme political authority and monopoly over the legitimate use of force within its territory. Second, it is capable of regulating movements across its borders. Third, it can make its foreign policy choices freely. Finally, it is recognized by other governments as an independent entity entitled to freedom from external intervention. These components of sovereignty were never absolute, but together they offered a predictable foundation for world order. What is significant today is that each of these components— internal authority, border control, policy autonomy, and non-intervention—is being challenged in unprecedented ways.[114]

The 20th century was the century of spreading sovereignty geographically in an unprecedented manner and at the same time a period of the relativization of its meaning, and eventually today, the surface of the world is almost completely covered by sovereign states, which is a major step compared to the situation at the beginning of the 20th century, when colonization was accepted and sovereignty was the

[112] Jackson, 2002, *op.cit*., p.786.
[113] Philpott, 2003, *op.cit.*
[114]Richard N. Haass, former ambassador and director of Policy Planning Staff, U.S. Department of State, "Sovereignty: Existing Rights, Evolving Responsibilities", *The Office of International Information Programs: Washington File*, U.S. Department of State, Jan. 15, 2003, http://www.iwar.org.uk/news-archive/2003/01-15.htm, (15 March 2009).

privilege of the "civilized".[115] The source of sovereignty was determined as vested in nations whereas the ambiguity in conceptualizing the holders of the supreme power in accordance with the evolving epochal needs have revealed diverse meanings of the concept defined by eminent political philosophers. One of the biggest German philosopher and jurist in the early 20th century, Carl Schmidt's book entitled Political Theology begins with the definition of the sovereign as 'the one who decides on the exceptions (Grenzfall)'.[116] The influence of Hobbes and Bodin's influence can clearly be seen on Schmidt's idea of supremacy of sovereign power over constitutional law. He argues in his book that legal order can ultimately be re-established by the decisions of the sovereign on behalf of the good of the state during an exceptional time and therefore, the decisions made during a time of emergency are the real ones made by the true sovereign. Because of his arguments against some modern features limiting the sovereign's absolute power such as checks and balances or rule of law, it is clear that he criticizes the modern ideas of liberal constitutionalism.

'In the end the myth of the nation state proved itself to be a bloody nightmare'[117] and 'rather than enabling humans to reach their maximum capacities, the nation state had become an idol which sought human sacrifices on the plains of Belgium in 1914 and throughout the European continent between 1939 and 1945.'[118] That the bad reputation of nation state as a political form after WWII prevailed enabled modern philosophers to re-evaluate the model of legitimate sovereignty. Thus 'the abolition of internal frontiers, the creation of a supranational legal system

[115] Adrián Tokár, *op.cit*. p. 2.
[116] Carl Schmitt, *Siyasi İlahiyat*, translated by Emre Zeybekoğlu, Ankara: Dost Press, 2005, p. 13.
[117] Engle, *op.cit*., p.39
[118] Robert Gerwarth, *Twisted Paths: Europe1914-1945*, Oxford: Oxford University Press, 2007, p. 91.

and the introduction of the concept of a European citizenship'[119],which are considered the new idols of the modern international system, have mostly inspired to update the definition of the concept. Within this framework Stephen D. Krasner has argued the reasons lying behind the failure of conventional sovereignty in identifying and solving practical modern problems, and the frequent violation of Westphalian sovereignty in the contemporary environment:[120]

Collapse of domestic authority structures: The de-colonization process during the 20th century caused domestic authority structures to collapse primarily in a number of formerly colonial states which secured international legal sovereignty with independence. However these colonies never managed to exercise effective authority and control within their own territories as in the case of central Africa.

Weapons of mass destruction and rogue states: That some regimes or policies of specific countries like of Iraq or North Korea constitute a threat to international peace and stability is an old problem but the emergence of weapons of mass destruction have caused the weaker states to be able to damage much more powerful ones and made the domestic political regimes in some relatively weak states a matter of concern to even the most powerful.

Ungoverned regions: Some areas within internationally recognized states like the Pakistan–Afghanistan border, the border area of Brazil, and Chechnya are not effectively governed by central authorities. Such ungoverned areas constitute not only regional but also transnational threat through terrorism, transnational crime, and weapons of mass destruction

[119] Adrián Tokár, *op.cit*. p. 1.
[120] Krasner, 2003, *op.cit*., p. 2.

Human rights abuses: As a result of the violation of human rights by repressive regimes, including genocide, some international actors like the UN have decided that the protection of human rights must in some cases abridge conventional sovereignty principles.

Governance Failures: Many countries have failed to meet the requirements of good governance within their territorial spaces even though there is not a total breakdown of effective control or dramatic human rights violations. The lack of accountability, the rapid rise of corruption and criminality are the clear proof of the fact that the citizens governed by the domestic institutes operating within the basic norms of Westphalian sovereignty, cannot reach adequate levels of welfare.

The incapability of conventional sovereignty in identifying and resolving the contemporary problems practically stems from the interdependent structure of modern world, easily abusable characteristic of unilateral state which possesses the absolute power and all rights but no responsibility and accountability. Yet, today's international system contains not only unitary states but also multinational and federal states and international institutions as world actors, in which sovereignty has become 'relational rather than insular, in the sense that it describes a capacity to engage rather than a right to resist.'[121] Therefore, the meaning of sovereignty derives no more from absolute power of states but from the modern political identity reconstructed by the global society.

[121] Anne Marie Slaughter, *A New World Order*, New Jersey: Princeton University Press., 2004, p.268.

External actors started to appear on the scene for the purpose of domestic regime changes. Therefore, according to Krasner, sovereignty started to be used in four different ways: [122]

International legal sovereignty refers to the practices associated with mutual recognition, usually between territorial entities that have formal juridical independence.

Westphalian sovereignty refers to political organization based on the exclusion of external actors from authority structures within a given territory.

Domestic sovereignty refers to the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity.

Interdependence sovereignty refers to the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants or capital across the borders of their state.

States can exercise one or more types of sovereignty: Taiwan, for example, does not have international legal sovereignty since it is not recognized by other states while it has Westphalian sovereignty since none of the states can interfere in domestic matters of Taiwan or 'states' interdependence sovereignty is gradually eroded by the effects of globalization - the technological developments and the reduced costs of communication – which does undermine domestic sovereignty comprehended simply as control'[123] whereas the erosion of states' power to control their cross border matters do not have any influence on domestic authority.

[122] Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton: Princeton University Press, 1999, pp. 3-4.
[123] *Ibid*. p. 13.

Moreover, Krasner posited that 'the exercise of one kind of sovereignty – for instance international legal sovereignty – can undermine another kind of sovereignty, such as Westphalian sovereignty, if the rulers of a state enter into an agreement that recognizes external authority structures as has been the case for the members of the EU.'[124] As an instance, Turkey's international legal dependence will not be affected by its accession to the EU while its Westphalian sovereignty has to be transformed since it will have to bargain through treaties and fulfil the Copenhagen criteria to be fully eligible to join the Union.

In contemporary discourse external policies to transform internal authority in other states have led to shifts from diverse models of sovereignty. Krasner classifies these external efforts into four groups: 'conventions in which they agree to abide by certain standards regardless of what others do, contracts in which the rulers agree to specific policies in return for explicit benefits, coercion which leaves rulers who subject to it worse off, and imposition which is a situation that occurs when the target ruler cannot effectively resist.'[125] Conventions and contracts are voluntary actions of the rulers so that they invite external actors to compromise over their autonomy; however, interventions like coerced regime changes and impositions force the target state to alter its internal structures involuntarily. Not only the use of coercion, and imposition but also signing contracts and joining conventions lead Westphalian sovereignty to be violated while international legal sovereignty is violated only through unfree choices. Voluntary participation in the cooperative treaties for foreign political and economic assistance, for instance within the EU, which has the

[124] *Ibid*. p. 4.
[125] *Ibid*. pp. 25-26.

exclusive right to make political and judicial decisions on behalf of member states or conditionality agreements with the IMF violate only the Westphalian sovereignty; coerced regime changes through military force as in the case of US military actions to eliminate Taliban regime in Afghanistan and US imposition to promote democracy and rule of law on Iraq violate both Westphalian and Interdependent legal sovereignty.

The literature of contemporary discourse has created modern definitions of sovereignty since 'states must be prepared to cede some sovereignty to world bodies if the international system is to function…'[126] Today most of the literature dealing with the redefinition of the concept is very critical to the outmoded norms of classic sovereignty. As mentioned above, Krasner described sovereignty by dividing it into four concepts under the title of 'organized hypocrisy'; some other authors defined the concept as 'social construct'[127], implying that 'numerous practices participate in the social construction of a territorial state as sovereign, including the stabilization of state boundaries, the recognition of rights onto sovereign states'[128], which seems to mean that 'the concept of sovereignty does not have any particular characteristics inherently, but what shapes its natural structure is mostly the customs and practices of nation-states and international systems'[129], which could change over time practically. Following an idea similar to Nietzsche's – only that which has no history can be defined - Bartelson argues that 'in order to enable a present meaning of the

[126] Richard N. Haass, "On Ending US Sovereignty, *Bilderberg Conference*, June 2007, http://files.meetup.com/797132/Richard%20Haas%20-%20CFR%20-%20WeAreChangeSF%20Flyer.pdf, (15 March 2009).
[127] Biersteker and Weber, *op.cit*., 1996, p. 3.
[128] *Ibid*., p. 278.
[129] *Ibid*.

concept, its historicity does not constitute the starting point but the analysis of the concept's meaning in the present.'[130]

Throughout the concept's long and complex history there is always a distance between what the doctrine theoretically promises and what it imposes practically. The new world order increased the efforts to balance the gap between sovereignty theory and sovereignty practice. In these contemporary efforts to redefine the concept, sovereignty continues to exist, but with new meanings.

1.2.3 Conclusion: From Classic Sovereignty to Shared Sovereignty:

From the early times international system and, thus, sovereignty principle have been in a process of perpetual transformation to be able to find the proper shape that would meet the needs of diverse eras they passed through. And today 'through a process of devolution of powers to sub-national entities as well as through subsumation of other powers to supra-national entities and through a redefinition of sovereignty, the international system is transformed further to meet the needs of our era.'[131] 'Changes in human rights law have placed individuals, governments, and nongovernmental organizations under new systems of legal regulation – regulation that, in principle, is indifferent to state boundaries, which is a significant indicator of the distance that has been travelled from the classic, state-centric conception of sovereignty to what amounts to a new formulation for the delimitation of political power on a global basis.'[132] A necessity to transform the character of nation-state and international system has risen because of the catastrophic failure of the nation-states

[130] Jens Bartelson, *A Genealogy of Sovereignty*, Cambridge: Cambridge University Press, 1995, p. 13.
[131] *Engle*, *op.cit*., p. 47.
[132] Held, *op.cit*., p.169.

in deadly world wars in the 20th century. The legal result of this episode is to create an alternative political structure and the modern actors at the global level.

The failure of some international organizations such as the UN in effectively setting peace and rest in conflict zones has raised a new idea of international liberal institutions which secure peace economic interdependence and trade. The outcomes of the liberal intension of keeping the international order through interstate economic unions and free trade facilities, the EU model, its replications, the Association of Southeast Asian Nations (ASEAN) and the North American Free Trade Agreement (NAFTA), and WTO achieved to transform the period before the WWII in which independent states could benefit from war into an updated one in which interdependence and integration are favoured over the traditional balance between war and profit.

Under the influence of modern international structure, classic sovereignty is gradually gaining new political features, which lead each nation-state to find its proper definition for the concept. In that instance, supranational institutions and international norms appear on the stage to reshape these diverse definitions under a common point of view on behalf of good governance. The states intending to have a voice in international arena participate in supranational organizations. On the other hand, reactions to circumscription of sovereignty by state actors differ in terms of their historical background and previous roles they played. Circumscription of sovereignty constitutes a more serious problem for the states such as Turkey that would perform an effective role in the international arena in the past than other states like Sweden or Belgium.

This modern regime of international sovereignty maintains to go beyond the traditional boundaries of nation-states and to contradict with domestic law until an internationally proper form of state sovereignty is reconfigured. These transformative changes that alter the form and content of politics, nationally, regionally, and globally signify the enlarging normative reach, extending scope, and growing institutionalization of international legal rules and practices – the beginnings of a "universal constitutional order" in which the state is no longer the only layer of legal competence to which people have transferred public powers.[133] 'One can expect a broader set of participants than just nation-states, but also non-state and nongovernmental bodies and individuals, including economic (business) actors; moral, religious, and scholarly entities; and international organizations.'[134] However, some ideas also contradict with one another regarding the relationship between the dynamics of globalization and the state sovereignty: 'In some respects, sovereignty appears to be under effective challenge or increasingly irrelevant; in others, it is clearly on the rise'[135] because the nation-state governments can still enjoy the exclusive control of hiring or firing external actors. The latter idea can be disproved in light of the question asked by Krasner – 'while a state might have the formal right to dismiss an IMF official sitting in the ministry of finance, would the costs of such action be prohibitive because of the reaction of private investors?'[136] whereas Davutoğlu reaches the same conclusion from another perspective: He makes a positive correlation and an interconnected distinction between participation and

[133] J. Crawford and S. Marks, 1998, *op.cit*., p. 2; M. Weller, "The Reality of the Emerging Universal Constitutional Order: Putting the Pieces Together", *Cambridge Review of International Studies*, 1997, p. 45, quoted in Held, 2003, p. 169.
[134] Jackson, 2003, *op.cit*., p.802.
[135] Thomson, 1995, *op.cit*., p. 230.
[136] Krasner, 2003, *op.cit*., p. 5.

supervision in contemporary international institutions describing them as the most prominent elements of transformation process of state sovereignty: International institutions promote participation of states at the same time when they are forming a supervision mechanism and in the failure of balancing the participation and supervision, there emerges the problem of sovereignty for nation-states because this imbalance causes states to be only in a status of the supervised as in the case of the UN, in which other participating states mostly fall into the supervised position due to the special status of five permanent states as the exclusive supervisors.[137] Nonetheless, both parts of the debate leave some questions unanswered: To what extend can exogenous actors enjoy the contemporary delegation of policing functions on behalf of states and how extensive is the transformation of state sovereignty?

The most obvious direction of transformation is substitution for parts of state power by supranational or international institutions such as the EU, the UN, or its economic reflection Group of Twenty (G20) that replaced Group of Eight (G8) with the 2008 Washington Summit. 'Even large countries that participate in international negotiations are strongly influenced by the views of corporate or activist interests and additionally, the complexity of transnational issues increasingly demands the participation and expertise of private companies and non-governmental organizations (NGOs); therefore, it is appropriate for the international system to recognize these actors as legitimate stakeholders.'[138] Just as the state bargaining with the society (the people) at national level, a similar bargaining at international level between states and international actors has become a necessity because in such a rapidly globalizing

[137] Davutoğlu, *op.cit*. pp. 53-54.
[138] Bertrand de La Chapelle, *op.cit*., p.4.

world it is not possible for states to withdraw from modern international system. One of the most important effects of the French Revolution was the demolishment of class divisions among people. When constitutional system began to function within a state, democracy and social equality characterized the national system. Similarly the principles of formal equality of states and democratic legitimization have turned into the guarantee of states in interstate relations. While the transformation of absolute sovereignty through the increasing global networks is an undeniable fact of modern times, the problem of democratic legitimization in international organizations as another expected outcome of the growing interdependence has appeared. 'Without democratic supports transfers of power will have no legitimacy and will serve the interests of elites, only.' [139] I would, therefore, argue that as long as international institutions could achieve legitimacy through true democracy, the clash between national law and international legal norms would come to an end because this can be the only way that will make states feel under no threat of exogenous actors.

The main reason caused transformation of classic sovereignty is hidden beneath the nature of human and their changing needs and behaviour. The classic conception of sovereignty simply referred to a transfer of the absolute power of a king to a representative government, which still had right to absolute sovereignty. Enhancing its extreme norms, adding modern features and reconfigurations have adapted absolute sovereignty to the modern circumstances. 'Decisions by individual actors and governments may have direct and immediate impacts beyond national boundaries; systems such as power grids, financial markets, and even terrorist

[139] Engle, *op.cit*. p.45.

networks provide daily reminders of the linkages among physically disparate individuals and societies, therefore, in this integrated world, absolute sovereignty is revealed to be only an illusion.'[140]

Conclusively, the transformation process beginning with security concerns has also changed its direction towards sociocultural, political and economic concerns as a very normal conclusion of economic and technological globalization. Today states, at will, circumscribe their external sovereignty by participating in supranational organizations and signing multilateral treaties due to global concerns; contemporary international system abridges the exercise of internal sovereignty primarily by the modern principles of division of powers, rule of law, democracy and human rights and individual freedoms. Further, as Krasner posited, Westphalian sovereignty is eroded mostly within the framework of modern international system. Yet, the only thing that is not affected by this evolutionary process is the core of sovereignty: The supreme authority still resides in the nation. Hence, it is still argued that sovereignty preserves its constitutive characteristic even today. On the other hand, it is steadily subjected to transformation, which is the obvious evidence of the dynamic structure of the concept. Sovereignty must therefore be understood as 'a relative and partial power shared at multiple levels in an intensively networked world.'[141]

[140] Bertrand de La Chapelle, *op.cit*., p.4
[141] Engle, *op.cit*., p. 34.

CHAPTER II:

PARAMETERS OF THE TURKISH POLITICAL CULTURE

Political culture is the abstract basis of political systems; therefore, a brief overview of the various aspects of political culture and cultural prerequisites forming and reforming the concept and a description of founding tenets of Turkish political culture and its evolutionary process will facilitate our perception of Turkish sovereignty culture transforming on its path to the EU membership.

2.1 The Concept of Political Culture

One of the central research themes in modern political science, political culture was first proposed by Gabriel Almond in 1956 as a new tool for the study of political systems; however, under the masquerade of diverse concepts, political culture has been an indispensable part of political reflection since Social Contract theorists founded the moral basis of authority on the consent of the governed. Modern understanding of the concept began with the French Revolution when political power based on the Louis XIV's traditional definition of absolutism "*L'etat, c'est moi* " ("I am the State") was overruled through the declaration of the members of the Third Estate as the people and the emergence of popular sovereignty. Henceforth, authority, as the moral justification of sovereignty, remains distinct from the simple power and requires the institution or person exercising it to have some qualities based on the recognition and trust on part of the followers of authority.

Having found its reflections under the mask of sovereign authority, political culture was introduced to a more scientific concept by Max Weber – *legitimate power,* which makes political culture more than simple institutions of government.

He defines legitimacy 'as that which is considered to be legitimate not only by elites but also by the population in general' and therefore 'to understand the political power of the state, social science must attend to its reception and sources in society'.[142] Weberian approach concentrates more on the question of whether the political power exercised by the states seen as legitimate by the governed. Thus, in modern political system, it has become crucial to a government to possess the consent of its people who believe that it properly should exercise authority. Today, the legitimacy of a government or governmental acts can be based upon the following the principles of good governance such as economic stability and prosperity or security, democratic procedures like elections and upon emotional ties like historical or religious identity. In diverse retrospective reflections, the rise of the concept helped to reveal the interactive relationship between people and the state by changing the focus from traditional political specification of formal institutional structure of the state. Thus, in contemporary political science political culture became 'the cutting edge of the disciplinary movement, concentrating on the mass of common man who had been neglected in traditional political science, and borrowing both conceptual frameworks and methodological techniques from cultural anthropology, depth psychology, and public opinion research.'[143]

Contemporary work on political culture, however, dates more directly to the mid-twentieth century when in the wake of World War II, social scientists were motivated to explain why some nations had turned to authoritarianism while others

[142] Jeffrey Olick and Tatiana Omeltchenko, "Political Culture", *International Encyclopaedia of Social Sciences*, Second Edition, 2008, p. 300.
[143] Lowell Dittmer, "Political Culture and Political Symbolism: Toward a Theoretical Synthesis", *World Politics*, Vol. 29, No. 4, (Jul., 1977), p. 553.

supported democratic institutions.[144] 'The failure of purely institutional descriptions of political systems to offer adequate explanations of post-Second World War political developments led scholars to delve into the reasons why similar political institutions performed so divergently in different countries.'[145] During that period, some scholars made assumptions of the development of diverse personality models in diverse societies and their reflections on political systems. *The Civic Culture: Political Attitudes and Democracy in Five Nations* by Gabriel Almond and Sydney Verba was considered as one of the most prominent works on political culture at the time. In their book, Almond and Verba emphasized that the relationship between political culture and political structure is one of the most significant researchable aspects of the problem of political stability and change.[146] The examination of political awareness and expectations of the societies has led political science to open its doors to a renaissance of the fact that political culture matters. The major aim or their comparative study is to show what role subjective values and attitudes of people play in explanation of stable democratic political systems. Discussions about political culture started to intensify during the Cold War period, which is the symbol of polarised ideologies.

Although political scholars encountered problems in defining, measuring and testing political culture and have, therefore, divided on its meaning, they have common ideas in describing basic principles that form political culture. In his first work *Comparative Political Systems* Almond asserts that 'every political system is

[144] Olick and Omeltchanko, *op.cit*., p.301.
[145] Ionannis N. Grigoriadis, "Turkey's Political Culture and Minorities", *South East European Studies Programme (SEESP): Nationalism, Society and Culture in post-Ottoman South East Europe*, European Studies Centre, St Antony's College, Oxford, 29-30 May 2004, p. 1.
[146] Gabriel A. Almond and Sidney Verba, *The Civic Culture: Political Attitude and Democracy in Five Nations*, Boston: Little, Brown and Company, 1965, p. 33.

embedded in a particular pattern of orientations to political action and he has found it useful to refer to this as the political culture.'[147] Further he goes on that politics involves three components: perception or cognition, preference or affect, evaluation or choice through application of standards or values to the cognitive and affective components."[148] Since Almond first advanced a definition of political culture, it has been elaborated upon his own writings, and those of Pye and Verba, and has gained virtually unanimous acceptance in the field.[149] In *Comparative Politics: A Developmental Approach*, Almond and Powell see political culture as 'psychological dimension of political system'[150] and they say that "political culture is the pattern of individual attitudes and orientations toward politics among the members of a political system. It is the subjective realm that underlies and gives meaning to political actions."[151] Hague and Harrop in their study *Comparative Government and Politics* posit that the building blocks of political culture are the knowledge, beliefs, opinions and emotions of individual citizens toward their form of government.[152]

In *The Civic Culture*, in Almond and Verba's words, political culture of a nation constitutes 'the particular distribution of patterns of orientation[153] toward political objects among the members of the nation.'[154] According to Almond and Verba, 'the degree of member participation in society's political sector is the decisive

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[147] Gabriel A. Almond, "Comparative Political System", *The Journal of Politics*, Vol. 18, 1956, pp. 391-409, quoted in Howard J. Wiarda, *Critical Concepts in Political Science,* Vol. 1: History, Theory, Context, New York: Roudledge Imprint, 2005, p. 148.
[148] *Ibid*.
[149] Dittmer, *op.cit*., p. 553.
[150] Gabriel A. Almond and G. Bingham Powell, *Comparative Politics: A Developmental Approach*, Boston and Toronto: Little, Brown Company, 1966, p. 23.
[151] *Ibid*., p.50.
[152] Rod Hague and Martin Harrop, *Comparative Government and Politics: An Introduction*, New York, Hampshire: Palgrave, 2001, p. 78.
[153] Almond and Powell distinguish three models of orientations: cognitive(knowledge and beliefs), affective(feelings) and evaluative (judgements and opinions).
[154] Almond and Verba, *op.cit*., p.13.

criterion for the classification of three major types of political culture that reflect a citizen's orientation toward political systems and acts: *participant* is assumed to be aware of and informed about the political system in both its governmental and political aspects, a *subject* tends to be cognitively oriented primarily to the output side of government: the executive, bureaucracy, and judiciary, and the *parochial* tends to be unaware, or only dimly aware, of the political system in all its aspects.'[155] Societies characterized by *parochial* model do not possess cognitive orientation (no knowledge or interest) toward a set of political objects, in general 'the system as a whole, input, output and self as object'[156], which means that individual considers neither him/herself participant in any aspect of the domestic political system, nor politics distinct from other spheres of life. In this model, individuals do not expect any positive outcomes from the political objects and thus have low sense of political efficacy since politics is seen as an elite domain. In *subject* model, although citizens are somewhat cognitively oriented toward the political institutions and political decisions, they stand in largely passive relationship for they, as well, regard politics as a powerful and effective elite domain, and are heavily subject to rules of the government. *Participant* societies possess cognitive orientation toward all four objects of political system and have high political efficacy and expectations from domestic political actions. Since this model consists of the thoughts of citizens who have a strong sense of responsibility for understanding the political system and of their role in the system they live in, participant type of culture constitutes the core of any democratic society.

[155] *Ibid*., p. 45
[156] *Ibid*., pp.15-16

'Political culture functions as a conceptual umbrella for a wide and apparently heterogeneous range of political issue areas: National character, the impact of collective historical experience on national identity and the emotional or normative dimensions of the relationship between the state and its citizenry (such as apathy, or a sense of political efficacy), seem to be among the more prominent concerns of the contributors to this literature.'[157] Almond and Veba have found that a political culture with a high political efficacy and participation is a requirement for a democratic system. Effective democracy requires more than democratic institutions and constitutions because one cannot talk about effective democracy unless its values have found an acceptance on the individual level and it is regarded as the better than other regimes for each citizen. Hence, a democratization process is mostly hindered by non-democratic political experience and the absence of socio-cultural values of democracy in a society. Almond and Verba stated that if 'a democratic political system is one in which the ordinary citizen participates in political decisions, a democratic political culture should consist of a set of beliefs, attitudes, norms, perceptions and the like, that support participation'.[158] Particularly in transitional societies, high cognitive orientation toward contemporary political systems (knowledge and perception of politics) is the *sine qua non* of democratization process and social, political and cultural transformation because awareness for domestic political matters and acceptance of democratic principles will be enhanced through the certain knowledge and perception of contemporary political phenomena. For instance, in the case of Turkey, a transformation in sovereignty culture is

[157] Dittmer, *op.cit.*, p. 552.
[158] Almond and Verba, *op.cit.*, p. 134.

possible only when orientations of national populace transform. The aftermath of Helsinki Summit and the rise of Justice and Development Party (JDP/AKP) in 2002 elections have shown that political culture of Turkey has entered into a transformation process.

In sum, 'political culture theory makes empirical sense out of the French Revolution's claim that sovereignty derives from society rather than the state.'[159] 'New political culture analysts in particular have focused not only on how political acts succeed or fail to obtain some material advantage but also on how in doing so they produce, reproduce, or change identities.'[160] Since political culture refers to an integrated set of evaluative, cognitive and affective orientations of citizens toward domestic political process, which are accumulated from political socialization and political experience. Therefore, 'political culture is multidimensional firstly because it contains both symbols which typify behaviour in the political sector (political institutions) as well as the symbols integrating and rendering the former plausible (political legitimations), and because both legitimations and institutions are focused on participation and on political power.'[161] But the concept should not be treated as synonymous with public opinion or political ideology. Agreement on political matters is not at the core of political culture, but sharing a common framework of political rules and rights. It is more widely held, and more enduring than political ideology since it passes down through the agents of political socialization - such as families, schools, mass media, political events or socio-cultural impacts. For instance, men are generally more oriented to support war and dead penalty than

[159] Olick and Omeltchanko, *op.cit*., p.302.
[160] *Ibid.*
[161] Edward W. Lehman, "On the Concept of Political Culture: A Theoretical Reassessment", *Social Forces*, Vol. 50, No. 3, Mar. 1972, p. 369.

women or in Turkey, Turkish nationalists mostly support the Nationalist Movement Party (MHP); state nationalist and secularists are mostly identified with the Republican People's Party (CHP) and Sunni-Muslims are more likely to vote for the AKP/JDP. Therefore, political values or beliefs can show distinctions in various social structures or spheres within a certain society as well as they show exclusiveness in different societies; For instance, European culture has a more individualist structure whereas Turkish culture, as well as many Asian cultures, is characterized by collectivist norms.

Political culture is the common reflection of distinctive values, norms, behaviours, beliefs and habits of a society about politics that is the product of accumulated political experience and socialization. In my description of political culture of Turkey, I will use a more institutional approach; analysis of constitutional and governmental structures, socio-cultural features of Turkish society, and an examination of historical linchpins that have characterized current political system.

2.2 Basic Tenets of Turkish Political Culture

Turkey's experience with democracy, national sovereignty concept and human rights and freedoms stand as a proof of the fact that Turkish politics has been dominated by an ideological state structure and its subjective elements. 'Prevalence of state interests over fundamental human rights, the model of passive, deferential citizen, the lack of tolerance for religious and ethnic diversity, the exalted role of the military and bureaucratic elite as guardian of the Western and secular character of the Turkish state and society are all indicators of Turkey's lack of democratic

consolidation.'[162] Despite the Kemalist efforts of Westernization and the introduction of multi-party political system in 1946, Turkey's democratic consolidation was lack of political liberalism, which favors submissive citizenry over participant citizenry toward governing authority. Since the state ignored active participation of the people in political developments and considered diverse political thoughts critical to the existing model hostile, the political atmosphere in Turkey tented to discourage the free expression of broader social and political interests.

Despite all the efforts to keep the early republican political model alive in Turkey, Turkish political culture has shown a shift from subject elements to participant elements encouraging citizens to be more interested in social and political events. It cannot be denied that recently there has been a change in the perception of national identity and sovereignty among Turkish people and Turkey has shown much progress in democratic consolidation. Since the beginning of its EU candidature in Helsinki Summit, Turkish political culture has characterized with more participatory elements.

In this part of study we will look at the developments and founding principles that shaped and led to bureaucratise Turkish society and political culture, and their influence on Turkish citizens' perception of political character in Turkey.

2.2.1 The Early Stages of Sovereignty Culture in Turkey

Since the proclamation of the Republic, Turkey has passed through diverse processes of democratic sovereignty. But the early period of transition to national sovereignty started with the first constitutional attempts in late monarchic Ottoman State, on the ruins of which Turkish Republic has been founded.

[162] Grigoriadis, *op.cit.,* p. 4.

Hakyemez examines Ottoman period in three stages in context of the evolution of sovereignty: the period from early years of the Ottoman state to its dissolution, throughout which sovereignty characterized with the same features; the proclamation of the first Ottoman Constitution of 1876 (Kanun-i Esasi/the Fundamental Law), and the proclamation of the second Kanun-i Esasi of 1909, which demonstrated a much more different characteristic than others.[163]

The early Ottoman governmental system was characterized by absolute monarchy based on the Sultanate system. Though the competences of the Ottoman sultan were restrained theoretically through the theocratic (Şer-i) and customary (Örf-i) principles, and Sheikh'ul-Islam (the superior authority in the issues of Islam) functioned as a judiciary control system, Ottoman state system was practically lack of an enforcing mechanism that could supervise the Sultan in terms of following those rules and thus he had the monopoly of authoritative power.

Despite some attempts to the circumscription of the absolute power of the Sultan and amendments to the fundamental rights in the 19th century through the proclamations of the Charter of Alliance of 1808, the Rescript of Gülhane of 1839 and the Rescript of Reform of 1856, which are seen as first examples of constitutional documents in terms of their content by Kemal Gözler,[164] these documents failed to change the very essence of the Sultan's right to absolute sovereignty, and to describe the basic governmental organs and their exclusive competences.

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[163] Hakyemez, *op.cit*., pp. 123-124.
[164] Kemal Gözler, "Sened-i İttifak", Sep. 2009, www.anayasa.gen.tr/senediittifak, "Islahat Fermanı", www.anayasa.gen.tr/islahatfermeni.htm, (28 May 2009).

The 19th century reformation efforts of the empire under the challenge of severe economic problems and national uprisings resulted in the proclamation of first written constitution, the Fundamental Law (Kanun-i Esasi) of 1876. The need to level with western world with respect to industrialization and democratization, and the fear of the competitive powers' expansion triggered a remarkable administrative change in Ottoman state system. However, the constitution formally or structurally did emerge as a result of unilateral enactment of the Sultan II. Abdülhamit -rather than as a result of revolution, even though the commission compromised of 28 persons under the chair of Midhat Pasha contributed to its preparatory stage.

According to Hakyemez, the first Ottoman constitution did not constitute a constitutional monarchy since it granted very broad prerogatives to the Sultan, thereby limiting the rights of the citizens.[165] He defines the true constitution as the written document that regularizes the basic governmental and political system, the branches of a state, and their competences, duties and interrelations in accordance with the principle of separation of powers, and that guarantees the certain rights and freedoms to citizens; therefore, he considers the Fundamental Law of 1876 a first written form of already existing duties and competences of diverse state institutions under the name of constitution rather than a document circumscribing the absolute power of the Sultan[166] and guaranteeing the protection of individual rights against their violation or limitation by the executive body. Similarly, Tanör posits that the constitution of 1876 merely implies a departure from absolutism rather than an emergence of constitutional monarchy since monarchy has become moderate with a

[165] Hakyemez, *op.cit*., p. 127.
[166] *Ibid.*

constitution and parliamentary but it failed to gain a constitutional and parliamentarian characteristic.[167] Because the first constitution did not change the existing state structure, national sovereignty concept could not evolve in Ottoman State as early as in the European continent, which was mostly caused by the Ottoman theocratic state system.[168]

On the contrary it is not inaccurate to argue that though 'contemporary constitutions generally encounter practical problems with judiciary branch which cannot maintain its independent and objective feature in context of the protection of human rights and the separation of powers, Kanun-i Esasi, within the conditions of the term, differs from its relatively independent judiciary branch and a good organization of individual rights and freedoms.'[169] In that sense, Kanun-i Esasi led to a number of improvements in a period in which the relationship between the ruler and the governed was highly asymmetrical and to the favor of the former. According to Okandan, Kanun-i Esasi played the role of threshold in the rise of some issues concerning constitutions, constitutional monarchy and individual rights and freedoms[170] at the same time though he thinks that the absolute monarchy of the Sultan continued to prevail under the mask of the Kanun-i Esasi of 1876.[171]

One of the major weaknesses of the text was the expansive sovereign rights of the Sultan to both the executive and legislative powers of the government stated in

[167] Bülent Tanör, *Osmanlı-Türk Anayasal Gelişmeleri*, Second Edition, Istanbul: Der Publications, 1995, p. 125.
[168] Göztepe, *op.cit*., p. 173.
[169] Hakyemez, *op.cit.*, p. 129.
[170] Recai G. Okandan, *Amme Hukukumuzun Anahatları*, Istanbul: IUHF Press, 1977, p. 230.
[171] *Ibid.,* p. 148.

Article 7.[172] The Sultan's right to prorogue the General Assembly and to veto the laws made by the legislative body demonstrated the fact that these two branches were under the clear influence of the Sultan though they were organized as separate units. As Gözler stated, the functions of the executive and legislative bodies were clearly under the influence of the Sultan and were solely responsible to him.[173] With the Article 5[174] the Sultan had right to be exempt from any judicial and political responsibilities.[175] Moreover, with Article 113 the ruler was granted the right to proclaim a state of siege, dependent upon the perpetration of acts or the appearance of indications of a nature to presage disturbance at any point on the territory of the Empire, so that the civil laws would be under a temporary suspension. Another exclusive right of the Sultan to expel those who were recognized as dangerous to the safety of the State, merely with trustworthy information obtained by the police opened the way for the justification of the Sultan's exile of Midhat Paşa later.

The first constitution of the Ottoman Empire, despite various theoretical and practical nondemocratic setbacks, still achieved to create a generation who would aim to establish westernized democratic institutions. It was also a major step as opposed to the earlier top-down reformation attempts when taking the historical

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[172] **Sovereign Rights of the Sultan**: Art. 7. Among the sovereign rights of His Majesty the Sultan are the following prerogatives: - He makes and cancels the appointments of ministers; he confers the grades, functions and insignia of his orders, and confers investiture on the chiefs of the privileges provinces, according to forms determined by the privileges granted them; he has the coining of money; his name is pronounced in the mosques during public prayer; he concludes treaties with the powers; he declares war and makes peace; he commands both land and sea forces; he directs military movements; he carries out the provisions of the Şeriat (the sacred law), and of the other laws; he sees to the administration of public measures; he respites or commutes sentences pronounced by the criminal courts; he summons and prorogues the General Assemly; he dissolves, if deems it necessary, the Chamber of Deputies, provided he directs the election of the new members. "The Ottoman Constitution (23 December 1876)", http://www.anayasa.gen.tr/1876constitution.htm, (28 May 2009).

[173] Kemal Gözler, *Türk Anayasa Hukuku*, Bursa, Ekin Kitabevi Yayınları, 2000, www.anayasa.gen.tr/osmanli.htm, (28 May 2009).

[174] **Sultan, "Supreme Caliph":** Art. 5. His Majesty the Sultan is irresponsible; his person is sacred. "The Ottoman Constitution (23 December 1876)", http://www.anayasa.gen.tr/1876constitution.htm.

[175] Göztepe, *op.cit*., p. 175.

conditions into consideration since the idea of establishing an assembly under the authority of the ruler was still beyond the expectations.

As opposed to first Ottoman constitution of 1876, the second constitution of 1909 was proclaimed in a controversial atmosphere and to an extent under the influence of a societal revolution and the reactions of their representatives in the assembly. It was the first that favored the sovereignty of the people over absolute sovereignty of the Sultan. Through various amendments to the former constitution, sovereignty, for the first time, started to be shared between the Sultan and the people and thus transited to constitutional monarchy. When the role of people in politics gained importance, the concept of national sovereignty started to take its place in political system.

The transformation of sovereignty was obvious through the amended articles of the first constitution that clearly curtailed the absolute power of the Sultan, particularly in legislative body, and defined the duties of the three branches of the government in accordance with the principle of separation of powers, which was characterized with a parliamentarian feature, and that guaranteed the individual rights and freedoms to an extent. The Sultan's political responsibility started to be constitutional through the amendments to the Article 3.[176] The people started to be emphasized as the holder of the sovereignty rather than the Sultan, thereby leading the rise of a radical bottom-up transformation of sovereignty culture.

Until Kanun-i Esasi of 1909, the concept of national sovereignty did not exist in Ottoman state system. Although it was not clearly mentioned in the constitutional text, the text eroded the absolute monarchic system theoretically and to an extent

[176] *Ibid*., 176.

practically. However, later the arbitrary attributes of the Committee of Union and Progress (CUP / Ittihat ve Terakki Cemiyeti) that was the holder of the government at the time reversed the theoretical positive environment of national sovereignty. Due to the political interests of the Committee, electoral system did not function in accordance with the established judicial structure and failed to maintain a multi-party characteristic. Therefore, national sovereignty merely gained a *de jure* character while the CUP turned into the *de facto* holder of the sovereign authority in lieu of the Sultan. In Tunaya's words, constitutional monarchy, despite its very liberal structure, solely referred to the shared sovereignty between the Sultan and the people.[177] On the other hand, it is not wrong to say that some practical problems in transition periods are expected since neither the people nor the existing political structure cannot display a total preparedness for a radical transformation. The crucial point here is that all these are a sign of a new era in terms of sovereignty.

Despite all practical shortfalls, the second constitutional period of 1909 signalized the transition from a feudal ideology to a national-secular ideology and contributed a lot to the emergence of a new state based on national sovereignty.[178] Briefly, all efforts to provide the people with more rights and individual freedoms, and the most important with the right to sovereignty throughout the late Ottoman period constituted the starting point of a radical transformation of sovereignty.

[177] Tarık Zafer Tunaya, Türkiye'de Siyasal Gelişmeler (1876-1938): Mütareke, Cumhuriyet ve Atatürk, Second Edition, Istanbul: Istanbul Bilgi University Press, 2003, p. 132.
[178] Hakyemez, *op.cit*., pp. 133-134.

2.2.2 Kemalism as a Top Down Implementation of Westernized Nation State

> Each society is moved by the circumstances of its existence to develop its own approach to foreign relations. This means that diplomacy and for that matter every other social institution, is bound to incorporate the traditions and values peculiar to the civilization in which it is practiced.
>
> Adda B. Bozeman [179]

The European states were rapidly civilizing as a result of the influence of the Age of Discovery, Renaisance and Reform movements whereas the Ottoman State could not catch up with these developments due to the internal conflicts and political corruption and thus could not reconfigure itself in accordance with the epochal needs. As a solution, the Ottoman State tried to compensate its backwardness in all spheres by adopting western-oriented enhancements. Thus, 'the concept of 'defensive modernization', that is to say, adapting the institutions of the West to be able to cope with the West was the most observable process during the last phases of the Ottoman Empire; the West was both a source of salvation and a source of threat.'[180]

Under the impact of the diplomatic, political problems posed by the decline of the Ottoman State - Eastern Question revealed in the Vienna Congress of 1815, and Sèvres Syndrome emerged after the defeat of the Ottoman State during the First World War (WWI) - the late Ottoman State was captured by the fear of disintegration through the attempts of Western powers. This threat led the ideology

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[179] Adda B. Bozeman, *Politics and Culture in International History*, Princeton, NJ: Princeton University Press, 1960, p. 324, quoted in Ali Karaosmanoğlu, "The Evolution of the National Security Culture and the Military in Turkey", *Journal of International Affairs,* Vol.54, No.1, Fall 2000, p. 199.

[180] Ali Tekin, "Sharing Sovereignty: Turkey's Sovereignty Culture and the EU Accession", *Sixth Pan-European International Relations Conference: Making Sense of a Pluralist World: Sixth Pan-European Conference on International Relations*, Session 2-17, The ECPR Standing Group on International Relations, 12-15 September 2007, p. 3.

of Atatürk (Kemalism) to realize a transition from conventional state system to a modern one through a rapid and top-down process under the leadership of intellectual bureaucrats. In order to fulfill the Kemalist model of westernization and to catch up with the advanced level of civilization, it was necessary to accelerate the transformative process; short ways to rapid transformation found by Atatürk and his supporters have been reshaped under the concept of 'six arrows'[181] of Kemalism.[182]

The primary objective of the policy makers of the 19th century Ottoman State, during its declination, was the protection of the Sublime Porte from fragmentation and 'avoiding being an object of European great power rivalries as a land ripe for partition.'[183] Therefore, this fear of disintegration and partition has played a prominent role in the formation of Turkish national sovereignty. Atatürk, with his sayings such as *all the mighty strength you need is already imbedded in your noble blood*[184], tried to eliminate the lack of self confidence in Turkish society caused by that fear and to strengthen the national sovereignty soul.

Henceforth, modernization through the European values and ideas, from which the threat originated, was also seen as the path to salvation by the Ottoman

[181]The rapid makeover of Turkey is best illustrated through the development of six Kemalist principles: Republicanism, Reformism, Nationalism, Secularism, Étatism and Populism. All of them openly clashed with the actuality of Turkish life. Republicanism obviously sought to alter Turkey's monarchic and feudal tradition, although it could refer to a legacy of Ottoman reforms. Similarly, Reformism implied a shift from divine rule to human rule in a much more explicit fashion than during the decades of Ottoman constitutionalism. However, the other four principles were irreconcilably novel to Turkish society. Populism dealt with the conversion of hierarchical governance through elite dominance to the creation of a community based on popular action and interests. Étatism complemented this goal by making the state the central player in formulating and materializing those same popular interests. Finally, the last two principles of Nationalism and Secularism have had the most profound influence in contemporary Turkey as they sought to remodel collective and individual identity. Elliot Hen-Tov, "Turkish Identity Politics and EU Accession", *International Studies Association 48th Annual Convention,* Hilton Chicago, CHICAGO, IL, USA, Feb 28, 2007, pp. 4-5. http://www.allacademic.com/meta/p179764_index.html, (22 July 2009).

[182]Hikmet Öksüz, "Atatürkçülük ve Küreselleşme Sürecinde Türkiye", *AKÜ Sosyal Bilimler Dergisi*, Vol. 8, No. 3, Afyon, 2006, p. 85

[183] Karaosmanoğlu, *op.cit*., p. 204.

[184] *Atatürk's Address to Turkish Youth*, 1927, http://www.istanbul.gov.tr/?pid=394, (13 May 2009).

State. 'In 1923, in his „Principles of Turkism", Ziya Gökalp responded to the European challenge confronting the Muslim World as follows:'[185] There is only one way to escape these dangers, which is to emulate the progress of the Europeans in science, industry and military and legal organisation, in other words to equal them in civilisation. And the only way to do this is to enter European civilisation completely.[186]

Thus, 'sovereignty of today's Turkey has received the most important contradictory Ottoman legacies: Westernization against the west'[187] - Europeanization of administrative and socio-political structures - and Sèvres Syndrome, which is called *historical reflex*[188] by Davutoğlu and which directly refers to the demands of the Western powers for sharing Ottoman territory. Feroz Ahmad emphasized the prominent role played by that fear in configuring Turkish polity through his saying, 'Turks have continued to live with the phobia that it never quiet died and could be revived at any moment.'[189] 'This fact may provide some help for those unable to interpret Turkey's passion for being a part of the European Union on the one hand and its half-commitment on the other.'[190] These contradicting tendencies revealed the *sine qua non* of Kemalist ideology: indivisible unity of nation and homeland, independent sovereignty, and westernization. In Baskın Oran's words, Kemalism is 'a par excellence underdeveloped-country nationalism' with

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[185] Dietrich Jung, "Turkey at the Crossroads", *The International Workshop on Middle East Globalization and Development,* 5-6 November 1998, p. 7.
[186] Ziya Gökalp*, The Principles of Turkism*, translated by Robert Devereux, 1968, p. 45-46, quoted in Jung, "Turkey at the Crossroads", p. 7.
[187] Tekin, *op.cit*., p. 4.
[188] Ahmet Davutoğlu, *Stratejik Derinlik:Türkiye'nin Uluslararası Konumu*, İstanbul: Küre Press, April 2001, p. 515.
[189] Feroz Ahmad, "The Historical Background of Turkey's Foreign Policy", Eds. by Lenore Martin and Dimitris Kerides, *The Future of Turkish Foreign Policy*, Cambridge: MIT Press, 2004, p. 9.
[190] Tekin, *op.cit*., p. 4.

'two objectives, independence and modernization'[191] 'In Atatürk's thought the former is mainly a prerequisite for the latter; a strong modernized Turkey could only be achieved against the will of the imperialist West; therefore, Kemalism is a Modernization Project built around Atatürk's central theme *Contemporary Civilization*.'[192]

The Turkish National Movement initiated by Mustafa Kemal Atatürk started the process of transition in Turkish history from personal sovereignty to national sovereignty that was the point of origin leading the movement. 'As opposed to the expectations, the form of the new state that would be established after the Turkish War of Independence would be the modern nation-state system rather than a constitutional monarchy.'[193] 'Instead of a Muslim community loyal to a political-religious establishment that derived its authority and legitimacy from Islam, the founding officers of the republic envisioned a new Turkish man whose affinities were to a nation and state in which the political class derived its legitimacy from its adherence to progressive ideals and science.'[194] Tocci described the reasons behind the rise of Kemalist ideas by an analysis of the late Ottoman environment:

> Founded upon the ruins of the Ottoman Empire, the pillars of the new Republic of Turkey were grounded upon and deliberately accounted for what were to believe to be the causes of failure of the old regime. The Kemalist elite reacted strongly against Ottoman expansionism and national heterogeneity. Heterogeneity was regarded as having fostered separate identities within the Empire, having prevented the integration

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[191] Baskın Oran, "National Sovereignty Concept: Turkey and Its Internal Minorities", *CEMOTI*, No.36, Juillet-Decembre 2003, p. 34.
[192] *Ibid*., p. 34.
[193] Feroz Ahmad, *Modern Türkiye'nin Oluşumu*, Second Edition, Istanbul: Kaynak Press, 1999, p. 68-69.
[194] Steven Cook, *Ruling but Not Governing: the Military and Political Development in Egypt, Algeria and Turkey*, Baltimore: Johns Hopkins Press, 2007, p. 5, quoted in Meri Lynott, "Identity Crisis? Europeanization and the Challenge to Kemalism in Turkey", *The Midwest Political Science Association 67th Annual National Conference,* The Palmer House Hilton, Chicago, IL, Apr. 02, 2009, p. 1. http://www.allacademic.com/meta/p361522_index.htm, (10 July 2009).

> of peoples and having reduced popular loyalty towards the state. They were thus seen, as having encouraged the disintegration of the Empire from within as well as the latter's weakness against external threats. Expansionism was instead blamed for the repeated wars of the Empire, which ultimately led to its collapse.[195]

The national character of the movement was emphasized through the National Pact: Determination of definite territorial borders of the prospective state as opposed to Ottoman expansionist structure was the sign of independent state sovereignty whereas internal sovereignty was seen as the only way to independence and constituted the most prominent point of the Amasya Circular.[196] Conceiving a new vision of nation-state in the nascent Republic, Atatürk aimed to secure the unity and loyalty of all citizens through the creation of an indivisible and homogeneous nation, whose territorial borders would not be subject to alteration with the conquest of foreign lands.[197] Thus, indivisible national sovereignty and state independence have become the *sine qua non* of the Atatürk's centralist state ideology and Kemalist nationalism took its place as one of the main arrows of Kemalism leading the evolution of the Turkish Republic.

In the Kemalist tradition, state sovereignty has the priority since the survival of the state is conditional upon it. Under the influence of historical experience, the Kemalist elite 'are convinced that any departure from Atatürk's vision and ideology will unleash a series of maladies leading directly to the destruction of the Turkish state'[198]; therefore, they 'aimed at creating a new, strong, powerful state to resist

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[195] Nathalie Tocci, "21st Century Kemalism: Redefining Turkey-EU Relations in the Post-Helsinki Era", *CEPS* Working Document No. 170, September 2001, p. 2. http://www.ceps.be.
[196] "The Transition to National Sovereignty: Amasya Circular", 21-22 June 1919: **Article 1**: The independence of the nation will be saved once more by the determination and decisiveness of the people, http://www.tbmm.gov.tr/english/about_tgna.htm, (22 June 2009).
[197] Tocci, *op.cit*., p. 2.
[198] Lynott, *op.cit*., p. 12.

external pressures and to suppress possible demands of autonomy; in this line of thinking the survival of the state was the primary concern of the founding fathers.'[199]

'The Turkish Republic evolved according to Kemalist principles rooted in essentialist ideas that could also be interpreted as reductionist, again compelling homogeny where heterogeneity was the norm'[200] and the top-down modernisation process. In this sense, 'the resolve to create a functioning nation-state equivalent to its West European peers overrode the social and historical reality of the post-Ottoman lands.'[201] The first condition of modernisation was to form a nation-state and the nation-state required nationalism. Moreover, for the formation of a modern Turkish national identity, it was necessary to eliminate the existing religious structure though the principle of Secularism, which could facilitate the modernization project. Throughout the Turkish Republic's history, the Kemalist political elite have been positioned to define the parameters of Turkish identity discourse.[202] Nonetheless, their efforts to impose uniformity and eliminate non-state actors in the Kemalist modernization project had repercussive impact. Unintended tensions occurred particularly as a result of secularism and nationalism, which had the most prominent effect on the new collective identity. In the long run, nationalism and secularism, as opposed to theoretical thought, caused discrimination and ethnic segmentation in practice. Due to the varying definitions - the dilemma of the state itself in defining the nationalism and 'the lack of consensus on what it means to be Turkish'[203] - 'nationalism in the Turkish context has swung back and forth between

[199] Tekin, *op.cit*., p. 4.
[200] Hen-Tov, *op.cit*., p. 4.
[201] *Ibid*.
[202] Lynott, *op.cit*., p. 7.
[203] *Ibid*., p. 6.

racial, ethnic, essentialist model and a moderate, cultural, territorial understanding of nationalism.'[204]

In its nature, Atatürk's ideology focused on preventing the rise of pluralistic identities to provide for national unity and integrity under a collective identity, due to 'the security syndrome caused by the division of Ottoman State by European powers, first through religion-based and then ethnic-based differentiations.'[205] In Tocci's interpretation, 'Kemalism in practice did thus not try to create a new Turkish nation based solely upon citizenship and state loyalty; rather, it attempted to assimilate diverse ethnicities into an ethnically Turkish nation.'[206] However, it would be inaccurate to argue that assimilation is the originating idea of the new Turkish state as can be understood by Metin Heper's statements:

> The rationale behind non-recognition is that of trying to hinder the de-acculturation of the already acculturated, not that of assimilating people who are non-acculturated.[207]

The resolve to create a supra-identity for all ethnic and religious groups for the sake of the security and modernization of the new state did not constitute a 'melting pot' project. Nonetheless, Kemalism, over time, is subject to biased interpretations of the Kemalist elite who see themselves as the guardian of the Atatürk's ideology of nationalism and secularism; namely, the ideology has gained an oppressive and a non-democratic characteristic in practice, which has led to ethnic and religious differentiation and discrimination, and thus, a radical change in the essence of Kemalism.

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[204] Hen-Tov, *op.cit*., p. 5.
[205] Tekin, *op.cit*., p. 4.
[206] Tocci, *op.cit*, p. 4.
[207] Metin Heper, *The State and Kurds in Turkey: The Question of Assimilation*, Houndmills, UK and New York: Palgrave Macmilllan, 2007, pp. 6-7.

Today, some scholars like Hen-Tov assert that since 'Kemalist revolution of the 1920s and 1930s produced a particular national ideology whose total ingredients underpinned the pre-eminence of the nation-state, Kemalism is in decline' as a result of effects of globalization – 'the revival of identity politics and the rise of modern pluralism - and the direct impact of negotiations over EU accession'[208] whereas others like Baskın Oran posit that 'contemporary civilization in Kemalism's heyday was represented by the monistic Western Europe of 1920s and '30s, now it's the pluralistic Western Europe of 21st Century; therefore, there are two interpretations of Kemalism, that of "Model 1930s" and that of "Model 2000s"; a perfect dichotomy.'[209] Consequently, 'its state-centric and top-down approach came under severe attack, which found its expression in the emergence of identity politics'[210] because the nature of the 'artificial' Ataturkist populism which has been made up in pursuit of Atatürk's revolution eroded after 1938 is currently under the threat of today's demand for pluralism.

Whatever form Kemalism takes, the profound truth is that the national sovereignty model of 17th century-Europe and the centralist, monistic nation-state system of 19th century-Europe upon which Kemalism was founded are anachronistic today.

2.2.3 Pseudo/Imperfect Democracy Experience in Turkey

Nations use their sovereignty right through the representative governments; therefore, the most profound signal of the national sovereignty is democracy. 'Turkish democracy, in spite of its much longer history, has been handicapped by

[208] Hen-Tov, *op.cit*, pp. 7-10.
[209] Oran, *op.cit*., p. 34.
[210] Hen-Tov, *op.cit*., p. 7.

serious conflicts over religious and minority rights,'[211] and deficits in their application, and the violation of the rule of law through periodical military interventions in Turkish politics, a process that has clearly impeded the Turkey's accession to the full membership. With an authoritarian and the human rights violating manner of the military, Turkey, despite its history of competitive elections, stands rather in the category of unconsolidated/imperfect/defective democracies than of consolidated democracies. 'A number of factors that compromise Turkish democracy include human rights violations, political corruption and the prohibition of political parties.'[212]

2.2.3.1 The Influence of Military on Turkish Politics

'The new republican state itself emerged out of the Turco-Greek war that ended with the victory of the republican forces in 1922.'[213] Though the Treaty of Lausanne in 1923 abolished Sèvres Treaty by acknowledging the sovereignty of the Turkish Republic, 'law and tradition, since the foundation of the Republic, entrusted the military the key tasks of ensuring the survival of the Kemalist state and nation against both internal and external threat.'[214] '*Sèvres Syndrome*, the feeling of being encircled by enemies attempting the destruction of the Turkish state, is still a feature of the social habitus of the Kemalist élite,'[215] and 'the integrity, sovereignty and consolidation of the new state continued to be at the centre of the Kemalist

[211] Ziya Öniş, "Turkey, Europe, and Paradoxes of Identity: Perspectives on the International Context of Democratization", *Mediterranean Quarterly*, Vol. 10, No. 3, Summer 1999, p. 109.
[212] Mark Tessler and Ebru Altınoglu, "Political Culture in Turkey: Connections Among Attitudes Toward Democracy, the Military and Islam", *Democratization*, Vol. 11, No. 1, February 2004, p. 25.
[213] Jung, *op.cit*., p. 31.
[214] Tocci, *op.cit*., p. 14.
[215] Jung, *op.cit*., p. 24.

reforms.'[216] In general, the military-bureaucratic elite still considers that Turkey's stability and security is continuously threatened by her neighbour states, they aim to make Turkey an authoritative state by stabilising the power of the army and the bureaucracy. Hence, 'Kemalists have remained in key judicial and military positions throughout the history of the Republic.'[217]

The military's imposition of particular vision of the nation has caused the discrimination and alienation of some segments and their pressure for change. Yet 'traditional elites, contradicting the spirit of Kemalist theory and determined to preserve the indivisible and homogeneous nation-state, have often resorted to explicitly repressive measures.'[218] That's why, 'during Atatürk's rule in Turkey in the 1920s and 1930s, and up until 1946, the Kemalist Republican People's Party (CHP) ruled unchallenged given the closure of the party system to multi-party competition.'[219] Turkish society went first under a process of de-bureaucratization process during the rule of the Democrat Party (DP) between 1950 and1960. 'The DP policies attempted to loosen the ideological grip of the Kemalist elite over Turkish society by allowing for the dissemination of alternative political, social and economic programs.'[220] As a reaction to the elite's decreasing impact in Turkish politics and society the military intervention of 27 May 1960 broke out.

Consequently, the military started to intervene in the political life of the state for the sake of the Kemalist system, which they thought to be the right democratic

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[216] *Ibid*., p. 31.
[217] Lynott, *op.cit*., p. 9.
[218] Kemal H. Karpat, *Social Change and Politics in Turkey: A Structural-Historical Analysis*, E. J. Brill., 1973, quoted in Tocci, "21st Century Kemalism: Redefining Turkey-EU Relations in the Post-Helsinki Era", p. 14.
[219] Tocci, *op.cit*., p.14.
[220] Grigoriadis, *op.cit*., p. 5.

system. Serap Yazıcı describes the military coup- term and defines Turkish democracy as in the following:[221]

> In evaluation of the evolutionary process of Turkish democracy since 1946 when Democratic Party was founded and thus multiparty system started or since 1950 when the single party system lasted 23 years handed over, it is clear that the over half-century old process failed to consolidate democracy. The control of the Turkish Armed Forces (TSK) over the elected in the 57 year-old democracy period through two full scale interventions 1960 and 1980); a half scale intervention (12 March 1971); a post-modern intervention (28 February 1997) and finally the E-Memorandum (27 April 2007) impeded Turkish democracy to be regarded as a live democracy despite the present constitutional institutions and their relatively regular function. The fact that the TSK has demonstrated decisive impacts on decision-makers through constitutional institutions (National Security Council/MGK) during the periodical interventions or *de facto* ways displays how accurate it is to name Turkish democracy *semi-democracy* or *tutelary democracy*[222].

On the contrary, democratic consolidation requires a democratic civil-military relationship. In such a system, the military institutions and chairs are subordinated to and bound by governmental decisions. In other words, in a constitutional system, which has democratically consolidated, all political decisions are based on general will and thus, accountable only for the people, and made by the responsible branches of the government elected by the people.[223] That means that true democracy is the guarantor of the fact that the people is the source of sovereignty and their will is

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[221] Serap Yazıcı, *Demokratikleşme Sürecinde Türkiye*, Istanbul: Istanbul Bilgi University Publications, 2009, pp. 139-140.

[222] **Tutelary democracy**: This type of defective democracy is characterized by the existence of reserved domains of undemocratic forces functioning as extrademocratic power centers and veto players, like the military or some traditional oligarchic factions and groups. Apart from the classical case of Atatürk's Turkey, this type has been more frequent in Latin America (down to its somewhat reduced form in contemporary Chile) and in Southeast Asia, not that much in other parts of the world. See Hans-Jürgen Puhle, "Democratic Consolidation and Defective Democracies", Working Paper 47/2005 at the *Conference in UAM*, May 13, 2005.

[223] Larry Diamond, *Developing Democracies Toward Consolidation*, Baltimore and London: The John Hopkins University Press, 1999, pp. 10-13.; Philippe C. Schmitter and Terry Lynn Kar, "Demokrasi Nedir… Ne Değildir", *Demokrasinin Küresel Yükselişi*, Eds. by Larry Diamond and Marc F. Plattner, Ankara, Yetkin Press, 1995, pp.73-74., quoted in Serap Yazıcı, *Demokratikleşme Süresince Türkiye*, pp. 80-81.

superior to all military and political institutions and actions. In that sense, it is clear that the biggest factor preventing Turkish democracy from consolidating is non-democratic civil-military relationship since in Turkey governments have rarely made decisions independent from the permission of the military or even cannot contradict the military's opinions or interests in initiating crucial or vital policies concerning internal or external politics, which constitutes a clear violation of the supremacy of law and the sovereignty principles. According to Serap Yazıcı, the reasons lying behind the bureaucratised and non-democratic system imposed by the army can be summarised as in the following:

> One of the reasons why the TSK intervenes in legislative process in Turkish politics is first the prominent role they played in the foundation of the Republic, which identified the TSK with the guardianship of the Republic and led the army to react against any contradictions with the values of the Republic. And these reactions, over time, have taken various forms ranging from indirect warnings even to bringing down governments. The second, maybe the most important reason is that Turkish democratization process, since the multi-party period, has been interrupted three times by military coup d'états, which ended in the expansion of distinctive rights of the military to legislation through the constitutions of 1961 and later 1982 formed by the military itself.[224]

Though the military always tends to take over for a period rather than to install a long term military regime, it continues to have a permanent voice in three political branches of the elected government following its interventions of 27 May and 12 September, primarily through the National Security Council founded in the 1961 Constitution and its distinctive rights and competences expanded progressively in 1971 and 1973 constitutional amendments and ultimately in 1982 constitution. 'Any incremental steps made toward the adoption of participant political culture

[224] *Ibid*., pp.81-82.

elements were weakened by two more military coups that struck Turkish democracy in 1971 and 1980.'[225] The MGK[226] was to act as an advisory body on questions related to national security, theoretically a consultative body; however, in practice it has considerable authority since its status was further enhanced under the 1982 'Constitution by both adopting a broader definition of national security and by stressing that the MGK's opinions were to be given priority consideration by the Council of Ministers.'[227] 'The 1980 coup, in particular, was the biggest setback in the quest to introduce participant political culture in Turkey; by restoring illiberal interwar Kemalist ideology and enforcing subject political culture elements, the leadership of the 1980 coup succeeded in obstructing Turkey's democratic consolidation.'[228]

The influence of military was also seen on the judicial system. Until the annulment of the Article 143 of 1982 constitution in 1999, there existed State Security Courts (DGM) under the head of a military judge 'to deal with offences against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State.'[229] The foundation of High Military Administrative Courts through the constitutional amendment in 1971, which circumscribed the competency scope of the civil courts, gave a big judicial power to the military. Moreover, with Article 125/2

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[225] Grigoriadis, *op.cit.,* p. 5.
[226] With the 2001 constitutional amendment, the number of the civilian members in MGK has been inscreased and its effect on the Council of Ministers.
[227] Tocci, *op.cit*., p. 15.
[228] Grigoriadis, *op.cit*., p. 6.
[229] **Article 143**, *The 1982 Constitution of the Republic of Turkey*, http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf.

of the 1982 Constitution, the decisions of the Supreme Military Council become outside the scope of judicial review, which contradict with the rule of law principle stated in Article 2.[230] Therefore, 'the Turkish judiciary has been well-positioned to decide in the interests of Kemalism on cases brought before the courts concerning violations of Article 159 (which became Article 301 under the Turkish Penal Code) or cases aiming to close political parties that threaten the Kemalist definition of Turkish identity.'[231] Hence, that the military retains strong authoritarian rights in the civil political development through which the decisions of the representative government are liable to the military interests has become an indispensable characteristic of Turkish Polity.[232]

2.2.3.2 The Implementation of Minority Rights in Turkey

Ottoman expansionist policy and tolerated national heterogeneity are considered as the main reasons of the decline of the Ottoman State by Kemalist elite. 'The Ottoman State was ruled by a Sultan-Caliph, who functioned as the temporal and spiritual leader.'[233] There were many sub-identities in the Ottoman State and each was classified as a separate nation. Under such a model called *millet system*, various religious communities were tolerated and provided with accommodation and even autonomy without any racial or religious discrimination. In other words, 'these were recognized by the authorities and more importantly none of them were identical

[230] **Article 2:** The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.
[231] Lynott, *op.cit*., p. 9.
[232] Yazıcı, *op.cit*., p. 82.
[233] Feroz Ahmad, "Politics and Islam in Modern Turkey", *Middle East Studies*, Vol. 27, No. 3, 1991, p. 3, quoted in Ilhan Yıldız, "Minority Rights in Turkey", *The Thirteenth Annual International Law and Religion Symposium: The 1981 UN Declaration on Religious Tolerance and Non-Discrimination: Implementing Its Principles After Twenty-five Years*, Brigham Young University Law Review, 2007, p. 793.

with the main umbrella of Ottoman supra-identity; however, the supra-identity has changed to *Turkish* after the founding of the Republic though the representation of sub-identities has remained the same.'[234] Thus, 'the nascent Republic was based on the creation of an indivisible and homogenous nation, whose territorial borders would not be subject to change with the conquest of foreign lands.'[235]

In fact, what is meant by Turkishness is not a racial but a cultural concept. 'Even though the nationalist ideology of the State at its most rigid form had been thoroughly enforced in the 1930s, the main criterion for incoming refugees was *to be attached to the Turkish culture* and *not to be Turk*.'[236] Atatürk's saying in his "Tenth Year Speech", *How happy is the one who calls himself a Turk*[237], emphasized the fact that he had preferred the subjective identity (the one chosen by the individual) rather than objective identity (the one that comes with the birth). Nonetheless, under the influence of European racist theories and the Kurdish uprisings in the beginning of the 19th century, and the term *Sick Man of Europe*, from time to time, the term *Turk* is interpreted as a race rather than a citizenship term. But 'if the supra-identity had been designated as belonging to the Republic (to belong to Turkey/Türkiyelilik) and if Atatürk had instead declared *How happy is the one who belongs to the Republic of Turkey,* by giving emphasis to a territorial basis in conformity with the subjective identity, no theoretical conflict with sub-identity would have been created.'[238]

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[234] Oran, *op.cit*., p. 57.
[235] Tekin, *op.cit*., p. 4.
[236] *Ibid.*, p. 57.
[237] Atatürk did not chose to say *How happy is the one who is a Turk,* which would imply a racial discrimination.
[238] Oran, *op.cit*.,p. 59. He also posited that M. Kemal had used the territorial supra-identity during the 1919-22 War of Liberation, emphasizing the word 'Turkey' (the People of Turkey) instead of 'Turkish' (Turkish nation). After the declaration of the Republic in 1923 he started using the second set of terms, quitting the first one., *Ibid.*

In the 21st century, the "1930s model" of Kemalism is still resorted by some institutions such as the TSK since they are convinced that the external and domestic threats will complete the unfinished implementation of the Treaty of Sevres signed by the Ottoman State after its defeat in WWI. The repercussions of the Sevres Trauma remain alive in people's psyche today. The previous actions of ASALA (Secret Armenian Army for the Liberation of Armenia) and PKK (Kürdistan Labor Party) terrorism in the 70's, 80's and 90's have increased the disintegration concerns in the Republic. The Turkish Armed Forces reiterated that they will preserve their image 'as the Turkish people's stronghold against all domestic and foreign threats' and will therefore continue their fight against separatism and religious reactionaries.[239] 'As a solution in both internal and foreign policy, two arrows of Kemalism appeared on the scene: Secularism and Nationalism. With respect to both targets, Kurdish nationalism and political Islam, issues of domestic security are indeed linked with regional foreign policy.'[240] Therefore, 'Kurdish nationalism and political Islam are almost by nature interpreted through the prism of the Sèvres Syndrome.'[241]

Contrary to what is expected, 'with this attitude democratization in Turkey is belated and the outside intervention on behalf of protecting minorities becomes inevitable.'[242] The strict secularist and nationalist model imposed in the State for the sake of preserving its uniformity and unity has led Turkey, throughout her history, to deal with an identity crisis caused by ideological tensions (Kemalists vs. Islamists,

[239] So in a pamphlet published by the General Chief of Staff on April 8, 1999, *Turkish Daily News*, April 9, 1999, quoted in Jung, "Turkey at the Crossroads", p. 38.
[240] *Ibid.*
[241] *Ibid.*, p. 39.
[242] Oran, *op.cit.*, p. 60.

tradition vs. modernity), ethnic conflicts (Turks vs. Kurds). In order to eliminate the proper role of the religion in Turkish politics, Kemalists strived to divorce the people from Islamic values but created an ideological confrontation between Islam and Secularism. ' Kemalists have an understanding of secularism that is both modernist, meaning that they conceive of secularism as integral to the evolution from a backward and traditional society to modernity, and essentialist in that they see an either/or dichotomy between secularism and Islam: they perceive Islam as comprised of a static and totalizing dogma that cannot be modified to fit a modern Turkey, and as such, the Kemalists stifled the Islamist challenge to their understanding of secularism in the 1990's.'[243] Similar to strict secularist movement, due to traditional nationalist attitude, up until recently mentioning the existence of a separate Kurdish origin of Turkish citizens was taboo in Turkey. Consequently, numerous societal groups who press for a change in centre's perception of secularism and 'couch their demands regarding a renegotiation of secularism in the terminology of individual rights, freedom of expression and freedom of religion'[244] emerged.

In fact, 'signed with a zealous attempt to break from the past in the 1923 Lausanne Treaty'[245] 'contains important provisions relating to religious freedom and the treatment of minorities.'[246] 'On the ground of that the Lausanne Treaty has often been contrasted with abortive Treaty of Sevres of 1920, which had been imposed on the sultan's government by the European powers partitioning Anatolia, leaving the Muslim-Turkish population with a rump state in the center, and creating territories

[243] Lynott, *op.cit*., p. 14.
[244] *Ibid*., p 15.
[245] Tekin, *op.cit*., p. 4.
[246] Yıldız, *op.cit*., p. 795.

for Armenia and Kurdistan under Great Power mandate,'[247] 'the Turkish Republic which was born on the ashes of Ottoman Empire began to see the Treaty of Lausanne as the guarantor of its security and survival and an entrenched idea that any change in the contents of this treaty would produce security risks.'[248]

With the Lausanne Treaty Turkey has recognized only non-Muslim citizens as minorities. 'Unlike Christian and Jewish communities, the Muslim population was treated as a homogenous whole.'[249] Particularly through the Articles 37, 38, 39 and 40 of the Treaty,[250] the State granted the same rights to minorities as Muslims and guaranteed the protection of their rights. However, over time, the Treaty of

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[247] Ahmad, *op.cit*., p. 9.
[248] Tekin, *op.cit*., p. 4.
[249] Tocci, *op.cit*., p. 5.
[250] "Section III. Protection of Minorities", *The Treaty of Lausanne*, 23 July 1924, http://en.wikisource.org/wiki/Treaty_of_Lausanne/Part_I , (25 July 2009).

Article 37:
c1. Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

Article 38:
c1. The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.
c2. All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.
c3. Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

Article 39:
c1. Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.
c2. All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.
c3. Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries.
c4. No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.
c5. Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

Article 40:
c1. Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

Lausanne is subject to misinterpretations. The rights given to the non-Muslim minorities and Turkish nationals of non-Turkish speech were not completely fulfilled, for instance, the 1936 Declaration concerning the minorities' foundations led to expropriation acts, which was a violation of both the Treaty and property rights. Moreover, though Section Three of Lausanne also introduced rights to groups other than non-Muslims, these rights were ignored and do not fall under international guarantee whereas the rights of the non- Muslims have been placed under the guarantee of international treaties in Article 44.[251] In fact, the Treaty of Lausanne does not only mention minority rights but also human rights.

Besides incomplete interpretation of Lausanne, Baskın Oran summed up the reasons of the fact that the subject of minorities is considered from a very narrow angle because:

> The recognition of different identities and the granting of minority rights are thought or considered to be the same. (which is a clear rejection of diverse ethnic roots within the Turkish Nation)…Not recognizing different identities in order not to grant minority rights leads to a crippled democracy and what's more leads to the alienation of minority from the State and it therefore paralyzes national integration. As a result of confusing internal self-determination,' which means asking for democracy, and 'external self-determination,' which implies disintegration, the recognition of different identities and the disintegration of the State are assumed to be the same. In a national society, 'uniformity' and 'unity' are considered the same concept. What's more many people do not understand or refuse to understand that the former is gradually destroying the latter.[252]

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[251] "Section III: Protection of Minorities", *The Treaty of Lausanne*, 23 July 1924,
Article 44:
c1. Turkey agrees that, in so far as the preceding Articles of this Section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations.

[252] Oran, *op.cit*., pp. 55-56.

Up until recently expressing a separate origin or a different identity was a taboo in Turkey. For instance, 'elements of a separate Kurdish identity were erased by banning the use of Kurdish names and restricting the use of Kurdish language for the fear of institutionalisation of ethnic division.'[253] This was a clear violation of the Article 39 of Lausanne, which granted to all Turkish nationals the right to use whatever language they prefer wherever and whenever except in public offices.

Moreover, the Turkish Constitutional Court considers minority rights not in the context of universal human rights, but in the context of national legislation and international treaties, and it views this concept as a category that is incompatible with 'the indivisible unity of the country and the unitary State'.[254] Hence, the suppression of the cultural diversity was seen as the way to preserve the nation-state mentality of 1930s reinforced by the September 12 military intervention.

Consequently, 'Turkey's culture of sovereignty derives its basis from the entrenched security syndrome and its off-shoot state-centricism.'[255] What is ignored here that the concept of sovereignty and hence democracy have different interpretations today in compliance with the needs of the 21st century. The ignorance or deliberate refusal of the cultural diversity in a nation or not embracing modern pluralism, as opposed to the expected, constitutes the primary reason for the segmentation of the population. 'The representation of the nation (i.e., democracy)

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[253] Tocci, *op.cit*., p. 5.

[254] Yılmaz Aliefendioğlu, "Azınlık Hakları ve Türk Anayasa Mahkemesinin Azınlık Konusuna Bakışı", *Ulusal, Ulusalüstü ve Uluslar arası Hukukta Azınlık Hakları: Birleşmiş Milletler, Avrupa Birliği, Avrupa Konseyi, Lozan Antlaşması*, Istanbul: Istanbul Bar Association Human Rights Center Publications, 2002, p.237, quoted in Oran, "National Sovereignty Concept: Turkey and its Internal Minorities", pp. 51-52.

[255] Umit Cizre, "Demythologizing the National Security Concept: the Case of Turkey," *Middle East Journal,* Vol. 57, 2003, pp. 213-229; Metin Heper, "The Ottoman Legacy and Turkish Democracy," *Journal of International Affairs*, Vol. 54, 2000, pp. 634-682, and Metin Heper, *The State Tradition in Turkey, Walkington*, Eothen, 1985, quoted in Tekin, "Sharing Sovereignty: Turkey's Sovereignty Culture and the EU Accession", p. 4.

was defined in the 19th century as 'the will of the majority'; in the beginning of the 21st century it is now defined as 'respect for the sub-identities'; the majority can no more act as it pleases like a dictator; the overall principle of democracy and therefore the main principle of national identity nevertheless requires that ideas, demands, interests etc. of the minority are taken into account.'[256] The norms of the 21st century putting emphasis on how a state treats its citizens replaced the 17th century norms of sovereignty. 'These two points converge on one important conclusion: National sovereignty of Turkey is stronger when "Model 2000s Kemalism" is preferred to that of "Model 1930s"; the best litmus test for it is Turkish State's attitude towards its internal minorities.'[257]

2.3 The Reflection of the Sovereignty Principle on Turkish Constitutions

The long-term efforts to circumscribe the power of the Sultan in the late Ottoman State had resulted in the foundation of the Grand National Assembly (TBMM) based on the national sovereignty in 1920. Unlike Ottoman parliamentary, the new Assembly focused on national sovereignty and formed through electoral process. In order to legitimate its presence, the TBMM formed the first constitution of 1921, officially called *Teşkilat-ı Esasiye Kanunu*, which became the linchpin with its first article that regularized the source of sovereignty as vested in the Nation[258] since for the first time sovereignty started to reside in the nation rather than the monarch in the constitutional level.[259] The sovereignty principle ratified in the 1921

[256] Oran, *op.cit*., p. 35.
[257] *Ibid*., p. 36.
[258] **Article 1**, *The 1921 Constitution*: Sovereignty is vested in the nation without condition. Governmental system is based on the principle of self-determination and government by people, http://www.bilkent.edu.tr/~genckaya/1921C.html, (25 July 2009).
[259] Hakyemez, *op.cit*., p. 142.

Constitution was also accepted in the 1924 Constitution and it was the clear refusal of Ottoman State.[260]

In Article 2 of the Constitution, a new governmental model was established, which possessed the monopoly of legislative and executive power, which referred to a governmental assembly system based on the fusion of powers.[261] In that sense, Article 3 stated that the State of Turkey is governed by the Grand National Assembly and its government is titled as the Government of Grand National Assembly.[262] Consequently, the 1921 Constitution was a result of a constitutional movement radically transforming the source of sovereignty and establishing a nation-state with a new governing system whereas the Ottoman constitutional movement from Kanun-i Esasi of 1876 to 23 April 1920 merely aimed to circumscribe the absolute power.[263] Therefore, the Constitution of 1921 had a revolutionary characteristic by declaring the supremacy of the Assembly over the Sultan-Caliph. On the contrary, the Constitution did not include any statements concerning the supremacy of the constitution over other laws, that's why it constitutes a flexible constitution model.[264]

With the abolishment of Sultanate system in 1922, a *de facto* State based on national sovereignty was founded. The democratic sovereignty principle came through with the founding of the Republic in 1923 and abolishment of Caliphate in

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[260] Tunaya, *op.cit.,* p. 132.

[261] *The 1921 Constitution*: **Article 2:** Executive power and legislative responsibility is exercised by and concentrated in the hands of the Grand National Assembly which is the sole and real representative of the nation.

[262] Article 8 also implied that the system accepted in the Constitution is governmental assembly model.

Article 8: The government of the Grand National Assembly exercises the executive function through ministers who were elected according to its special law. The Grand National Assembly directs the ministers on executive affairs and changes them when necessary.

[263] Göztepe, *op.cit.*, p. 178.

[264] Kemal Gözler, *Türk Anayasa Hukuku Dersleri*, Fouth Edition, Bursa: Ekin Kitapevi Publications, 2007, p. 31.

1924. National sovereignty was introduced before the founding of the Republic and has sensitively been focused by the Republican constitutions, as well. Yet, though the source of sovereignty remains the same in all, there have been fundamental differences particularly in its application.[265] Turkish Constitutions of 1921 and 1924 differ from the constitutions of 1961 and 1982 in terms of their formation process: They were ratified by the representative Assembly of the nation whereas the others were formed after military interventions.

The 1924 Constitution of the Republic of Turkey:

Similar to the former constitution of Turkey, general will of the nation had been identified with the TBMM in the 1924 Constitution on the ground of the fact that national liberation movement was realized through a government based on the supremacy of the Assembly. Since circumscribing the power of the Assembly was regarded as the same with the limitation to the authority of the nation, the 1924 Constitution did not set a limitation to the competency scope of the Assembly.[266]

Tanör thinks that the 1921 Constitution is the most democratic constitution of Ottoman-Turkish constitutionalism in terms of its formation and ratification process; because the ones who prepared the 1924 Constitution owed their candidature and deputyship to M. K. Atatürk, it was not possible to enable the conditions in 1921 no matter how impartial their will was.[267] In Hakyemez's statements, the 1921 Constitution did not constitute a true constitution; it proposed fusion of powers and did not give place the fundamental rights and freedoms since its main aim was to

[265] Hakyemez, *op.cit*., p. 145.
[266] The supremacy of the Assembly was declared constitutionally, but until the multi-party system of 1946 Turkey lacked an assembly formed through a true democratic electoral system. Erdoğan Teziç, *Anayasa Hukuku*, Fifth Edition, Istanbul: Beta Press, 1998, p. 96.
[267] Bülent Tanör, *op.cit*., p. 201.

succeed in national movement.[268] The constitution of 1924 was the first constitution of the Republican period and annulled both 1876 Kanun-i Esasi and the 1921 Constitution and thus ended the dual constitutionalist system in 1921.[269] Unlike the former constitution, it was a rigid constitution since 'it regularized the limitations to the constitutional amendments and modifications in Article 102.'[270] The 1924 Constitution regularized the fundamental rights and freedoms internalizing the liberty principle stated in the Declaration of the Rights of Man and of the Citizen of 1789. Yet, it failed to apply those rights and freedoms.

'The Article 3 of the Constitution included the sovereignty principle as it was stated in the 1921 Constitution'[271] and the Article 4 stated the Grand National Assembly of Turkey as the sole representative body of the nation exercising sovereignty in the name of the nation. Unlike the former constitution, in this constitution a model similar to the separation of powers was preferred after the founding of the Republic. The executive and legislative powers were vested and centered in the TBMM. Whereas the TBMM was given the direct right to exercise the legislative power, it exercised executive power through the intermediary of the President of the Republic, whom it elects and, through a Cabinet chosen by him. Independent tribunals exercised the judiciary power in the name of the Assembly in accordance with the law. However, the Assembly was, through the Constitution of 1924, granted not only the right to use of sovereignty, but also the right to control the

[268] Hakyemez, *op.cit*., p. 146.
[269] Bülent Tanör, *op.cit*., p. 259.
[270] Edward Mead Earle, "The New Constitution of Turkey", *Political Science Quarterly,* Vol. 40, No. 1, Mar., 1925, p. 100. **pp.73-100** The 1924 Constitution of The Republic of Turkey: **Article 102:** Amendments to or modifications of this Constitution may be made only upon the following conditions: The proposal to amend must be signed by at least one-third of the total number of deputies. The proposed amendment must be thereafter discussed by the Assembly and adopted by vote of two-thirds of the total number of deputies.
[271] *Ibid*., p. 89, "Section 1": **Article 3:** Sovereignty belongs without restriction to the nation .

acts of the government and to withdraw power from it at any time. In that sense, the TBMM remained supreme over other bodies.

'The biggest deficiency of this Constitution is that it lacked a constitutional court to examine the constitutionality of the laws made by the TBMM through absolute democracy though the Article 103 was the clear evidence of the supremacy of constitution over all other laws.'[272] In absolute democracy, the will of the majority is considered as the best for the people and the rights of the minority are not guaranteed. In that sense, that political powers in Turkey, as in the European states, abused the absolute democracy model gave way to the emergence of liberal and plural democracy.

The supremacy of legislative power as the representative of the national sovereignty demonstrated deficiencies in the late 1924 constitutional period and thus the need for limiting the national sovereignty came into question.

The 1961 Constitution of the Republic of Turkey:

When the abuse of absolute democracy and the lack of constitutional courts to control the laws made by the legislative power in the era of the former constitution are taken into consideration, the 1961 Constitution of Turkey promulgated as a result of a referendum 'had a more liberal and pluralist characteristic than other Ottoman-Turkish constitutions and displayed quite different perception of sovereignty'[273] It was created as a rigid constitution that declared the supremacy and binding force of

[272] *Ibid*., p.100, **Article 103:** None of the provisions of this Constittution may be arbitrarily modified on any pretext; neither may the enforcement of any provision be suspended. No law shall be in contradiction to the Constitution.
[273] Hakyemez, *op.cit*., p. 149.

the Constitution in Article 8 rather than the supremacy of the Assembly.[274] 'This Constitution replaced the absolute democracy concept adopted by the 1924 Constitution with plural democracy and played a prominent role in the evolutionary process of Turkish democracy; however, since it was not prepared by the representative constituent assembly whose members were not freely elected by the nation'[275] but the National Unity Committee (MGK) after the military coup of 27 May 1961, it failed to found a true representative democracy.

As in the former constitutions, sovereignty as vested in the nation was accepted in Article 4; however, it differed from other constitutions in the exercise of sovereignty by the nation through the authorized agencies as prescribed by the principles laid down in the Constitution. Thus, TBMM has become only one of the bodies that can exercise sovereignty in the name of the nation and national sovereignty was circumscribed under the rules of constitutional law. From then on, the TBMM elected by direct general ballot shared the right to exercise of sovereignty with executive (the President and the Council of Ministers indirectly elected by the Assembly) and judicial bodies (which is not related to general ballot at all).[276] This model complies with the principle of human rights and plural democracy since 'it distinguishes the general will as the source of sovereignty (national sovereignty) from the political power held by the representatives of national sovereignty.'[277] Through the founding of the Constitutional Court controlling the constitutionality of

[274] *The 1961 Constitution of the Republic of Turkey,* **Article 8:** Laws shall not be in conflict with the Constitution. The provisions of the Constitution shall be the fundamental legal principles binding the legislative, executive and judicial organs, administrative authorities and individuals. http://www.anayasa.gen.tr/1961constitution-text.pdf, (18 July 2009).
[275] Yazıcı, *op.cit*., pp. 141-142.
[276] Mümtaz Soysal, *Anayasanın Anlamı*, Seventh Edition, Ankara: Gerçek Press, 1987, p. 91-92.
[277] Göztepe, *op.cit*., p. 181.

the laws made by the TBMM, absolute democracy was replaced by the plural democracy.

With this Constitution, the Republic has gained new characteristics based on the contemporary democracy model. Though sovereignty reside in the nation, this democratic emphasis can no longer undermine the human rights and the rule of law because the Republic of Turkey is a social state governed by the rule of law, based on human rights as stated in the Preamble and Article 2. Henceforth, the 1961 Constitution guaranteed the application of the individual rights and freedoms, which were recognized by the 1924 Constitution.

The beginning of the legal relations between Turkey and the European Economic Community (EEC) by signing the Ankara Treaty in 1963 caused debates over the supremacy of the EEC law over domestic law, and particularly, the possible obligatory transformation of conventional nation-state institutions. The provisions of the 1961 Constitution started to be discussed within the framework of transformation and the partial transfer of legislative, executive and judicial powers permanently to the EEC.[278] Through the Article 4, the 1961 Constitution declared that the right to exercise sovereignty shall not be delegated to any one person, group or class, and no person or agency shall exercise any State authority which does not derive its origin from the Constitution. On the contrary, some interpretations of the Article 65[279] and

[278] İzzettin Doğan, AET Hukuk Düzeni ve Türk Anayasa Düzeni, Vol. 3, İstanbul: İktisadi Kalkınma Vakfı Publication, 1977, p. 130., quoted in Göztepe, *Avrupa Birliği'nin Siyasal Bütünleşmesi ve Egemenlik Yetkisinin Paylaşılması Sorunu*, p. 196.

[279] **Article 65:** The Ratification of treaties negotiated with foreign States and international organizations in behalf of the Turkish Republic is dependent upon its approval by the Turkish Grand National Assembly through the enactment of a law.

Treaties which regulate economic, commercial and technical relations, and which are not effective for a period longer than one year, may be put into effect through promulgation, provided they do not entail a commitment of the State's finances and provided they do not infringe upon the status of individuals or upon the rights of ownership of Turkish citizens in foreign lands. In such

Article 97[280] claimed the possibility of the transfer of the right to exercise of sovereignty to international institutions. But whether the system of the 1961 Constitution could systematically allow such an interpretation had been discussed until the promulgation of the 1982 Constitution since it seemed impossible to transfer the right to exercise of sovereignty to the international institutions while this right shall not be delegated from one governmental body to another even within the State.

In spite of its provisions reinforcing plural democracy and liberal aspects - granting broad human rights and guaranteeing their application through founding of democratic institutions – the 1961 Constitution institutionalized tutelary democracy by founding the MGK and transforming the presidential office to a means that subjected the three organs of the state to the military authority. Thus, by the amendment of 1971, military jurisdiction was enlarged against the civil jurisdiction; new courts were established under the names of High Military Administrative Court and the DGM and also the Council of Ministers gained the right of some limited legislation authority named Statutory Decrees (decrees having the effect of law).[281]

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cases, these treaties must be brought to the attention of the Turkish Grand National Assembly within two months following their promulgation.

Agreements concluded in connection with the implementation of an international treaty, and economic, commercial, technical or administrative treaties concluded pursuant to the authority provided by laws are not required to be approved by the Turkish Grand National Assembly provided however that economic and commercial treaties or treaties affecting the rights of individuals shall not be put into effect unless promulgated.

The provisions of paragraph 1 shall apply in all treaties involving amendments in Turkish legislation.

International treaties duly put into effect carry the force of law. No recourse to the Constitutional Court can be made as provided in articles 149 and 151 with regard to these treaties.

[280] **Article 97:** The President of the Republic is the head of the State. In this capacity he shall represent the Turkish Republic and the integrity of the Turkish Nation.

The President of the Republic shall provide over the Council of Ministers whenever he deems it necessary, shall send representatives of the Turkish State to foreign states, shall receive the representatives of foreign states, shall ratify and promulgate international treaties and may commute or pardon on grounds of chronic illness, infirmity or old age the sentences of convicted individuals.

[281] H.Tahsin Fendoğlu, Liberty and Turkish Constitutions, International Conference of Lawyers, Straosbourg/France, 5th-8th of February, 1999,

Even the Constitutional Court which was founded on the account of rectifying democracy in the country used its constitutional competences rather as a guarding tool of tutelary democracy than representative democracy during the term of 1982 Constitution.[282]

The 1982 Constitution of the Republic of Turkey:

Similar to the 1961 Constitution, the 1982 Constitution was also a casuistic type of constitution formed after a military coup. These constitutions show both similarities and differences in terms of human rights, democracy and sovereignty. It has been amended several times since 1987 and is still under amendment. A deep look at how the sovereignty principle is regulated in the 1982 Constitution, which is the current constitution of Turkey, is crucial to answer whether it is possible with the existing provisions of this Constitution to join a supranational organization like the EU and whether the sovereignty culture in Turkey is transforming today.

The Article 6 of this constitution regulated the sovereignty principle as in the following:

1. Sovereignty is vested fully and unconditionally in the nation.

2. The Turkish Nation shall exercise its sovereignty through the authorised organs as prescribed by the principles laid down in the Constitution.

3. The right to exercise sovereignty shall not be delegated to any individual, group or class. No person or agency shall exercise any state authority which does not emanate from the Constitution.

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http://www.akader.info/KHUKA/5_99_ekim/liberty_of_turkish.htm, (10 July 2009).

[282] Yazıcı, *op.cit.*, p. 153.

In the first provision, the nation is accepted as the only holder of sovereignty, thereby adopting national sovereignty. The modifiers used here – full, unconditional– are related to the source of sovereignty implying that this right is unique to the nation and absolutely resides in the nation, but they do not refer to any unlimitedness in the exercise of it. Hakyemez explains the use of these terms on the grounds of the epochal conditions in which the big efforts were made to replace monarchic sovereignty with national sovereignty.[283] Through the second provision of the 6th Article it is clear that the representative democracy model is accepted so that the representatives exercise this right in the name of the nation. Moreover, Article 80 also declares that the Members of the Turkish Grand National Assembly represent, not merely their own constituencies or constituents, but the Nation as a whole, which implies again the adoption of national sovereignty a result of representative democracy.[284]

The *democratic state* principle in Article 2 and national sovereignty, according to Özbudun, are complementary terms; in a state where the nation is the holder of the supreme authority, the governmental system should adopt a democratic regime based on the autonomy of the people.[285] Besides the democratic state principle, the secular structure of the state - Secularism - emphasizes that the source of sovereignty is of people but not religion or religious institutions and it does not belong to any individual, class or group but to the nation as a whole, so democratic sovereignty is constitutionally accepted.[286]

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[283] Hakyemez, op.cit., pp. 154-155.
[284] *Ibid*., p. 153.
[285] Ergun Özbudun, *Türk Anayasa Hukuku*, Eight Edition, Ankara: Yetkin Publications, 2004, p. 83.
[286] BülentTanör and Necmi Yüzbaşıoğlu, *Türk Anayasa Hukuku*, Third Edition, Istanbul: Yapı Kredi Publications, 2002, p. 114.

The first provision of Article 3 states that the Turkish state, with its territory and nation, is an indivisible entity. This unity principle refers to the source of sovereignty. Since integrity of the nation is contrary to the very essence of democracy, this unity of nation, according to Oran, implies a kind of assimilation's nation-state approach which inevitably suggests that, except for the ones recognized by Lausanne, there are no minorities in the country and therefore, there are practically no minority rights that can be spoken of, and any opposition to this suggestion is punished.[287] The right of the Constitutional Court to dissolve a political party permanently due to its violation of the fourth paragraph of Article 68,[288] and the definition of the Articles 1, 2, 3 as irrevocable under the Article 4[289] show that the 1982 Constitution is very strict about the protection of these characteristics and national sovereignty. The unity principle is interpreted by the Court from a broad perspective since they evaluate all kinds of thoughts and ideas within the framework of this prohibition.[290] Therefore, it is a fact that though the term *unity* theoretically implies the *harmony* within the nation, it is often confused with *uniformity* in practice.

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[287] Oran, *op.cit.*, p. 44.

[288] **Article 68 - Forming Parties, Membership and Withdrawal From Membership in a Party:**
(4) The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime.
Article 69: (As amended on July 23, 1995 and October 17, 2001)
The decision to dissolve a political party permanently owing to activities violating the provisions of the fourth paragraph of Article 68 may be rendered only when the Constitutional Court determines that the party in question has become a centre for the execution of such activities.

[289] **Article 4 - Irrevocable Provisions:**
The provision of Article 1 of the Constitution establishing the form of the state as a Republic, the provisions in Article 2 on the characteristics of the Republic, and the provision of Article 3 shall not be amended, nor shall their amendment be proposed.

[290] Sevtap Yokuş, "Türk Anayasa Mahkemesi'nin ve Avrupa İnsan Hakları Mahkemesi'nin Siyasi Partilere Yaklaşımı", 2001, p. 110, http://dergiler.ankara.edu.tr/dergiler/38/288/2629.pdf, (15 August 2009).

The Article 6 also mentions the authorized bodies through which the nation can use its right to sovereignty. As can be understood from the Articles 7, 8 and 9, legislative, executive and judicial branches exercise sovereignty in the name of the nation;[291] namely, this Constitution like the former one applies the model of separation of powers; but here the executive power has gained more importance than in the 1961 Constitution because its actions and acts are henceforth perceived not only as a mission but also as a competence and the constitutionality principle is adopted as a control-mechanism of decisions made by the legislative body. The Constitution also sees the judicial power as a competent authority since it has to solve the contradictions within the framework of laws made by the legislative body in an independent and impartial manner. At the same time, in order to prevent the arbitrary acts of these bodies, it sets a limitation to the exercise of this right by using the statement of 'as prescribed by the principles laid down in the Constitution'. In that sense, rather circumscribed sovereignty than absolute sovereignty is adopted in the Constitution.

Political parties, classes or groups are given the right to exercise political power; therefore, by the third provision in Article 6, what is meant is that sovereignty cannot be exercised permanently by or delegated unchangeably to any individual, or group.[292] In the Preamble of the Constitution the above mentioned characteristics of national sovereignty and the state, together with the harmonious rather than a

[291] **Article 7.** Legislative power is vested in the Turkish Grand National Assembly on behalf of the Turkish Nation. This power cannot be delegated.
Article 8. Executive power and function shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the law.
Article 9. Judicial power shall be exercised by independent courts on behalf of the Turkish Nation.

[292] E.S.: 1988/2, K: 1988/2 (Dissolution of a Political Party), K.S.:1988/1, K.T.: 8-12-1988, *AYMKD* No:24, p. 589, quoted in Hakyemez, *Mutlak Monarşilerden Günümüze Egemenlik Kavramı*, pp.156-157.

hierarchical functioning of the organs of the state are emphasized, thereby harmonizing the national sovereignty with the supremacy of the Constitution.[293]

The 1982 Constitution gained a semi-direct democracy characteristic through the 1987 amendment which has made the referendum principle obligatory in case of constitutional amendments under some circumstances.[294] In that sense, Doğan asserts that through referendums the nation can decide to delegate sovereignty right to international organizations since sovereignty resides fully and unconditionally in the nation.[295] Referendums can prevent constitutional regulations contradicting general will of the nation, human rights and democracy to be legislated when the condition of a two-thirds majority for the constitutional amendments can be achieved by the political parties which have a common interest, and thus it gives the ultimate decision-making right to the nation.[296] Therefore, some scholars posit that the Article 6 should be amended as 'the Turkish Nation shall exercise its sovereignty through

[293] **The Preamble of the 1982 Constitution:** 3rd and 4th Paragraphs:
…The understanding of the absolute supremacy of the will of the nation and of the fact that sovereignty is vested fully and unconditionally in the Turksih nation and that no individual or body empowered to exercise this sovereignty in the name of the nation shall deviate from liberal democracy and the legal system of instituted according to its requirements;
The principle of the separation of powers, which does not imply an oredr of precedence among the organs of state, but refers solely to the exercising of certain state powers and discharging of duties which are limited to cooperation and division of functions, and which acceptes the supremacy of the Constitution and the law;…

[294] Article 175: (As amended on May 17, 1987)
…The President of the Republic may refer the laws related to the Constitutional amendments for further consideration. If the Assembly adopts the draft law referred by the President by a two-thirds majority, the President may submit the law to referendum.
If a law is adopted by a three-fifths or less than two-thirds majority of the total number of votes of the Assembly and is not referred by the President for further consideration, it shall be published in the Official Gazette and shall be submitted to referendum. …

[295] Doğan, *op.cit*., p. 141, quoted in Göztepe, *Avrupa Birliği'nin Siyasal Bütünleşmesi ve Egemenlik Yetkisinin Paylaşılması Sorunu*, p. 197.

[296] Hakyemez, *op.cit*., pp. 159-160.

the authorised organs and referendums as prescribed by the principles laid down in the Constitution.'[297]

In terms of sovereignty, judicial power has to posses some characteristics; first of all according to the Article 138, 'Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming to the law.' In that sense, as stated in Article 125/3 they can solely control the conformity of the acts of the administration with law.[298] Particularly, such a violation by the Constitutional Court may have political effects, especially on legislative body.[299] However, the abstract principles mentioned in the Preamble may lead the Court to contradict the Article 148 in its examination of constitutional amendments and laws. Thus, some decisions on cases concerning the fundamental principles of the State made by the Court show that the Court sometimes considers the supremacy of the Constitution and law mentioned in the Preamble sovereignty of the constitution; therefore, it expands the scope of sovereignty and annuls the decrees or laws on account of any violation of the Article 6/3 – 'No person or agency shall exercise any state authority which does not emanate from the Constitution.'[300] The violation examples that these abstract terms caused

[297] Tanör and Yüzbaşıoğlu, *op.cit*., p. 101.
[298] **Article 125/3:** Judicial power is limited to the verification of the conformity of the actions and acts of the administration with law. No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.
[299] **Article 148/1:** The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. Constitutional amendments shall be examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having the force of law issued during a state of emergency, martial law or in time of war.
[300] E.S.:1996/58,K.S.:1996/43,K.T.:20.11.1996,R.G.:06.11.1997,No:23162, http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=search&id=24, (10 August 2009).

can also be seen in the decisions on the dissolution of political parties by the Constitutional Court.[301] Therefore, the Court must be meticulous in such examinations. Otherwise, this kind of violation may lead to the fusion of powers, which is a threat to the shared sovereignty power between the organs of the state, and consequently, to what is recently on Turkey's agenda, to 'the government of judiciary.'

As for the international treaties which gained importance with the rise of human rights in 1960s, constitutions have to give place provisions related to the situation between domestic and international laws. Likely, the Article 90 of the 1982 Constitution, since the intensified Turkey-EU relations in 2000s, regulated the ratification of the international treaties: Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on the authorisation as stated in the law shall require approval of the Turkish Grand National Assembly.[302]

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[301] The 16.7.1991 Decision of the Court on the dissolution of the Communist Party of Turkey (TKP) was solely based on the term *communist* in the title of the party. See Yokuş, "Türk Anayasa Mahkemesi'nin ve Avrupa İnsan Hakları Mahkemesi'nin Siyasi Partilere Yaklaşımı", p. 114.

[302] **Article 90: Ratification of International Treaties** (As amended on May 22, 2004)

The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.

Agreements regulating economic, commercial and technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the state, and provided they do not infringe upon the status of individuals or upon the property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation.

Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on the authorisation as stated in the law shall not require approval of the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and affecting economic, or commercial relations and the private rights of individuals shall not be put into effect unless promulgated.

Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph.

International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In

The 2004 amendment to the Article has also made the dissolution of political parties difficult as can be seen in the example of the decision dated 30.7.2008 of the Supreme Court on the case of the AKP, which was more different than its previous interpretations.[303]

In the application of sovereignty, Turkey, as opposed to other democratic countries, displays differences in terms of its source and exercise. These differences and its deficiencies in the application today will be summarized in light of Hakyemez's[304] and Yazıcı's[305] analysis:

1. That the nation as a whole is the holder of sovereignty is clearly stated in the constitution but despite the land reforms in Turkey, the de-facto situation of semi-feudal structure in the eastern and south-eastern provinces in Turkey constitute a serious problem in terms of sovereignty; the people in these areas survive by working in the fields possessed by feudal lords and for that reason, it is not possible for these people to express their political will freely.

2. The principles of unitary state system and indivisible unity of nation defined as irrevocable in the constitution imply that in a nation-state system both multinational and federative state systems cannot be spoken of since the Republic has been founded on the ashes of a multinational and disintegrated state system; the decisions made by the Constitutional Court have shown its strict attitude in its evaluation of cases based on these principles together with the fact that sovereignty

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the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

[303] E.S.: 2008/1 (Siyasî Parti Kapatma), K.S.: 2008/2, K.T.: 30.7.2008, R.G.: 24.10.2008, No: 27034 But the Court banned the Islamist-rooted Welfare Party in 1998 and the Virtue Party in 2001, for they were violating the secularist articles of the Constitution.

[304] Hakyemez, op.cit., pp. 186-187.

[305] Yazıcı, *op.cit*., pp. 117-205.

features in federal state system and rendering other ethnic groups some rights in Turkey are interpreted as disintegration and departure from unitary state system.[306] On the contrary, under the influence of harmonizing with the EU, 'the regulations made in 2002 and 2003 in Constitution and relevant Acts have eliminated obstacles to enjoyment of such rights: Constitutional restrictions against regional languages (practically used against Kurdish) were removed by the 2001 Constitutional Amendment and as a result of the amendments made on Articles 26 and 28, phrase of *"language prohibited by law"* was removed and consequently law no 4471 of 2002 paved the way for the use of such languages or dialects in sphere of education or media (printed media, but radio and television in essence).'[307]

3. With the rise of human rights and the rule of law, absolute sovereignty was replaced by the circumscribed sovereignty and in Turkish constitution how sovereignty is exercised through the three organs of the state in the name of the nation is clearly described. However, the Article 125/2 constitutes problems in terms of the exercise of this circumscribed sovereignty.[308] Moreover, the Article 148/1

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[306] The Constitutional Court has the authority to close down political parties, and indeen has banned numerous political parties, frequently by invoking the principle of the 'indivisible unity of the nation.' This has happened especially in their dealings with left-wing parties including the the Turkish Workers' Party (in July 1971, by referring to Article 57 and 81 of the 1961 Constitution), the Labor Party of Turkey (in May 1980, by reffering to Article 83), the Turkish United Communist Party (in July 1991 with a similar verdict), the Socialist Party (in July 1992 by referrin to both constitutional provisiona and the Law No 2820), the Freedom and Democracy Party (in November 1993), the Socialist Turkey Party (in November 1993, by referring to the violation of Article 78 of the Law on Political Parties), the Democracy Party (in June 1994), the Labor Party (in February 1997)… for more details see Baskın Oran, "Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues," *Human Rights in Turkey*. Ed. Zehra F. Kabasakal Arat. Philadelphia: University of Pennsylvania Press, April 2007, pp. 47-48, **pp. 35-52**.

[307] Mustafa Baysal, (Rapporteur Judge of the Constitutional Court), "National Minorities in the Turkish Law", *Turkey's Contribution Submitted on the Occasion of the 10th Anniversary of the Constitutional Court of Andorra*, http://www.tribunalconstitucional.ad/docs/10aniversari/K-TURKEY.pdf, (15 June 2009).

[308] **Article 125/2:** The acts of the President of the Republic on his or her own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review. In suits filed

states that 'no action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having the force of law issued during a state of emergency, martial law or in time of war.' Thus, such implementations prevent the legislative body from modifying or changing the decrees and may result in arbitrary acts of executive body. In that sense, another problematic issue is the role of the MGK in national security politics in Turkey since the 1961 constitutional process, which is, as Yazıcı posited, a clear evidence of politicization of the military and judiciary, namely *tutelary (guided) democracy*[309] dominating in Turkey since the founding of the Republic.[310] After 1982 Constitution, the power of the military autonomized and the statue of National Security Council changed. With 1982 Constitution, commanders of Martial Law are dependent to the General Chief, not to the prime minister and with 118. Article of 1982 Constitution, statues of National Security Council were considerably widened.[311] It may be asserted that the 1982 Constitution provided the army with a more effective role in civil administration. Though in article 117/2 'the Council of Ministers shall be responsible to the Turkish Grand National Assembly for national security and for the preparation of the Armed Forces for the defence of the country,' the function of MGK in Turkish politics as a guardian of security policy contradicts the

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against administrative acts, the statute of limitations shall be effective from the date of written notification.

[309] **Tutelary democracy:** This type of defective democracy is characterized by the existence of reserved domains of undemocratic forces functioning as extrademocratic power centers and veto players, like the military or some traditional oligarchic factions and groups. Apart from the classical case of Atatürk's Turkey, this type has been more frequent in Latin America (down to its somewhat reduced form in contemporary Chile) and in Southeast Asia, not that much in other parts of the world. See Hans-Jürgen Puhle, "Democratic Consolidation and Defective Democracies", Working Paper 47/2005 at the *Conference in UAM*, May 13, 2005.

[310] Neşe Düzel, "Pazartesi Konuşmaları: Doç. Dr. Serap Yazıcı: Bu, yargıçlar devleti kurulması süreci", *Taraf Paper*, May 26, 2008.

[311] Fendoğlu, *op.cit.*

representative democracy principle. Through the 2001 constitutional amendment to the Article 118[312], the civil members of the Council is increased and its decisions are turned into advice submitted to the government, so it might be said that the military power gradually autonomised after 27 May 1960, 12 March 1971 and 12 September 1980 started to be reduced.

4. Party discipline playing an important role in political parties in Turkey may constitute an obstacle in terms of the exercise of sovereignty when the parties fail to keep it balanced. Representative democracy requires all deputies to make decisions with their own free will, so that free will of the nation can be fully manifested in the parliamentary. But in Turkey, mostly in opposition and ruling parties, under the authority of party discipline, this is frequently violated. To be able to keep the effectiveness in ruling or to comply with the general decision made by the party members as a whole, deputies tend to vote in accordance with the group decision during the ballots concerning different issues even though they show some contradictions with their own viewpoints. Consequently, in such a situation, party leaders or dominant characters may have impact on determination of the general will of the TBMM, which is the representative of the nation.

5. Though the Constitution declares itself as liberal, 'the main philosophy of the 1982 Constitution is characterized with three concepts: authoritarianism,

[312] **Article 118:** (As amended on October 17, 2001)
The National Security Council shall be composed of the Prime Minister, the Chief of the General Staff, Deputy Prime Ministers, Ministers of Justice, National Defence, Internal Affairs, and Foreign Affairs, the Commanders of the Army, Navy and AirForces and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic.
Depending on the particulars of the agenda, Ministers and other persons concerned may be invited to meetings of the Council and their views heard.
The National Security Council shall submit to the Council of the Ministers its views on the advisory decisions that are taken and ensuring the necessary condition with regard to the formulation, establishment, and implementation of the national security policy of the state…

restriction and tutelage; it has reinforced the system of tutelage instead of representative institutions by preferring restriction to liberty and authoritarianism to democracy.'[313] In the Constitution, as the first and the fifth paragraphs of the Preamble state[314], the individual and society are subordinate to the State. It is the first and the only constitution in The West that considers the state as a "Holly State"; the individual and society depend upon the State.[315] It failed to balance the freedom and authority. The 1982 Constitution enables a great scope of reasons for limitation of fundamental rights and freedoms to the legislation, which is a system alien to the Western type of constitutional system. The multi-restriction system proposed in Article 13[316] open the way to the possibility of restricting all basic freedoms and rights in case of the nine abstract statements together with the private circumscription

[313] Yazıcı, *op.cit*., p. 117.

[314] **Preamble** (as amended on October 17, 2001); the following paragraphs were amended in 1995 and 2001, but they did not fully eliminate the authoritarian principal of the Constitution.

1. In line with the concept of nationalism and the reforms and principles introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivalled hero, this Constitution, which affirms the eternal existence of the Turkish nation and motherland and the indivisible unity of the Turkish state, embodies;

5. The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics; the acknowledgment that it is the birthright of every Turkish citizen to lead an honourable life and to develop his or her material and spiritual assets under the aegis of national culture, civilization and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution in conformity with the requirements of equality and social justice;

[315] Fendoğlu, *op.cit*.

[316] **Article 13.** (As amended on October 17, 2001)

Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.

Before the amendment, it has been debated whether democracy mentioned in Article 13 is based on the international standards or is based on the democratic system adopted by the Constitution. Yazıcı, *Demokratileşme Sürecinde Türkiye*, p. 128.

This amendment relatively democratized the authoritarian soul of the Constitution and liberalized the system of freedoms and rights shaped through the restrictive principles. *Ibid.,* p. 129.

fields and the Article 14[317], the general sanction and limitation provision of human rights which grants the unlimited competence to the judiciary institutions in terms of the prohibition of abuse of Fundamental Rights and Freedoms.[318] The actors responsible for all deficiencies in democracy are the actors who played the main primary role in the preparation of the constitution – the MGK and the consultative assembly whose members were directly or indirectly determined by the MGK that operated the 12 September military coup d'état the at the behest of the TSK. According to the military, the main reason lying behind the increased terrorism in that term was the very liberal environment created by the 1961 Constitution. Therefore, the 1982 Constitution is characterized by more authoritarian and restrictive features.

Briefly, the 1982 Constitution does not aim to preserve the individual, freedom and liberal/plural democracy but the authority.[319] The priory matter that Turkish political life face in the era of 1982 Constitution is, therefore, to strive for liquidation of rooted tutelary democracy in institutional level through legal and constitutional reforms, and for eliminating its impressions dominating the political elites' minds and attitudes.[320]

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[317] **Article 14.** (As amended on October 17, 2001)
None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.
No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.
The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.

[318] None of these restrictions comply with the The European Convention on Human Rights (ECHR).

[319] Suna Kili, "Temel Hak ve Özgürlükler Yönünden 1961 ve 1982 Anayasaları", *Anayasa Yargısı*, 1984, Vol. 1, No. 1, p. 28.

[320] Yazıcı. *op.cit.*, p. 153.

Conclusion:

Within the broad parameters of the Kemalist modernization project, Turkey was able to make a transition to a democratic political order in the immediate post-war period; the key institutions of representative democracy have been established and despite periodic breakdowns and military interludes, parliamentary democracy has remained the norm throughout the post-war period, which constitutes a considerable achievements judged by the standards of countries in other parts of the world notably in Latin America, East Asia and eastern Europe.[321] On the other hand, the established democratic order could not meet the needs of the society in terms of recognition and participation. In this ideological state based on the extreme nationalist and secularist values of Kemalism some segments of Turkish people were deprived of active political participation. A rigid interpretation of the principles of secularism and national identity limited its capacity to incorporate the demands of groups that wished an extension of the boundaries of political space on the grounds of religious and ethnic identity.[322] However, 'democracy requires a functional and performative state protecting the citizens' rights but not the ideological premise.'[323] Therefore, over time, this strictly ideological state found itself under challenge because of the arbitrariness of artificial Kemalists claiming to act in the name of raison d'etat, and both domestic and international demands for the political transformation favoring an extension of religious and ethnic rights have led the existing government to undergo a political renaissance.

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[321] Ziya Öniş, "Turkey's Encounters With the New Europe: Multiple Transformations, Inherent Dilemmas and the Challenges Ahead", *Journal of Balkan and Near Eastern Studies*, Vol. 8, No. 3, December 2006, p. 281.
[322] *Ibid*., p. 282.
[323] Ihsan Dağı, A Consitution Without Kemalism, *Todays Zaman*, 13 August 2007, http://www.todayszaman.com/tz-web/yazarDetay.do?haberno=119200, (10 August 2009).

CHAPTER III

WHAT MAKES THE EUROPEAN UNION A UNION?

In its September 1927 decision on Boz-Kourt-Lotus case, the Permanent Court of International Justice defined international law as a branch of law which regulates the relations between sovereign states.[324] Having clearly defined the nation-states as the core subjects of international law, the approach, however, is waning rapidly since, with the rise of human rights, individuals have priority over states, and international institutions transforming from economic cooperation to political union extend their sovereignty scope by founding international judicial organs.[325]

Crucial concepts in international relations theory are subject to redefinition and reinterpretation as situations change.[326] Nation-state and sovereignty are such concepts that 'are altered as they become objects of political struggle.'[327] The idea of circumscribing the sovereignty rights of the nation states first appeared with the efforts to protect the democratic order based on human rights after the World War II. For instance, the Charter of United Nations (UN) has limited member states' right to use of force similar to the binding decisions of the European Court of Human Rights established in 1950 to monitor respect of human rights by states.

The age of globalization, besides nation-states, creates new actors, so that they are acting on behalf of the states and even becoming more effective in

[324]Edip F.Çelik, "Milletlerarası Hukuk", Vol. 1, No. 456, Istanbul Universitesi Hukuk Fakültesi Yayınları, 1979, s. 77-78, quoted in Mümtaz Soysal, "Değişen Egemenlik ve Meşruluk", *Anayasa Yargısı*, Vol. 20, No. 50, Ankara, 2003, s. 171-181.
[325] Ibid., s. 174.
[326] Robert O. Keohane, "Ironies of Sovereignty: The EU and The US", *JCMS*, Vol. 40, No. 4, 2002, s. 743-765.
[327] *Ibid.*

international arena. These internationally operating actors are international, supranational organizations and transnational co-operations. Among these institutions, supranational organizations which are the main focus of this study have more influence on state sovereignty than other international organizations like the UN. Known as the only supranational organization, the European Union has a distinctive character with its post-modern sovereignty perception and legal system.

Before analyzing the evolution of post-modern sovereignty in the EU, a close look should be taken at the concept of supranationalism.

3.1 The Concept of Supranationalism:

Semantically the Latin prefix *supra* used in compound words should be translated not only as 'beyond'1, but also, or, most accurately perhaps, as 'above' as opposite in meaning to the prefix *sub* denoting 'under' or 'below'; therefore, the notion of supranationalism (or supranationality) means that something happens above nations, and sometimes above the states, or that its importance is recognized by all people (such as ideas, values, etc.).[328] The modifier *supranational* corresponds to *uluslarüstü*, *ulusüstü* or *ulusalüstü* in Turkish. In political science, supranationalism refers to a decision making mechanism, where states try to compromise by both abstaining from vetoing decisions and giving up their national benefits, whereas supranationalism, legally, implies an absolute hierarchy where community laws is superior to national laws.[329]

Supranational associations were first expressed by the one of the founding fathers of the EU, Robert Schuman in 1949. He considered the supranational

[328] Janusz Ruszkowski, "Supranationalism as a Challenge for the EU in the Globalized World", *Global Jean Monnet Conference: ECSA World Conference, Europe's Challenges in a Globalized World*, Brussels, 23-24 November, 2006, p. 2.
[329] Yazıcı, *op.cit*., p. 258.

cooperation 'a new step in the human kind development, or even a new era in the history of the world, a century of supranationalism which followed the century of nationalisms.[330] According to him, supranationalism is a guarantee of true democracy and is threatened definitely by bureaucracy. In his speech to the French National Assembly in 1950, he described supranationality as the 'supranational authority established beyond the national sovereignties that is joined by all the participating countries and that is the expression of partnership and mutual help among these countries. Such authority takes advantage of their partially joined national sovereignties.[331] Schuman's definition compromised a complimentary process: national sovereignty first transferred to the institutions in the supranational level in some areas turns later into a collective supranational sovereignty.

Jean Monnet, the President of the High Authority of the European Coal and Steel Community (ECSC) emphasized that 'European nations must make room for a higher form of organisation and learn how to cohabitate under the aegis of common law and common institutions. Sovereign nations from the past are no longer able to solve the problems of today. They are not able to secure their development or the control over their own future. The community is merely a step on the way to the organised world of the future.'[332]

In international relations, the concept is defined as a method of decision-making in multi-national political communities, wherein power is transferred or delegated to an authority by governments of member states, and this authority,

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[330] R. Schuman, *Nos Taches europeennes*, D. H. Price, *Schuman or Monnet? The Real Architect of Europe. Robert Schuman Speeches and Texts on the Origin, Purpose and Future of Europe*, Brussels 2004, p. 30, 31, 53, quoted in Ruszkowski, *op.cit*., p. 4.
[331] D. H. Price, op.cit., p. 19, quoted in Ruszkowski, *op.cit*., p. 4.
[332] J. Monnet, *Memoirs,* New York, 1978, pp. 433-34, quoted in *Ibid*., p. 5.

subject to supranational democratic institutions and with a legal procedure can therefore institute a supranational rule of law above the constituent national legal order.[333] Namely, such organizations are characterized with supranational features transcending each member states' will and law.[334] States that are involved in those organizations work together in a manner that they are not permitted to possess complete control over the implementations, so that even they can be subject to apply decisions against their will. In that sense, the concept goes beyond the classic cooperation theory of states seen in the IGOs and takes the shape of integrated community which requires states to lose sovereignty in some areas.

Shared values stand at the core of the supranational structures. In the supranational structure, with its free flow of rules and regulations that do not allow to restrict other national cultures' influence as well as with its strict limitations imposed on nationality or citizenship based on discrimination, national differences cannot be simply defined as resulting from artificial boundaries set by governments.[335] So, the values that supranationalism appreciates most include: non-discrimination of nations, free transfer of regulations, permeability of borders, control over the otherwise uncontrollable outbreak of national interests, etc.[336]

In terms of their radical and exclusive features supranational communities are more challenging than international organizations because they not only reconfigure the traditional notion of interstate boundaries but also impose restraints on its

[333] http://en.wikipedia.org/wiki/Supranationalism, (08 October 2009).
[334] Faruk Sönmezoğlu, "Uluslar arası Politikada Analiz Düzeyi Sorunu", *İUSBFD*, Vol.2, No. 2, Istanbul, 1984, p. 276, quoted in Hakyemez, *Mutlak Monarşilerden Günümüze Egemenlik Kavramı*, p. 275.
[335] Por. J.H.H. Weiler, "The State „über alles". Demos, Telos and the German Maastricht Decision", *EUI Working Papers*, RSC, No 95/19, 1995, p.42, quoted in Ruszkowski, "Supranationalism as a Challenge for the EU in the Globalized World", p. 3.
[336] *Ibid.*

member states at the same time while making more demands on them than international organizations. In this context, such organizations display distinguishing characteristics: First of all, these institutions like other international organizations are founded and based on treaties, but these treaties are constitutional agreements which demand states to delegate some of their sovereignty right to the supranational organization. Secondly, some of the institutions of supranational organizations can make decisions regardless of national norms and thus they are independent of member states. Thirdly, decisions do not require unanimity but majority voting and are binding for member states and the citizens, and directly applicable. Moreover, besides their supremacy over national laws, supranational laws are directly applicable not only to national law of states but also to citizens; therefore besides states, citizens are also direct subjects of the supranational law. Though the decisions of the Security Council of the UN are also binding but solely to states, and the Council does not exercise sovereignty in the name of member states though it may erode their sovereignty.[337]

Supranational cooperation is a higher stage of international cooperation unquestionably based on inter-governmental contacts within a system existing beyond hierarchic supranationalism.[338] States voluntarily delegate some of their sovereignty to collective organs in return for many gains. Supranational organizations are seen as the most advanced and the strongest institutions in the international law; however, they cannot directly give the sanction specified in founding treaties to the individuals violating the fundamental aims of the unions, but

[337] Hakyemez, *op.cit*., pp. 227-228.
[338] Ruszkowski, *op.cit*., p. 7.

by means of the concerned member state.[339] Kimmo Kiljunen explains the structure of a supranational organization in his book, *The European Constitution in the Making*:[340]

> By definition, supranational union resides between a confederation and a federation and has supranational sovereign competences, albeit such competences are conferred upon it by the sovereign member states. The Union can only act within the bounds of the competences conferred upon it, and any competences not conferred upon it remain with the member states. Supranational decision making does not require unanimity; qualified majority is used, yet decisions so taken are binding upon the member states and directly affect their legal system.

In the following table the divisive features of three structures are clearly illustrated:[341]

Table 1:

	Confederation	**Supranational Union**	**Federation**
Definition	Union between states	Supranational union	State in the form of a federation
Sovereignty	Member states	Shared	Federal state
Legal basis	Treaty	Treaty on Constitution	Constitution
Competence	Member states	Conferred by member states	Federal state
Continuity	Secession possible in practice	Secession possible in principle	Permanent
Decision basis	Unanimity	Qualified majority	Majority
Supreme legislation	Member states	Dual-tiered	Federal
Identification	Member state	Multi-level	Federation as nation
Citizenship	National	Both national and supranational	Federal

[339] Hüseyin Pazarcı, *Uluslararası Hukuk Dersleri*, I. Book, Sixth Edition, Ankara: Turhan Press, 1999, p. 124.
[340] Kimmo Kiljunen, *The European Constitution in the Making*, Brussels: Centre for European Policy Studies, 2004, p. 22.
[341] *Ibid.*

Conclusively, when a state signs an international treaty, it limits its right to freely act and thus lose some part of its sovereignty rights or independence. This voluntary action of states displays that they are already ready to pool sovereignty in certain areas, since they know that in return they gain practical benefits. Owing to the opportunity to handle common global matters through a collective decision making process, states are now more capable of effective control over them. Thus, the supranationalisation process begins with the delegation of some powers by the member states to an international institution who, acting independently, obtains the character of a supranational organisation and, after a while, assumes an exclusive authority.[342] The European Union is seen as the prime example of such a supranational structure with its distinctive institutions such as the ECJ and the Economic and Monetary Union (EMU).

3.2 Towards a Common Europe

> I accept the principle of voluntary concession of sovereign rights neither for its own values nor as a goal as such, but rather as the necessity. It is a basis that means overcoming, with our consent, national egoisms, antagonisms and xenophobies which finally kill us.
>
> R. Schuman[343]

The whole European continent can serve as an example of a territory where various contradictory streams, opinions and interests regularly encountered in the past; nations were divided not only by language and religion, but by rivalry, competition and political, economic and security interests, too; therefore, multilateral consensus was, in fact, until the middle of the 20th century, European integration

[342] Ruszkowski, *op.cit*., p. 12.
[343] R. Schuman, *Statement on the Supranational High Authority*, D. H. Price, *op. cit.,* p. 109, quoted in *Ibid*., p. 9.

remained on a mere theoretical level.[344] So, it is not wrong to say that 'though the idea of European economic and political integration goes back to the Charles the Great (768-814), this unique project of economic and political community has been institutionalized since the end of the WWII.[345] In that sense, the main objective of forming a European Community was to keep the peace in the European Continent rather than to create an economic integration.[346] Then it is possible to examine the roots of the common European approach in two stages, the theoretical stage - the formulation of ideas and thoughts about building a new Europe and the practical stage – materialization and institutionalization of the formulation process stimulated by the common interests of European states after the conflict.

The post-war circumstances necessitated the integration of European states, at least in the Western Europe. After the conflict, an interdependent network of relations emerged though it did not comply with the conventional character of their sovereignty. Thus, states realized that classic norms of national sovereignty could not enable their survival but limiting some of their sovereignty rights by joining supranational institutions. Further, the political and ideological clashes between the bipolar powers – the USA and the Union of Soviet Socialist Republics (USSR) – during the Cold War period considerably stimulated the rebuilding of Europe. Consequently, 'one of few positive experiences of the war itself was the provoking of the awareness of the fragility of the pre-war political structures of nation-states. Practically all European states, often with a questionable democratic base, joined the conflict very quickly. In other words, the necessity of the change of pre-war political

[344] Jan Suchaček, European integration After World War II:The Way to the Treaties of Rome, Jan. 11, 2002, http://www.kakanien.ac.at/beitr/fallstudie/JSuchacek1.pdf, (12 November 2009).
[345] Göztepe, *op.cit*., p. 77.
[346] Hakyemez, *op.cit*., p. 229.

structures in many regards appeared as a very pressing issue. One might call this phase of the European unification as the seeking of balance in the polygon of interests reflecting not only war events and as the searching phase of a new Europe, too.'[347]

The idea of a common Europe was first floated by Winston Churchill in his famous speech in Zurich in 1946, who considered that the future and peace of Europe could only be ensured through a United States of Europe formed around the core of France and Germany, supported overseas by the United States of America and Britain.[348] The key to peace in Europe was the resolution of the French-German dispute over the steel industry and rich coal reserves of Saar region. In the aftermath of the presentation of Shuman's proposal in May 1950[349], with the underlying political objective to strengthen Franco-German solidarity, banish the spectre of war and open the way to European integration,[350] the Treaty of Paris (1952), or the ECSC Treaty became the first step towards the realization of the supranational Europe dream.[351] The French Foreign Minister, Robert Schuman, in his famous declaration,

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[347] Suchaček, *op.cit*., p. 3.
[348] Kiljunen, *op.cit.,* p. 11.
[349] For more details, see the webpage, http://www.ena.lu/.
[350] "Treaty establishing the European Coal and Steel Community, ECSC Treaty", http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_ecsc_en.htm, (15 October 2009). In addition to France and the Federal Republic of Germany, it was joined by Netherlands, Belgium, Luxemburg and Italy. Kiljunen, *op.cit*., p. 13.
[351] **Preamble,** The Treaty of Paris, The Official Journal of the European Union
HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS,
DETERMINED to lay the foundations of an ever closer union among the peoples of Europe,
RESOLVED to ensure the economic and social progress of their States by common action to eliminate the barriers which divide Europe,
AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,
RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

proposed that Franco-German coal and steel production be placed under a common High Authority within the framework of an organisation in which other European countries could participate.[352] Henceforth, a supranational authority was at the centre of decisions on production, investments or social conditions. A true supranational organization was created with a common High Authority that was subsequently converted into the European Commission.[353] The members of the High authority were designated by the member states, but functioning of the Community was largely based on the independence of the supranational authority - decision making body of the Community. From the legal perspective the Treaty enabled the development of conditions for the rise and application of a unique legal system of European Communities and became the keystone of the European Communities and, in a broad sense, the European integration, too.[354]

ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,
DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,
INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,
RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,
DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating, and to this end HAVE DESIGNATED as their Plenipotentiaries.,
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF,(15 October 2009).

[352] The ECSC Treaty, http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_ecsc_en.htm, (15 October 2009). So, for Robert Schuman and Jean Monnet the European authority placed above the nation offered the solution to the problems resulting from the egoisms of national states. Ruszkowski, *op.cit*., p. 5.

[353] The other institutions of the Coal and Steel Communtiy were the Council, which represented the governments of the member states, the Parliamentary Assembly and the Court. All these institutions that have been inherited by the EU. Kiljunen, *op.cit*., p. 13. The Parliamentary assembly consisting of representatives appointed by the parliaments of member states had only a consultative body. It was not until 1979,when the European Parliament was first elected by the popular vote that its role began to increase in importance. *Ibid.*, p. 14.

[354] Suchaček, *op.cit*., pp. 4-5.

As a second step towards the Union, 'the Treaties establishing the European Economic Community (the EEC Treaty)[355] and the European Atomic Energy Community (the EURATOM Treaty) were finally signed in Rome.'[356] The Treaty of Rome, which established the community in 1957, was a standard international agreement designed to regulate the relationship among sovereign states; however, at the same time, the founding states agreed to lay the foundations of an ever closer union among the peoples of Europe.[357] For the first time the six Member States of this organisation relinquished part of their sovereignty, albeit in a limited domain, in favour of the Community.[358] The EEC Treaty established the common market and the customs union and EURATOM aimed to exercise control over nuclear power and its peaceful use.[359]

With the Treaty of Luxemburg in 1967, the three communities (EEC, ECSC and EURATOM) were merged under the European Community (EC). The ideas of common market, customs union, free trade area and the supranational decision making authority were bold political developments beyond the expected at that time.

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[355]The Treaty establishing the European Economic Community (the EEC Treaty) is often referred to as the *Treaty of Rome* and was renamed Treaty establishing the European Community (the EC Treaty) by the Treaty of Maastricht in 1993, and later Treaty on the functioning of the European Union (TFEU) by the Treaty of Lisbon in 2009. Since 1993, it has been joined by the Treaty on European Union (TEU; also known as the Treaty of Maastricht) in constituting legal treaty basis of the European Union (EU). "Treaties of Rome", http://en.wikipedia.org/wiki/Treaty_of_Rome, (15 October 2009).

[356] *Ibid*., p. 6.

[357] Sheehan, *op.cit*., p. 13.

[358]"Treaty establishing the European Economic Community, EEC Treaty-original text", http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm, (17 October 2009).
The EEC Treaty, signed in Rome in 1957, brings together France, Germany, Italy and the Benelux countries in a community whose aim is to achieve integration via trade with a view to economic expansion.

[359] In the mind of Jean Monnet, Euratom was more important than the EEC in expediting European integration. However, nuclear energy did not in the end prove to be the motor that pulled Europe together; rather, the Economic Community did. The Treaty of Rome incorporated the lofty aim to lay the foundations of an ever closer union among the peoples of Europe. Not only was the ultimate goal ambitious, the institutions founded were also designed for something larger than just coal and steel production or a customs union. Kiljunen, *op.cit*., p. 13.

Since European states were still preserving their completely independent structures, the supranational power granted to the Community was astounding in the context of that era. The *Treaties of Rome* finished the first stage of the European integration regarding the basic formation of a primary sphere of European law.[360]

In the history of the supranational European Communities, the concepts like sovereignty, federal state or political union related to nation- states were explicitly spelled out at the beginning whereas they started to be used jealously again within the framework of nation-state with the emergence of the political union after the Maastricht Treaty (The Treaty of European Union) in 1992.[361] Upon its entry into force in1993, it created the European Union followed by the creation of the single European currency, the euro. Thus, besides economic unity, Common Foreign and Security Policy and Police and Judicial Co-operation in Criminal Matters were introduced as the pillars of the Union. Later treaties – the Treaties of Amsterdam, Nice and Lisbon - have amended the Maastricht Treaty. Four years after the Treaty of Maastricht, several pending issues like eastward expansion on the EU agenda stimulated the negotiation of the Treaty of Amsterdam. The Treaty of Amsterdam signed in 1997 aimed to strengthen the developments on the way to the political union and expansion beginning with the Maastricht Treaty by enhancing the cooperation between member states (Article 11 – Flexibility Provision)[362] and

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[360] Suchaček, *op.cit*., p. 6.
[361] Göztepe, *op.cit*., p. 78.
[362] The EC Treaty;
Article 11: Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Treaty shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so., *Official Journal of the European Communities*,
http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf, (27 October 2009).

enforcing them to comply with the founding principles of the Union.[363] Though a reinforced and close cooperation was achieved by the Treaty, the institutional issues created by the forthcoming enlargement remained unresolved. This failure prompted the signing of the Treaty of Nice in 2001, whose main aim is to adapt institutions to the requirements of the Union's expansion to 25 Member States.

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[363] Treaty of EU,
Article 6/1: The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
Article 7:
1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.
2. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.
3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.
The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.
4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed…
The EC Treaty;
Article 228:
1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.
2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.
If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.
If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

As an amendment to the Treaty on European Union (TEU, *Maastricht*; 1992) and the Treaty establishing the European Community (TEC, *Rome*; 1957), which was renamed to Treaty on the Functioning of the European Union (TFEU), the Treaty of Lisbon entered into force in December 2009.

The Treaty of Lisbon:

'The Treaty of Lisbon is an attempt to overcome the impasse caused by the failure of the Treaty Establishing a Constitution for Europe, and aims to create an enhanced institutional architecture and to offer better opportunities for strengthened collective action – leaving the door open for the Member States to go further if they so wish.'[364] The Lisbon Treaty amends, but does not replace, preceding Treaties (e.g. Maastricht, Amsterdam and Nice) which amended the "founding Treaties".[365] Though it is a light version of the European Constitution, it includes many institutional changes in order to realize the aims of the Union stated in the Preamble: to complete the process started by the Treaty of Amsterdam [1997] and by the Treaty of Nice [2001] with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action.[366]

Opponents of the Treaty assert that the new provisions do not challenge the essence of the foreign and security policy decision making and centralise the EU

[364] Sophie Dagand, "The impact of the Lisbon Treaty on CFSP and ESDP", *ISIS Europe – European Security Review*, No. 37, March 2008, p. 1, 7.
[365] Alastair Sutton, Insight: The Lisbon Treaty, December 2009, White & Case, www.whitecase.com, (28 January 2010).
[366] As the preamble states, the purpose of the treaty is "to complete the process started by the Treaty of Amsterdam (socioeconomic standards, broader immigration and civil judicial oversight, protection and enforcement of human rights, and an increase in the power of the European Parliament) and by the Treaty of Nice (largely preparation for the admission of new members from eastern Europe, adjustments to the power of the Commission, and adjustments to voting rules to allow easier passage of laws), with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action." Mark P. Denee, "The Treaty of Lisbon – Europe's Next Step?", *The Real Truth*, March 10, 2009, http://www.realtruth.org/articles/090303-004-europe.html, (29 January 2010).

whereas undermining national sovereignty and democracy by reducing the power of the national representatives. Proponents believe this is a precise and limited response necessary to make EU foreign and security policy more effective in an EU of 27 Member States – while still preserving national security interests. Whatever the truth is, the Lisbon Treaty contains a number of important institutional changes.[367] Prominent changes can be summarized as: replacement of more qualified majority voting in the decision making body, Council of Ministers instead of unanimous voting, increased co-decision role of the European Parliament in the legislative process together with the Council of Ministers, the abandonment of three pillar system and extended Presidency term and a creation of High Representative of the Union for Foreign Affairs and Security Policy functioning as a single voice of the EU in world polity thereby ending the dual structure in decision making (the EC and the EU) and giving the Union a single legal personality finally the Union's human rights charter, the Charter of Fundamental Rights[368] has become legally binding.[369]

The Lisbon Treaty clearly states the European Union's aims and values of peace, democracy, respect for human rights, justice, equality, rule of law and

[367] Dagand, *op.cit.*, p. 7.

[368]It is a document comprising human rights provisions. Certain political, social, and economic rights for EU citizens are enshrined in the EU law by the Charter of Fundamental Rights of the European Union, which was officially promulgated by the European Parliament, the Council of the European Union, and the European Commission on December 7, 2000, but it was not until the ratification of the Treaty of Lisbon on December 1 2009 that its legal status becomes certain and it has full legal effect.

[369]The Charter of Fundamental Rights, **Article 51:** The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers. According to Article 51 of the Charter does not extend the scope of Union's competences far ahead of the ones stated in the treaties and its acts and the decisions must be consistent with the Charter; otherwise the EU legislation will be abolished by the Court of the EU. It is only addressed to member states when they are implementing the Union Law.

sustainability and makes institutional changes in accordance with these aims. In the booklet prepared by the Commission the purpose of the Treaty is defined so:

> The existing rules, however, were designed for a much smaller EU, and an EU that did not have to face global challenges such as climate change, a global recession, or international cross-border crime. The EU has the potential, and the commitment, to tackle these problems, but can only do so by improving the way it works. This is the purpose of the Lisbon Treaty. It makes the EU more democratic, efficient and transparent. It gives citizens and parliaments a bigger input into what goes on at a European level, and gives Europe a clearer, stronger voice in the world, all the while protecting national interests.[370]

To be able to better understand the functioning of the Union, it should be taken into consideration what has been done in the EU to increase transparency and democracy, and strengthen the role of the EU by creating a legal base in the international arena and improving the functionality and effectiveness of decision-making process:

- *To consolidate democracy and provide for more openness*

The Treaty provided the EU citizens with a stronger voice in decision-making, thereby consolidating participatory democracy. One of the steps is the creation of a new 'Citizens Initiative' stated in Article 8/B, whereby citizens, with one million signatures – out of 500 million EU citizens - can have the opportunity to petition the European Commission to submit new policy proposals.[371] This gives

[370] "Your Guide to the Lisbon Treaty", the Booklet prepared by the European Commission, Luxembourg: Publications Office of the European Union, 2009, ec.europa.eu/publications.

[371] The Treaty of Lisbon - **Article 8 B:**

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit

citizens a direct say in the EU's lawmaking for the first time, and national parliaments in each Member State a greater role in examining EU laws before they are passed to ensure that the EU does not overstep its mark on matters that should be dealt with at a national or local level.[372] Henceforth, the Council of Ministers have to meet in public during its consideration and voting on draft laws to share information about the EU decision taking in a more open manner, so that national parliaments and citizens are able to see which decisions have been made by whom in the Council of Ministers.

According to the Treaty, the functioning institutions of the Union[373] and their new competences are described in Article 9[374]; especially the power of the European

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any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.
The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 21 of the Treaty on the Functioning of the European Union.

[372] "Your Guide to the Lisbon Treaty", *op.cit.*, p.1.

[373] The Treaty of Lisbon - **Article 9:**
1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions. The Union's institutions shall be: the European Parliament, the European Council, the Council, the European Commission (hereinafter referred to as "the Commission"), the Court of Justice of the European Union, the European Central Bank, the Court of Auditors.
2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.

[374] **The European Parliament** The European Parliament is the directly elected EU institution that represents the citizens of the Member States. The Lisbon Treaty increases the number of areas where the European Parliament will share the job of lawmaking with the Council of Ministers and strengthens its budgetary powers. This sharing of power between the Parliament and the Council of Ministers is known as co-decision. Co-decision will become the 'ordinary legislative procedure'. It will extend to new policy areas such as freedom, security and justice. This will reinforce the legislative powers of the European Parliament. The Lisbon Treaty will also give the European Parliament a bigger role in approving the EU's budget.
The European Council The European Council is made up of the most senior elected political representatives of the Member States — prime ministers and presidents with executive powers. It gives the EU its political direction and sets its priorities. Under the Lisbon Treaty, the European Council becomes a full EU institution and its role is clearly defined. A new position of President of the European Council is created. The President of the European Council will be elected by the members of the European Council and can serve for a maximum of five years. He or she will chair Council meetings, drive forward its work on a continuous basis and represent the EU internationally at

Parliament whose members are directly elected by the citizens is increased since it is granted the 'co-decision'[375] role in making decisions on several areas with Council of Ministers.[376] That means that the members of the European Parliaments (MEPs) are

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the highest level. This marks a change from the present system where Member States, holding the six-month EU Presidency, also chair the European Council. The new President of the European Council will make the EU's actions more visible and consistent.

The Council The Council of the European Union is also referred to as the Council of Ministers. It is made up of 27 government ministers representing each of the Member States. It is a key decision-making body that coordinates the EU's economic policies and plays a central role in foreign and security policy.

It shares lawmaking and budgetary powers with the European Parliament. Majority voting, rather than unanimous decisions, will become more common. A system known as 'double majority' will be introduced from 2014: Council decisions will need the support of 55 % of the Member States, representing at least 65 % of the European population. This system gives double legitimacy to decisions. A new development under the Lisbon Treaty

is that the Council of Foreign Ministers will be chaired by the High Representative of the Union for Foreign and Security Policy/Vice-President of the Commission. In other areas such as agriculture, finance and energy, the Council will continue to be chaired by the minister of the country holding the rotating six-month EU Presidency.

This will make the EU Presidency system more coherent and effective.

High Representative of the Union for Foreign and Security Policy/Vice-President of the Commission A new position heading up the EU's common foreign and security policy and common defence policy will be created under the Lisbon Treaty. The appointment of a High Representative of the Union for Foreign and Security Policy who is at the same time Vice-President in the Commission is a major new step. It combines two existing posts: the High Representative for Common Foreign and Security Policy and the External Relations Commissioner. S/he will be appointed by the European Council and will chair the Council of Foreign Ministers while at the same time being a Vice-President of the European Commission. S/he will make proposals, carry out foreign policy on behalf of the Council, and represent the Union's positions internationally.

This is designed to help the EU to be better able to defend its interests and values on the international stage, and express itself with one voice.

The European Commission The European Commission is intended to represent, independently, the interests of the EU as a whole. The Commission is accountable to the European Parliament. It is the only EU institution with the general power to initiate proposals for legislation. The Commission also enforces the Union's policies, ensures that the budget is implemented, manages EU programmes, represents the EU in international negotiations and makes sure that the treaties are applied properly. At the European Council meeting in December 2008, the Heads of State or Government agreed that the Commission would continue to consist of one national from each Member State. "Your Guide to the Lisbon Treaty", *op.cit.*, pp. 12-13.

[375] **Co-decision procedure ('ordinary legislative procedure'):** Co-decision is the term for the European Parliament's power to make laws jointly on an equal footing with the Council of Ministers. The Lisbon Treaty brings co-decision into general use. Through the Lisbon Treaty the procedure by which the European Parliament co-decides with the Council will become the 'ordinary legislative procedure'.

This means that the decision-making of the European Union will be based on the double legitimacy of the people (as represented by their MEPs in the European Parliament) and the Member States (as represented by the Ministers in the Council)., *Ibid*., p. 16.

[376]This means that henceforth, the same degree of lawmaking power as the Council will be granted to the Parliament in some areas, where it used to be the consultative body or to have no say at all, including immigration, police cooperation (Europol) penal judicial cooperation (Eurojust, crime prevention) and, to a degree, trade policy and agriculture.

granted more power in relation to lawmaking and the EU budget and international relations.[377] Thus, the greater role for the European Parliament and greater involvement of national parliaments will consolidate representative democracy in the EU. Furthermore, national parliaments are given a greater role within the EU – right to information and power to enforce 'subsidiarity'[378] in Article 3.[379]

To be able to have a faster and a more efficient decision making process, the Treaty introduces qualified majority voting (QM),[380] instead of unanimous approval. The transition from unanimity to qualified-majority decision on the Council counts as the central means to secure the Union's functional capacity with the increasing number of members. Delays and blockages by a few Member States, or even a single one, ought to be prevented, and majority decision indeed compels the individual Member States to greater elasticity. No one wants to belong to the outvoted minority,

[377] The Treaty of Lisbon requires the consent of the Parliament for all international treaties in fields governed by the ordinary legislative procedure.

[378] **Subsidiarity, proportionality:** The EU's decisions must be taken as closely to the citizens as possible. Apart from those areas which fall under its exclusive competence, it does not take action unless this would be more effective than action taken at national, regional or local level. This principle is known as subsidiarity and it is reaffirmed in the Lisbon Treaty. This principle is complemented by the proportionality principle whereby the EU must limit its action to that which is necessary to achieve the objectives set out in the Lisbon Treaty., [378]"Your Guide to the Lisbon Treaty", *op.cit.,* p. 16.

[379] **Article 3 B:** The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

[380] **Qualified majority voting, double majority:** Qualified majority voting is the form of decision-making used for many Council of Ministers' decisions. Under the Lisbon Treaty, it is extended to many new areas and the way it works is redefined. From 2014, Council decisions will need the support of 55 % of the Member States, representing at least 65 % of the European population. This is known as 'the double majority'. At least four countries will be needed to form a blocking minority. This system places countries with a smaller population on a fairer footing with the larger Member States. This system gives double legitimacy to decisions. Strict rules will apply to any proposals to move new policy areas to majority voting. Every Member State must agree to any such change and the national parliaments will have a right of veto. In certain areas, decisions will continue to require unanimous approval. These include taxation and defence. "Your Guide to the Lisbon Treaty", *op.cit.,* pp.5, 15.

thus respective preferences.[381] More importantly, majority voting will become the rule in some 50 policy areas currently decided by unanimity: most dramatically migration, criminal justice and judicial and police co-operation, where the European Court of Justice (will also gain broad oversight for the first time.[382]

The Treaty of Lisbon will also eliminate the pillar system—the co-existence of three separate and equal bodies that make up the EU (the European Community, the Common Foreign and Security Policy, and the Police and Judicial Co-operation in Criminal Matters); all functions will merge into the European Union as a single entity, thus enabling it to have a "legal personality"[383] - including the ability to sign international treaties.[384] Moreover, to enhance democratic legitimacy, the Treaty streamlines the institutions by creating two significant offices: President of the European Council and High Representative for Foreign Affairs/ Vice- President of the Commission that will be the single voice of EU policies on the international scene, and defend its interests and values abroad, namely s/he will serve as the Europe's Foreign Minister, speaking in the name of the Union. To drive forward its work on a continuous and consistent basis, the European Council will elect a President of the European Council for a maximum of five years (S/he will sit for a

[381] M. Rainer Lepsius, "The European Union as a Sovereignty Association of a Special Nature", *Harvard Jean Monnet Symposium*, Harvard Law School, Cambridge, 2000, p. 2, http://centers.law.nyu.edu/jeanmonnet/papers/00/00f1201EN.html, (09 October 2009).
[382] "The EU Treaty-What Lisbon Contains", *The Economist*, Oct. 25, 2007, http://www.economist.com, (7 November 2009).
[383] **Legal base:** The Lisbon Treaty amends the Treaty on European Union and the Treaty establishing the European Community. It is the latest in a series of treaties updating and consolidating the EU's legal base. The EU will be given a single legal personality under the Lisbon Treaty. Currently, the European Community and the European Union have different statutes and do not operate the same decision-making rules. The Lisbon Treaty will end this dual system and the European Union will have its own legal personality. This change will improve the EU's ability to act, especially in external affairs. The Lisbon Treaty will allow the EU to act more effectively, coherently and credibly in its relations with the rest of the world. "Your Guide to the Lisbon Treaty", *op.cit.,* p. 15.
[384] Denee, *op.cit.*

renewable, two-and-a-half-year term). This will make the EU's actions more visible and consistent.[385]

The treaty also allows member states to cooperate in new policy areas of common foreign and security policy; justice and crime - international cross-border crime, illegal immigration, trafficking of people, arms and drugs, [386] and popular areas like climate change and energy.

Finally, two other developments brought with the Treaty of Lisbon are more important in context of my subject. First, the Treaty makes the Charter of Fundamental Rights legally binding by recognizing the rights, freedoms and the principles in the Charter that the member states signed the charter in 2000. This means that when the EU proposes and implements laws it must respect the rights set down in the charter and member states must do so too when implementing EU legislation.[387] Through the Treaty the Union will have the accession to the European Convention on Human Rights, which is the founding element of human rights protection in Europe together with the European Court of Human Rights which oversees it.

Another decisive step towards democratization of Europe is distribution of competences, which strengthens responsibilities in diverse areas of power. In other words, the Lisbon Treaty clarifies the distribution of power between the European

[385] "Your Guide to the Lisbon Treaty", *op.cit.,* p. 5.
[386] The Lisbon Treaty spells out more clearly the EU's role in the area of common foreign and security policy. Decisions on defence issues will continue to need unanimous approval of the 27 EU Member States. The Lisbon Treaty extends the EU's role to include disarmament operations, military advice and assistance, and helping to restore stability after conflicts. It also creates the possibility of enhanced cooperation between Member States that wish to work together more closely in the area of defence. The Lisbon Treaty provides that Member States will make available to the EU the civil and military capability necessary to implement the common security and defence policy and sets out the role of the European Defence Agency. It introduces a solidarity clause (of a voluntary nature) when a Member State is the victim of a terrorist attack or a natural or man-made disaster. *Ibid*., p. 6.
[387] *Ibid.* p.9.

Union and the Member States thereby identifying 'Who is responsible for which domain?' and Article 2 identifies three main categories of power: exclusive powers belong to the Union, shared powers and competences belong to the member states.

A basic rule is that the EU will only be able to exercise those powers that have been conferred on it by the Member States. It must respect the fact that all other powers rest with the Member States. In Table 2 the domains member states maintain their sovereignty rights are illustrated (as stated in the Treaty of Lisbon):

Table 2: Categories and Areas of Union Competence:

The Union's exclusive competences in areas where it legislates alone	**Supporting, coordinating or complementary action:** where the Member States have exclusive competence but in which the Union can support or coordinate	**Shared competences** between the Union and Member States:
• Customs Union; • Establishment of competition rules necessary for the functioning of the internal market; • Monetary policy for Member States which use the euro as legal tender; • Conservation of the biological resources of the sea as part of the common fisheries policy; • Common trading policy; • The conclusion of an international agreement when this is within the framework of one of the Union's legislative acts or when it is	• Protection and improvement of human healthcare; • Industry; • Culture; • Tourism; • Education, professional training, youth and sport; • Civil protection; • Administrative co-operation.	• Internal market; • Social policy with regard to specific aspects defined in the treaty; • Economic, social and territorial cohesion; • Agriculture and fisheries except for the conservation of the biological resources of the sea; • Environment; • Consumer Protection; • Transport; • Trans-European Networks; • Energy; • Area of freedom, security and justice; • Joint security issues with regard to aspects

necessary to help it exercise an internal competence or if there is a possibility of the common rules being affected or of their range being changed.		of public health as defined in the Lisbon • Treaty; • Research, technological development and space; • Development cooperation and humanitarian aid.

Citizens and states—that simple conjunction obscures the fundamental question at the heart of the European story: will Europe's "common future" be based on an international organization of sovereign states, or will it organize Europe's "peoples," and thus reach across international boundaries into the domestic politics of sovereign states?; the Community's institutional structure suggests that it aspires to do both: a Council of Ministers represented the states, but the Commission and Court represented the community as a whole, and the Parliament represented the peoples of Europe.[388] It seems that, with the Treaty of Lisbon, though its supranational power is still based on the competences the member states confer, the Union is more and more resembling a federation, especially because it gains a legal personality in international arena by designating a high representative as a foreign minister; namely, some kind of external sovereignty, which the EU lacked until the Lisbon.

The clear distribution of competences between the Union and its member states has transformed the classic meaning of sovereignty since the member states transfer part of their legislative, executive and judicial sovereignty to the

[388] Sheehan, *op.cit.*, p. 13.

supranational authority. In that sense, *sui generis* nature of the EU lies somewhere between the statehood and the international organization.

3.3 The *sine quo non* of the EU: Pooled Sovereignty

> Europe, the cradle of external and unitary sovereignty, now serves as the model of co-operative mutual interference.
>
> Robert O. Keohane[389]

The conception that a state must have control of its external policies and be free of external authority structures is an essentially European invention, dating from the 16th and 17th centuries and for over 300 years such external sovereignty has been associated with political success.[390] The norms of absolute sovereignty prevailed until the mid 20th century: the state was the holder of unrestrained supreme power over a certain territory and population.

The classic regime of sovereignty has been recast by changing processes and structures of regional and global order; states are locked into diverse, overlapping, political and legal domains – that can be thought of as an emerging multilayered political system,[391] which leads the classic regime of state sovereignty to undergo significant transformation. It is also ironic that the same Europe that invented sovereignty is now moving away from its classic meaning to post-modern perception since the post-war period.[392] Used to be 'the privilege of the civilized'[393], absolute sovereignty or state independence of all other states is in practice against the interdependence of modern states, motored by the effects of globalization and even by some legal barriers. It goes without saying that the process of globalization has

[389] Keohane, *op.cit*., p. 749.
[390] *Ibid*., p. 744.
[391] Held, *op.cit*., p. 172.
[392] Keohane, *op.cit*., pp. 743-765.
[393] Tokar, *op.cit.*, p. 2.

transformed the nature of sovereignty to a great extend especially since the early 1970s.[394] The modern state emerged as a unitary, introverted and national entity leading to an international system based upon the principles of non-intervention and reciprocity; the post-modern European state, in contrast, operate within a much more complex, cross-cutting network of governance where the dividing lines between local (regional), national and foreign realms are blurred.[395] Thus, an extrovert and integrated type of post-modern state emerged.

Nation-states have not disappeared; however, the essence of conventional sovereignty in post-war Europe has been transformed. 'Sovereignty can no longer be understood in terms of the categories of untrammelled effective power; rather, a legitimate state must increasingly be understood through the language of democracy and human rights, and legitimate authority has become linked, in moral and legal terms, with the maintenance of human rights values and democratic standards.'[396] Today, the respect to human rights and liberal democratic norms stand for the strongest hindrance of arbitrary exercise of sovereignty at the same time for the strongest source of the state legitimacy.

State borders are of decreasing significance under the influence of post-modern international norms. Rules governing war, weapon systems, war crimes, human rights, and the environment, among other areas, have transformed and delimited the order of states, embedding national polities in new forms and layers of accountability and governance.[397] While 'the classic conception of sovereignty

[394] Tekin, *op.cit*., p. 1.
[395] *Ibid*., p. 2.
[396] Held, *op.cit*., p. 172.
[397] D. Held, A. McGrew, D. Goldblatt, J. Perraton, *Global Transformations: Politics, Economics and Culture*. Cambridge: Polity Press, 1999, chs. 1,2., quoted in *Ibid*., p. 173.

prohibits governments from agreeing to rules defining a process, over which it does not have a veto', or in other words 'the delegation of powers over the state to an external authority,'[398] 'what has happened to states' traditional claim to control a clearly defined territory?'[399]

'European integration is happening in the environment of a radical, worldwide transformation and re-evaluation of the notion of sovereignty.'[400] The classic regime of state sovereignty has been sharply breached by the European Union because post modern sovereignty also implies the states' ability to participate in legally binding treaties or to cooperate by entering into alliances. 'A major historic accomplishment of the EU is that it has ended the association between sovereignty and success which creates an opening for innovative institutional thinking, free from the straitjacket of sovereignty.'[401] Increasing level of interdependence leads European states to exchange conventional sovereignty for pooled sovereignty and subsequently, pooling sovereignty institutionalized within the EU has become the *sine qua non* of the Union and the membership process. 'Under the conditions of extensive and intensive interdependence, formal sovereignty becomes less a territorially defined barrier than a bargaining resource.'[402] Though the founding treaties accept that all member states are indivisibly sovereign, the supranational nature of the EU leads to some kind of pooled sovereignty which is a result of powers delegated by each member in return for their representation in these supranational bodies. Hence, 'the EU creates new institutions and layers of law and

[398] Keohane, op.cit., p. 748.
[399] Sheehan, *op.cit*., p. 14.
[400] Tokar, op.cit., p. 2.
[401] Keohane, *op.cit*., p. 744-745.
[402] *Ibid*., p. 748.

governance that have divided political authority; any assumption that sovereignty is an indivisible, illimitable, exclusive, and perpetual form of public power – entrenched within an individual state – is now defunct.'[403]

'As an entity evolving to supra-nationalism, the EU requires the relinquishment of a substantial portion of national sovereignty of its members; with each phase of European integration, the member countries are bound to redefine national sovereignty.'[404] 'Nation states give up part of their sovereignty, for example by signing a Treaty or by agreeing to an EU Directive which removes the right of decision from the national government or parliament in a particular field or they share or pool sovereignty by agreeing to common action though EU institutions, thus participating in decisions taken by the EU in accordance with its procedures, and no longer retaining the right to act unilaterally.'[405]

Briefly, with its supranational features, the EU is apparently inconsistent with the traditional norms of the exercise of national sovereignty even though it does not challenge its source.

3.3.1 Supranational Identity & Functionality:

'The process of supra-nationalism questions the external sovereignty of states and the fundamental principles of the Westphalian state system, most importantly the non-intervention principle.'[406] 'The European Union enable goods, people, and capital to move freely. Those intra-European boundaries that were once so essential to the meaning of sovereignty have lost much of their practical and symbolic power;

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[403]Held (ed.), *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Cambridge: Polity Press, 1995, pp. 107–113., cited in Held, *op.cit*., p. 173.
[404] Tekin, *op.cit*., p. 3.
[405] "Sovereignty and the EU", March 9, 2010, http://www.euromove.org.uk/index, (18 November 2009).
[406] Tekin, op.cit., p. 3.

European states are now open in other ways as well - to a monetary system determined by a central bank, to restraints on budgetary authority, and to a vast collection of binding agreements.'[407] 'In relation to its territorial extent, the definition of its powers and its organizational structure, the EU has, over the last 50 years, developed, from its beginnings as the European Coal and Steel Community, into a complex sovereignty association.'[408] Thus, Westpahalian sovereignty of the states and interdependence sovereignty are challenged by the EU's supranational identity.

To adapt the EU's functional capacity with a view to enlargement and to prevent delays or blockages associated with the unanimous voting, the list of issues to be decided by qualified majority voting (QMV) in the Council are extended to 33 new Articles by the Treaty of Lisbon though on central questions - taxation, social security, foreign policy, common defence - unanimity is still required.[409] The qualified majority which will apply until 2014 and possibly until 2017 with the Ioannina Compromise will be replaced by the double majority of States and citizens.[410] 'These are 'bridging clauses' that allow the European Council to decide the transfer of the vote over to the qualified majority in some areas such as visas and the monitoring of the movement of foreigners, the common asylum system, the common immigration policy and judicial co-operation in criminal matters.'[411] Thus, not only the increased number of areas where member states have to pool their

[407] Sheehan, *op.cit*., p. 14.
[408] Lepsius, *op.cit*., p. 1.
[409] For more details about the list of the articles coming under QMV, "The Lisbon Treaty: Annex 3", Fondation Robert Schuman, December 2007, www.robert-schuman.eu, (18 November 2009).
[410] The double majority calculated according to two criteria: **State**: **55%** of EU States (i.e. at 27, 15 Member States) **Population: 65%** of the EU's population. A **blocking minority** has to include at least **4 Member States**. *Ibid*., p. 9.
[411] *Ibid.,* p. 4.

national sovereignty, but also the loss of veto right in those areas curtail their national sovereignty.

On the contrary, it is also debatable that QMV in the Council does not have any effect on the sovereignty of member states since the Council functions as a regular decision-making body which is not at all alienated from but represents the member states as the people are represented in standard parliamentary systems. 'As in every situation, when QM is requested instead of unanimity, there may be some who do not agree but the resolution is passed against their will and will become binding on them, which is the standard procedure.'[412] 'Furthermore, one of the special features of the way European integration transforms the sovereignty of its member states is the lack of means of physical enforcement on a European level.'[413] In that sense, to abide to the binding character of any rule is the voluntarily decision of the member states and thus, they retain their sovereignty rights only by exercising it through a specific type of system, QMV, within the Union rather than completely giving it up. It can be seen as a standard parliamentary system (excluding differences between functioning institutions and their competences in the Union) in terms of the fact that the people voluntarily exercise sovereignty rights through a representative assembly or, to a degree, delegate its sovereignty rights to a representative government which is elected, acts and makes decisions by means of some kind of majority voting system.

Another significant point related to national sovereignty of member states is the supranational identity that is trying to be created by the Union. Citizenship of the

[412] Tokar, *op.cit*., p. 12
[413] *Ibid*., p. 4.

European Union introduced by the Maastricht Treaty and modified by Amsterdam Treaty exists alongside national citizenship and grants additional rights to nationals of member states in articles 17-22, ex-art.8a-8e).[414] 'The Treaty, by establishing Union citizenship, confers on every Union citizen a fundamental and personal right to move and reside freely without reference to an economic activity and the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State in which he/she resides and the right to protection by the diplomatic or consular authorities of any Member State in a non-member country are a concrete expression of the feeling of common citizenship; moreover, directives adopted in 1993 and 1994 laid down the rules for giving effect to these rights.'[415] In this sense, the potential incompatibility of the Union's citizenship with member states' constitutional traditions may lead to problems in incorporation of the concept of the EU citizenship into the legal systems of the member states. Eventually, member states have to adapt their constitutions to the directives or the treaties of the Union. For example, such a situation occurred during Maastricht Treaty ratification process. French electoral system contradicted the EU citizenship: 'Senate, the higher chamber of French Parliament, is elected by representatives from French magistrates. French sovereignty is vested in French citizens who exercise it through their representatives. If a foreigner was elected into magistrate, he could directly influence the composition of the Senate – then the

[414] **Article 17 (Article 8 in the Treaty of Maastricht):**Citizenship of the Union is hereby established. Every citizen holding the nationality of the Member State shall be a citizen of the Union. (Maastricht version) Citizenship of the Union shall complement and not replace national citizenship. (Amsterdam amendment)

[415]"Citizenship of the European Union: The Treaty of Amsterdam", http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/a12000_en.htm, (30 November 2009). Additionally, "Directive 2004/38/EC on the right to move and reside freely" consolidated a great part of the existing secondary legislation and case law in the EU.

parliament would not reflect the opinion of the French people and exercise of French sovereignty would be perverted. To solve this problem, the French constitution has been amended in order to expressly provide for participation of foreigners in municipal elections.'[416]

Another critique of interpretation of the citizenship of the European Union is that the European population may be regarded as the holder of the popular sovereignty in the EU framework. 'Majority of member states' constitutions contains a reference to 'people' or 'nation' which the state sovereignty is vested in, and the community law does the same implicitly by establishment of the citizenship of the EU, so that since 1979, the 'EU people' or 'EU nation' have even an institution which can directly represent their interest at the community level.'[417] Furthermore, though member states do not share general opinion in relation to the citizenship of the European Union, they have already adopted the minimal standards required for citizens of other member states within the harmonization process. This may imply that a possible transformation of the Union to a supranational federal structure might replace the citizenship of member states, which will automatically infringe their national sovereignty. Thus, 'the range of citizenship expands beyond traditional conceptions of territorial sovereignty and nationhood, and member states consider citizenship as a status of full membership in their political communities.'[418]

[416] Ivo Šlosarčík, "Governance and Citizenship in the EU-The Influence of Culture", *The Ionian Conference*, Prague, 2000, p. 4. pp. 1-7
[417] *Ibid*., p. 2.
[418] "The Architecture of European Union Citizenship", Jean Monnet Center for International and Regional Economic Law&Justice, http://centers.law.nyu.edu/jeanmonnet/, (30 November 2009).

3.3.2 Division of Sovereignty:

Today, 'the European Union encompasses supranational institutions that can make decisions conflicting to some member states.'[419] 'Sovereignty is pooled, in the sense that, in many areas, the state's legal authority over internal and external affairs is transferred to the Community as a whole, authorizing action through procedures not involving state vetoes.'[420] The Union allocates not only horizontal division of powers - between the Commission, the Council of Ministers, the European Parliamentary and the ECJ – but also vertical division of sovereignty – between member states and the Union itself, which is contrary to the national sovereignty concept.

Different from a standard decision making process within a nation-state, the EU has a complex institutional and policy environment with different actors: supranational institutions and national governments, which is called supranational governance. A clear-cut division of powers in the EU is also difficult. For example, the main legislative body is the Council of Ministers but in order to adopt an EU law or a proposal submitted by the Commission, in most cases, the approval of the Parliamentary is also required.[421] However, national governments have only a minor

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[419] Tekin, *op.cit*., p. 3.
[420] Keohane, *op.cit*., p. 748.
[421] "The Treaty of Lisbon" - **Article 294:** 1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council.
First reading
3. The European Parliament shall adopt its position at first reading and communicate it to the Council.
4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.
5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.
6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.
Second reading

delaying power by the given right to ensure that the proposals and legislative initiatives submitted comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality. In that sense, member states transfer some part of their sovereignty to European level since the Union has the ultimate power to grant additional rights to the national governments such as the right to monitor subsidiarity compliance. With the Treaty of Lisbon, a clear division of powers between the EU and the member states is identified. However, the Treaty abolishes the veto right of nation-states in most areas with bridging clauses whereas it extends the Union's exclusive competences with flexible clauses.

'Europe's emerging conception of pooled sovereignty affects all aspects of European life, from criminal justice to foreign policy.'[422] A good example of this process is the monetary policy of the Union. 'Initially it was the responsibility of the national states, but with the adoption of the single currency of euro and establishing

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7. If, within three months of such communication, the European Parliament: (a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;
(b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;
(c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.
8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:
(a) approves all those amendments, the act in question shall be deemed to have been adopted;
(b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

[422] Keohane, *op.cit.*, p. 744.

the euro area and the European Central Bank, it has become the Community's exclusive authority (but only in relation to the euro area mentioned above).'[423]

'As regards the EU-internal perspective, the EU can only be instrumentalized on condition that sovereignty is no longer an operative principle in the internal interaction among member states.'[424] In the post-modern context of the EU, nation-states bargaining their influence and interest and compromising their sovereign powers can no longer function as the ultimate arbiter of authority. 'EU member states existing in a format whereby national interests have become divorced from national sovereignty are autonomous, but not sovereign units of governance; therefore, rule-making in these conditions takes place in the state-external political space, although domestic actors can be consulted regarding legislation and practical enforcement.'[425]

Externally, the EU lacks a legal international base until the Treaty of Lisbon. With the creation of a High Representative for Foreign Affairs and Security Policy to carry out foreign policy on behalf of the Council, and represent the Union's positions internationally the EU can appear as a sovereign external actor on international scene, thereby gaining a legal personality and expressing itself with one voice.

This design enabling the EU to defend its interests and values on the international stage may pose a genuine challenge to external sovereignty of nation states, which has already been, to a degree, curtailed within the framework of the EU

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[423] Suchaček, *op.cit*., p. 13.

[424] Ulf Hedetoft, "Sovereignty Revisited: European Reconfigurations, Global Challenges, and Implications for Small States", in Will Coleman et al, eds, *Globalization and Autonomy* (Volume on Institutions and Global Governance), Vancouver, University of British Columbia Press, , 2008. http://www.globalautonomy.ca/global1/summaryPrint.jsp?index=summaries/RS_Hedetoft_Sovereignty.xml, (6 January 2010).

[425] *Ibid.* The author used "Autonomy" here as the freedom and space to govern, manage, and act, in conditions largely determined by extraneous and dominant agency.

law. 'As far as EU membership is concerned on this dimension, member states give away their bargaining rights in certain external policy areas and thus some factual external sovereignty.'[426] With a foreign minister-like High Representative, the EU plans to have a legal external base though member states retain their sovereignty on the external political scene and continue to act normally as sovereign units in international arena.

On the contrary, since with the Treaty of Lisbon, 'for the first time, there is a provision for a Member State to withdraw from the European Union if it wishes and sets out the arrangements which will apply in that event.'[427] Moreover, 'in German Kompetenz-Kompetenz, the state can still be treated as fully sovereign even in such a hypothetical situation that it delegates all actual decision-making power to other entities, provided that it did so voluntarily and that it can successfully claim back the delegated powers when it chooses to do so.'[428]

3.3.3 Separate Legal System:

Another area where member states' sovereignty is eroded is 'the Community law[429] which, in the course of jurisdiction of the European Court of Justice, have

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[426] *Ibid.*
[427] "Your Guide to the Lisbon Treaty", *op.cit*., p. 14.
[428] Tokar, *op.cit*., p. 13.
[429] "EU Law", http://en.wikipedia.org/wiki/European_Union_law#cite_note-art249-3, (06 January 2010) The primary source of EU law is the EU's treaties (ranging from ECSC Treaty to the Treaty of Lisbon). These are power-giving treaties which set broad policy goals and establish institutions that, among other things, can enact legislation in order to achieve those goals. The legislative acts of the EU come in two forms: *regulations* and *directives*. Regulations become law in all member states the moment they come into force, without the requirement for any implementing measures, and automatically override conflicting domestic provisions. Directives require member states to achieve a certain result while leaving them discretion as to how to achieve the result. The details of how they are to be implemented are left to member states.
See "European Union Consolidated Treaty - Article 249", European Commission, November 2007, http://eurlex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf, (07 January 2010).

been transformed into an autonomic legal system.'[430] Perhaps the best place to observe the transformation of sovereignty is 'in the realm of law since much more effectively than the Parliament of the European Union, the Court has become the chief organ of integration, successfully managing the Union's claims, sometimes in competition, more often in collaboration, with national courts.'[431] Considering sovereignty as 'the existence of an independent legal order, not subject to any other legal order'[432], the existence of the EJC makes the Union a sovereign entity. In other words, 'the member states of the EU are no longer juridically independent entities; they are subject to decision of the ECJ and in some cases policies within the Union determined by QMV, thereby limiting their international legal sovereignty.'[433] Furthermore, though the EU legislation derives from decisions taken at the EU level, implementation occurs at a national level. The central point in all decisions is the principle of uniformity, which is a means of ensuring that member states apply and interpret the EU laws uniformly.

Supranational nature of the EU law concerning sovereignty can be explained by its basic features, which have been created by the jurisprudence of the ECJ.

Independence: Independent nature of the EU law implies that the Union has exclusive powers that it can exercise independent on member states. Thus, the EU law is dependent neither on international law nor national law, so that 'national will

[430] Suchaček, *op.cit*., p. 13.
[431] Sheehan, *op.cit*., p. 14.
[432] Valki László, "Mit kezd a szuverenitással a nemzeközi jog?", *A szuverenitás káprázata*, Budapest, 1996, quoted in Tokar, *op.cit*., p.11.
[433] Krasner, 2003, *op.cit*., p. 1.

cannot play a decisive role in its formation, alteration or elimination.'[434] In other words, any changes or amendments to the EU law based on both primary (constitutional treaties) and secondary sources (regulations and directives of the EU institutions) are in the monopoly of the institutions of the Union.[435] This exclusive right to make laws solitarily is inconsistent with the national parliamentary systems of the member states since the Union brings forward a distinctive legal system, which 'requires member states to adapt their domestic judiciary system to the Union's through structural amendments in the context of integrated areas.'[436] By this way, the EU, on the strength of its independent legal system and sovereignty competences, can join treaties with third states or international organizations that are binding to member states.

Direct Effect: Though it was not explicitly mentioned in any of the EU Treaties, the principle of direct effect was first established in *Van Gend en Loos v. Nederlandse Administratie der Belastingen*[437] by the ECJ. In *Van Gend en Loos (1963)* the question of whether treaties have direct effect, therefore confer legal rights upon individuals as well as member states, was raised and the answer was affirmative whereby it was famously said that: 'the Community constitutes a new legal order of international law.... [which] not only imposes obligations upon

[434] Füsun Arsava, "Geleceğin Avrupa Birliği Üyesi Olarak Türkiye: Egemenlik Haklarının Devri Sorunu", *Türkiye'de Anayasa Reformu: Prensipler ve Sonuçlar*, Ankara: Konrad Adeauner Vakfı, 2001, p. 72., quoted in Hakyemez, *op.cit*., p. 244.
[435] *Ibid*., p. 245.
[436] *Ibid.*
[437] Case 26/62; [1963] ECR 1; [1970] CMLR 1, http://eur-lex.europa.eu/en/index.htm, (09 January 2010).

individuals but also confers upon them legal rights which become part of their legal heritage.'[438]

The *Van Gend en Loos* judgment is of vital importance in the development of the Union's legal order. The ECJ identifies the Union as a new legal order of international law for the benefit of which the States have surrendered their sovereignty and whose subjects are both member states and their nationals. Thus, the fact that direct effect principle accepts not only member states but also member state citizens as subjects opens the way for individuals to refer to these rights during the cases in the national courts, too.

Supremacy and Primacy over National Laws: One of the legal principles of the EU law enunciated by the ECJ is that it is superior to national laws when a conflict arises between the EU law and the law of the member states and the former precedes the latter in terms of application. The principle of supremacy emerged from the ECJ decision on *Costa v ENEL* in 1964.[439] The ECJ decided that the EU law takes precedence to and overrides the law of member states when a conflict appears.

The reflection of this decision differed between member states. The precedence of the EU law is accepted by some states' highest courts provided that it continues to respect basic constitutional doctrines of the member states whereas in other cases, precedence of the EU law is explicitly stated in the constitutions of member states. For instance, Article 29 of the Constitution of Ireland states that the EU law precedes

[438] "The Principle of Direct Effect", http://www.itutorials.co.uk/direct-effect.php, (08 January 2010)
[439] Case 6/64, *Flaminio Costa v. ENEL* [1964] ECR 585, http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61964O0006, (08 January 2010).

the constitution if there is a conflict.[440] Henceforth, the validity of any legal decision of the EU cannot be challenged by the courts of member states excluding reference of the question to the ECJ, because 'as of now, the EU law has taken its place at the top of the hierarchy of norms within the internal legal system of the member states.'[441]

Another keystone in the European case law was the Simmenthal judgment of the Court in 1979[442], which stated that the precedence of Community law applies even with regard to a subsequent national law. On the basis of these two principles, which are the basic rules of the legal integration, the EU law can be invoked by individuals before national courts and any national law which is in conflict with the EU law may not be applied.

All above-mentioned decisions of the Court constitute the milestones of the European Union since they ensure that national courts are in an everlasting cooperation with the ECJ and their interpretation and application of the EU law does not differ from one another. The interactions between three decision makers – individuals, national courts and the ECJ – resulted in the establishment of a binding supranational legal integration. The international treaties between member states and the Union have eventually transformed to a supranational constitutional governance, namely to the EU law where *the member states transfer a substantial part of their*

[440] Constitution of Ireland -**Article 29:** No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities…
[441] Hakyemez, *op.cit*., p. 248.
[442] Simmenthal Case 35/76, http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61977J0106&lg=EN, (10 January 2010).

sovereignty rights to the supranational body, which is of vital significance for the development of the EU law.

In terms of transfer of sovereignty, the ECJ differs from the Commission and the Council: whereas member states can still exercise their legislative and executive competences to an extent that the Union permits, the national courts cannot exercise the jurisdiction exclusive to the ECJ or question the validity of the decisions of the Court.[443] Hence, the ECJ, as the organ of the Union having the monopoly of interpreting primary and secondary norms, has become the 'constitutional body' of the EU.[444]

3.3.4 Values and Principles of the EU - Membership Criteria:

The primary and supreme nature of the EU law transformed the institutions of the Union to a superior body whereas making each member state a sub-unit, and ultimately leads a sovereign supranational entity to emerge. As in the case of the EU membership, it is also required to give some part of sovereignty for the benefit of the Union in pre-accession process. In that sense, first of all, constitutions of the candidate states must permit such a transfer; therefore, first the states that aim to join

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[443] İzzettin Dogan, *Türk Anayasa Düzeninin Avrupa Toplulukları Hukuk Düzeniyle Bütünleşmesi Sorunu*, Istanbul, Istanbul Faculty of Law Publication, 1979, p. 186.

[444] Göztepe, *op.cit*., p. 233. "Consolidated Version of the TFEU", Official Journal of the EU, C 115/47, May 9, 2008, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF,(10 January 2010).

Article 267(ex Article 234 TEC, ex Article 177 EEC Treaty)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

the EU, must, in the full membership process, eliminate constitutional provisions that may be contrary to the EU membership criteria called Copenhagen criteria, which are the rules defining whether a country is eligible to join the Union. These criteria were outlined in the form of Copenhagen (1993) and Madrid Criteria (1995) for the EU membership.[445] Under the requirement of these criteria, the candidate state must, with its institutions, enable democratic governance and protect human rights, have a functioning market economy, and accept the obligations within the context of the EU. These fundamental membership criteria were clarified in Copenhagen Presidency Conclusions by the European Council in 1993:

> Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. [446]

Yesilada outlines the EU accession requirements of the candidates under four headings:[447]

1. *Europeanness:* The applicant country has to be a member of the European family of states.

2. *Political criteria:* The political system must be characterized by democracy and the rule of law, respect of human rights, and protection of minorities.

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[445] These criteria mainly refer to consolidation of democracy, the rule of law, protection of human rights, economic competitivenes, and the governability principles embedded in the legislative body (*acquis*) of the EU.

[446] Presidency Conclusions, Copenhagen European Council 1993, http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf, (14 January 2010).

[447] Birol A. Yeşilada, "Some expected and some not-so-expected Benefits of Turkey's EU Membership for both Parties", *European Union Studies Conference*, Canada, Montreal, May 17-20, 2007, p. 4.

3. *Economic criteria:* The country must have a strong market economy that encompasses the free movement of goods, capital, services, and people.

4. *Other obligations*

a. The aims of political, economic, and monetary union.

b. Adoption of the *acquis communautaire*[448], the rights and obligations derived from EU treaties, laws, and regulations over the years.

The easy process of EU accession during the Cold War turned into a complicated one in the post-war period. The collapse of the communist bloc, the Soviet Union, led the EU face an unforeseen, difficult situation during its deepening process with the Single European Act of 1986. When the newly post-Communist eastern and central European states together with some Mediterranean states applied for the membership, the number of the states at the queue increased. 'The queue of applicants could endanger the deepening process of the EU and the only way out was to set out more comprehensive membership criteria; therefore, in a report to the June 1992 Lisbon European Council, the Commission stated that in addition to the three basic conditions for membership: European identity, democratic status and respect of

[448] This is a French term meaning, essentially, "the EU as it is" – in other words, the rights and obligations that EU countries share. The "*Acquis*" includes all the EU's treaties and laws, declarations and resolutions, international agreements on EU affairs and the judgments given by the Court of Justice. It also includes action that EU governments take together in the area of "justice and home affairs" and on the Common Foreign and Security Policy. "Accepting the *Acquis*" therefore means taking the EU as you find it. Candidate countries have to accept the "*Acquis*" before they can join the EU, and make EU law part of their own national legislation. "The EU at a glance: Eurojargon", http://europa.eu/abc/eurojargon/index_en.htm, (16 January 2010). *Acquis communautaire* is one of the main requirements for membership in the EU. The requirements are quite specific about what conditions candidate countries must meet prior to accession. Furthermore, the EU leaders are quite clearly committed to preparing these countries for membership. Yeşilada, *op.cit*., p. 4.

human rights, the applicants had to accept the *acquis communautaire* and be able to implement it.'[449]

In 1993, at the Copenhagen European Council, the Union took a decisive step towards the fifth enlargement, stating 'Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.'[450] To be able to align with the EU's *aquis communautaire*, candidate states must carry out institutional and constitutional changes. The Copenhagen conditions applied only to Europe (association) agreement signatories: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. 'They were not specifically intended for Cyprus, Malta or Turkey, which had applied for membership in 1990, 1990, and 1987, respectively, however, since then, they have been understood to form the basic conditions even for these three applicants.'[451] Thus, with the Copenhagen Summit general membership criteria have been identified. Since Copenhagen, more general statements of the membership conditions have been made. The Amsterdam Treaty formalised the political conditions of membership, declaring that 'the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States' (article 6). 'Any European state that respects these principles may

[449] Aylin Güney, On Turkey's Inclusion in EU Enlargement: An Asset Or A Liability?, Perceptions: Journal of International Affairs, Vol. 9, No. 3, August 2004, p. 138.
[450] "Accession Criteria", http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm, (03 March 2010).
[451] Helene Sjursen and Karen E. Smith, **"**Justifying EU Foreign Policy: The Logics Underpinning EU Enlargement", *ARENA Working Papers***,** WP 01/1, 2001. http://www.arena.uio.no/publications/wp01_1.htm, (03 March 2010).

apply to become a member of the Union (article 49).'[452] Another condition that has been added is that of 'good neighbourliness', i.e. the willingness to cooperate with neighbours, so that the 1999 Helsinki Summit of the European Council required 'peaceful settlement of border disputes in accordance with the United Nations Charter.'[453]

Similarly, Turkey's ongoing EU candidature has triggered a widespread reform process in accordance with these criteria since the Helsinki Summit in 1999. The next part of this chapter mainly deals with the transformation of Turkey's sovereignty culture during its effort to adopt the Copenhagen criteria, and its battle between its unitary nation-state identity and the ongoing accession process; therefore, I will not go into the detail about the EU accession process in this section.

Conclusion:

'The Classic regime of sovereignty has been recast by changing processes and structures of regional and global order, so that it has undergone significant alteration.'[454] The emergence of new actors acting on behalf of the nation states on the international stage, which used to be the only actors of international law until the end of the World War I, led states to circumscribe sovereignty to a degree. In that sense, particularly, the EU, as a post-modern supranational institution, has ushered a new age, in which states voluntarily transfer a substantial part of their sovereignty to a superior body abstaining from their national interests in return for the protection of human rights and political legitimacy. Thus, today, the same Europe that was the

[452] *Ibid.*
[453] Güney, *op.cit.*, p. 138.
[454] Held, op.cit., p. 172.

inventor of national sovereignty is moving away from this concept towards a post-modern sovereignty order.

The European Union, since its establishment, has created a *sui generis* structure based on a supranational legal system that requires member states to undergo institutional, political, economic and legal transformation. Although it is still arguable that since the nation-states are not abolished, voluntarily join the EU, still constitute the source of the Union's power, and both member states and their citizens are represented within the Union, the Union does not fringe sovereignty, the new Europe is likely the place in the world where states experience the most developed example of transgressed territorial boundaries and transformed sovereignty. In other words, the EU which began with the will of the nation states, namely, national sovereignty, has, over time, ignored Westphalian sovereignty through a dynamic integration. It seems that, with the Treaty of Lisbon, the Union is gradually reshaping itself in a more federal manner, especially by designating a high representative and thus gaining a legal personality in international arena; namely, possession of some kind of external sovereignty with the Lisbon.

Briefly, unlike international law and classic interstate organizations where states curtail, to a degree, their sovereignty to cooperate, the legal system of the Union creates a post-modern order, in which each member states pool their sovereignty to compromise. That's why, whilst the impact of the development of international law on legal and political structure of the nation state is defined as the circumscription of sovereignty, the impact of the Union's supranational judicial

system on member states is referred to transfer (sharing/pooling) of sovereignty.[455] What makes the EU a union is this 'pooled sovereignty' principle.

[455] Yazıcı, *op.cit*., p. 258.

CHAPTER IV

TURKISH SOVEREIGNTY CULTURE UNDER TRANSFORMATION: *QUO VADIS*?

In this part of the study, how recent domestic and external changes affect the nature of sovereignty culture in Turkey will be examined particularly in light of Turkey's candidacy for EU membership beginning from the 1999 Helsinki Summit. Mentioned in the Chapter II, the basic Kemalist principles and values that have formed the very essence of the Turkish political culture contradict the 21st century European values. Yet the EU accession is seen as an ultimate point of Turkish modernization process which started with the founding of the Republic in 1923, and thus, as a candidate for the EU membership, Turkey has to fulfil what is required on its path to the EU, which may cause values of Turkish political culture to go under a radical transformation.

With respect to my topic, through the comparison of different sovereignty perceptions applied in these conflicting structures, how effective the EU can be in transforming the sovereignty culture in Turkey and to what extend Turkish sovereignty culture may transform are the basic questions to be answered here. In that sense, the post-modern identity and sovereignty in the EU characterized with supranational features are examined in the first part of this study; under the pressure of Copenhagen criteria, the accelerated efforts to consolidate democracy and legitimacy in Turkey since 1999 – constitutional amendments to eliminate the military norms in the 1982 Constitution and its role in Turkish politics; and the extension of individual freedoms, human rights and the respect for sub-identities –

will help to find the answer of the questions: 'How effective has the European Union been as an alternative to traditional sovereignty'[456] and to what extend the EU can transform sovereignty culture of Turkey?

I will base my study primarily upon the classic sovereignty which can be classified as internal and external sovereignty - in Krasner's definition, the former is directly related to domestic sovereignty and indirectly Westphalian and interdependence sovereignty whereas the latter corresponding to Westphalian and thus related to international legal sovereignty and interdependence sovereignty, which Krasner named conventional sovereignty. In the era of globalization, almost all mentioned classifications of sovereignty are gradually transforming, but Westphalian sovereignty is more subject to erosion since it 'is based on two conventional principles, territoriality and exclusion of external actors from domestic authority structures', upon which Kemalist ideology was founded; when external factors influence or determine domestic authority structures, Westphalian sovereignty is violated.[457] In the case of the EU, nation-states compromise their Westphalian sovereignty to fulfil the common legal norms such as Copenhagen criteria, which necessitates interdependence and mutual control. In an EU Conference on governance in Turin in 1996, Chirac explained the situation of member states of the EU by stating 'that the member states of the EU must retain their international sovereignty, even while they were entering into agreements that compromised their Westphalian, interdependence and domestic sovereignty since the EU can regulate trans-border movements, the European Court exercises transnational

[456] Krasner, 2003, *op.cit*., p. 5
[457] *Ibid*., p. 20.

authority; and some European Union decisions can be taken by a majority vote of the member states.'[458] Consequently, the classic form of sovereignty has been removed by the Union.

The development of the diplomatic relations of the Ottoman Empire with other European states in the 17th century had effects on the Ottoman state identity; similarly, sovereignty culture of the Republic of Turkey, due to the EU accession process, has frequently been transformed by religious and cultural toleration, minority and human rights, and by strengthening the state legitimacy, all of which are the ways to justify intervention in the domestic authority structures of other states. In other words, insistence on conventional sovereignty is today a source of conflict; however, some states that are sensitive about their sovereign rights tend to have more troubles in transforming their traditional sovereignty values; the foremost example, Turkey whose sovereignty culture is shaped through the entrenched security concern and state centrism and that 'has a long and deep-rooted sovereignty state tradition is expected to protect it jealously against outside world.'[459] This study attempts to find the answers to: Whether this implies that Turkey might fail to fulfil the sovereignty requirements of the Union; whether Turkish public, political institutions are ready to share sovereignty with a supranational organization and how much flexibility Turkey is able to display on its sovereignty rights. After analyzing the changing norms of sovereignty in general (Chapter 1) and the evolutionary process of sovereignty culture in Turkey (Chapter 2) how the EU transforms the conventional meaning of the concept (Chapter 3), the turning point, Helsinki Summit

[458] "The EU Conference on Governance(April 1996) in Turin", *Frankfurter Allgemeine Zeitung*, March 26, 1996, quoted in Krasner, *Organized Hypocracy*, p. 19.
[459] Tekin, *op.cit*., p. 1.

of 1999, will be the starting point of my final analysis, transformation of Turkish sovereignty culture in the context of its EU accession process. At the end of this chapter, I will point out to the question: To what extent has Turkish sovereignty culture transformed under the influence of EU accession process?

4.1 Turkey's Convergence with Europe

Since the establishment of the Republic, Western civilization has always been a reference point for the nation and integration with Europe a cornerstone of Turkish politics.[460] Turkey and Europe have been closely linked for several centuries and for more than five decades Turkey has been involved in most of the European organizations founded with a view to establish peace and security in the region after the WWII.[461] NATO-member Turkey is already broadly integrated into almost all pan-European institutions, from the Council of Europe, including the ECHR, and OSCE to football leagues.[462] Therefore, it cannot be denied that 'Turkey is already bound by many EU political decisions in which it has had no say'.[463] The EU is a product of the most comprehensive transformation in the history and has a dynamic structure, which constantly displays changes in every summit.[464] For instance, the Treaty of Lisbon brings forward new perception of sovereignty and changes in the functioning institutions. Similarly, Turkey is not static, as well, and experiences a dynamic transformation.[465] Likewise, the EU has led sovereignty to undergo a radical

[460] Tekin, *op.cit*., p. 5.
[461] Sanem Baykal, "Turkey-EU Relations in the Aftermath of the Helsinki Summit: An Analysis of Copenhagen Political Criteria in Light of the Accession Partnership, National Programme and the Regular Reports", *Ankara Review of European Studies*, Vol. 2, No. 3, Fall 2002, p. 15.
[462] Independent Commission on Turkey, "Turkey in Europe-Breaking the Vicious Circle", *Second Report of the Independent Commission on Turkey*, Open Society Foundation and the British Council, 2009, p. 9.
[463] *Ibid.*
[464] Davutoglu, *op.cit*., p. 56.
[465] *Ibid*., p. 56.

transformation; the accession process of Turkey displays a gradual change in national sovereignty since 'the potential EU membership creates both incentives and conditions constituting a powerful engine of democratization, economic transformation and domestic political change in candidate countries in the process.'[466]

Turkey's formal relations with the European integration started with her application for associate membership of the ECC – the EU today – which resulted in an association relationship with the signing of the Ankara Agreement in 1963 'whereby Turkey and the EU would conditionally and gradually create a customs union by 1995 at the latest, which was considered as a step towards full membership at an unspecified future date.'[467] As progress on the political criteria seemed unachievable for Turkey, the EU instead gave priority to completing negotiations for the EU-Turkey customs union, which came into force in 1996. [468] Turkey's entry into the Customs Union caused a hot debate in Turkey. While opponents 'indicated that under these circumstances Turkey would have to take on a one-sided responsibility to adapt to the customs regimes and tariffs of the Union, besides she would have no say on the phase of the determination of these regulations',[469] proponents pointed out that this prevented Turkey to be isolated from Europe, and displayed her will to join the Union. The entry into Customs Union has, as Tekin stated, demonstrated that 'sovereign rights related to internal political affairs are guarded more energetically

[466] Ziya Öniş, "Domestic Politics, International Norms and Challenges to the State: Turkey-EU Relations in the Post-Helsinki Era", *Turkish Studies*, Vol. 4, No. 1, Spring 2003, p. 10.
[467] Harry Flam, Turkey and the EU: Politics and Economics of Accession, *CESifo Working Paper Series*, No: 893, March 2003, p. 1, http://ssrn.com/abstract=388621, (10 February 2010).
[468] EU Briefings, "Turkey's Quest for EU Membership", *European Union Center of North Carolina, (EUCE)*, March 2008, p. 2.
[469] Tekin, *op.cit*., p.7.

than those related to foreign economic and security issues; that's to say, Turkey can more easily adapt to the sovereignty culture of the EU when the issue at the table is not about sensitive issues of internal sovereignty.'[470] 'However, the Customs Union *per se* failed to provide an appropriate mix of conditions and incentives to induce a major transformation in Turkey's domestic politics and economy.'[471]

Though Turkey applied for the EU membership in 1987, it was not until 1999 that Turkey attained the candidate country status, which signalized the prospective EU membership. The reasons lying behind this delayed acceptation of Turkey's accession can be explained with reasons, both related to the EU and Turkey. First of all, the EU, following the Single European Act of 1986, was preoccupied with the establishment of a Single Market by 1992, and remained reluctant to welcome any new members in the meantime.[472] The Commission argued that enlarging the Community would weaken its capacity to pursue policies required for the success of the Single European Act of 1986, which called for the establishment of a wholly integrated internal market by the end of 1992.[473] Additionally, because of two successive enlargements, the EU has developed a new enlargement strategy including Agenda 2000[474], Copenhagen Criteria, Pre-accession Strategy, Accession Partnership, National Programs, Regular Reports, and Screening etc. Turkey had to start over in spite of her previous ties with the European Union. Furthermore, the democratization and liberalisation of central and eastern European countries after the

[470] *Ibid*., p. 5.
[471] Önis, *op. cit*., pp. 10-11.
[472] EU Briefings, *op.cit*., p. 2.
[473] B. Kuniholm. "Turkey's Accession to the European Union: Differences in European and United States Attitudes, and Challenges for Turkey." *Turkish Studies*, Vol. 2, No.1, Spring 2001, p. 25.
[474] For more details see "Agenda 2000", http://ec.europa.eu/agenda2000/public_en.pdf, (10 February 2010)

collapse of communism in the East have the priority in EU's Agenda since the Union's primary aim was to create a common European identity based on common European values. Due to the Union's ambiguous treatment of Turkey's application and doubts about her concordance with the European values, Turkey remained again empty-handed. Another reason was beside Turkey's instable economic and political situation in 1990s, 'the relative lack of progress and transformation in Turkey, particularly in areas such as human rights, supremacy of law and democratization also played their part in her late acceptance as a candidate'.[475] Similarly, the European Commission stated that 'Turkey's failure to expand political pluralism and improve human rights and the rights of minorities, its skyrocketing inflation and unemployment, and the persisting disputes with Greece over Cyprus and the Aegean would create significant "adjustment constraints".'[476]

After another disappointment in Luxemburg Summit in 1997 that placed additional conditions on Turkey's candidacy including the resolution of Cyprus issue[477], in the Helsinki Summit of 1999, Turkey was eventually recognized as an official candidate state by the EU. The Accession Partnership in the aftermath of the Helsinki Summit was followed by the opening of the accession negotiations in October 2005. 'Turkey is today a candidate for full membership in the EU and amongst all the candidates the one most strongly economically integrated with the

[475] Baykal, *op.cit*., p. 19.
[476] EU Briefings, *op.cit*., p. 2.
[477] At its meeting in Madrid, the European Council stressed the need for the candidate States to adjust their administrative structures to ensure the harmonus operation of Community policies after accession. At Luxembourg, it stressed that incorporation of the acquis into legislation is necessary, but not in itself; it is necessary to ensure that it sis actually applied.Apart from those criteria, the Council also stressed the principle of peaceful settlement of disputes in accordance with the UN Charter and urged candidate states to make every effort to resolve any outstanding border disputes and other related issues. Failing this they should within a reasonable time bring the dispute the International Court of Justice., Baykal, *op.cit*., p. 22. For more detailes see European Council Presidency Conclusions at Luxembourg Summit in December 1997 and Acession Partnership, supra no. 4.

EU.'[478] Over the following years, the relations have been like a pendulum swinging from heights of optimism to the depths of pessimism, as far as Turkish public opinion is concerned, within very short periods of time, mostly due to the differences in the intention and will of the parties.[479]

Turkey's eager to enter into Customs Union has shown that Turkey is more ready to transform in economic sphere while she does not show the same enthusiasm in other sensitive issues in the light of the Lausanne Treaty, particularly in national sovereignty. With the fear of loss of sovereignty in certain policy areas and Sevres Syndrome the domestic opposition has also arisen during this accession process. After a brief look at the Turkey's convergence with the EU before the Helsinki Summit of 1999, this study will primarily focus on the transformation of Turkish sovereignty culture in the political area and the political and social changes in Turkey experienced during the accession process by analysing the impact of the EU negotiations on domestic scene and civilianization of the domestic policy through the amendments to the 1982 Constitution.

4.2 An Impetus to Transform: The Helsinki Summit and Beyond

The recognition of Turkey as a candidate for accession at the Helsinki European Council in December 1999 ushered a new era in the relations between Turkey and the EU; for both parties, Helsinki marks a qualitatively new beginning and a process of strategic mutual transformation.[480] In December 1999, the Helsinki

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[478] Wolfgango Piccoli, "European Integration in Turkish Identity Narratives: The Primacy of Security," paper presented to the *7th CGES Graduate Conference,* Georgetown University, 21-22 March 2003, quoted in Tekin, *op.cit*., p. 5.
[479] Baykal, *op.cit*., p. 16.
[480] Pınar Tanlak, "Turkey-EU Relations in the Post Helsinki Phase and the EU Harmonization Laws Adopted by the Turkish Grand National Assembly in August 2002", *Sussex European Institute (SEI) Working Paper*- No 55, October 2002, p. 3.

European Council acknowledged Turkey's significant progress toward meeting the Copenhagen criteria for EU membership and officially declared Turkey "a candidate State destined to join the Union".[481] This summit is significant for Turkish politics as it brought up the prospects of full membership and this possibility paved the way for democratic reforms; Helsinki decision was perceived as an incentive to make reforms in order to meet European standards by political parties which were in favour of Europeanization.[482] However, the Commission report which paved the way for Turkey's promotion to candidate status at the Helsinki Council in December 1999 concluded that there were still serious shortcomings in terms of human rights and the protection of minorities; therefore, when consideration is given to Turkey's candidature some of the biggest barriers to accession are thought to exist in the fields of democracy and human rights.[483]

In the post-Helsinki period EU has restored its relations with Turkey and offered Turkey a map for accession by Accession Partnership (AP).[484] The Commission's proposal for an AP[485] document containing legal, economic and

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[481] Tim Büthe, The Promise of Turkish EU Membership: A Comparative Analysis, *Panel 6G: Reconsidering Enlargement*, 11th Biennial Meeting, European Union Studies Association, Los Angeles, 23-25 April 2009, p. 1.

[482] Eda Taşpınar, "Turkish Political Parties: EU Integration Process", *Jean Monnet Workshop*, Koç University, 15-16 May 2009, pp. 4-5.

[483] Chris Rumford, "Human Rights and Democratization in Turkey in the Context of EU Candidature", *Journal of Contemporary European Studies*, Vol. 9, No.1, p. 93.

[484] *Ibid*., p. 4

[485] Accession partnerships are a pre-accession strategy instrument which determines the candidate countries' particular needs on which pre-accession assistance should be targeted and provides a framework for:

1. the short and medium-term priorities, objectives and conditions determined for each candidate country on the basis of the accession criteria (Copenhagen criteria) in accordance with the Commission's opinion on its membership application;
2. pre-accession assistance.

An accession partnership is established for each candidate country to provide guidance and encouragement during preparations for membership. To this end, each candidate country draws up a NPAA, which sets out a timetable for putting the partnership into effect. Each candidate country also draws up an action plan for strengthening its administrative and judicial capacities. The accession

political obligations of Turkey on its path to accession was accepted by the Council of Ministers in March 2001. Turkey now has a so-called Accession Partnership with the EU, which means that the EU is cooperating with her to enable it to adopt the *acquis communitaire*, the legal framework of the EU.[486] In line with the AP, the Turkish government adopted the National Program for the Adoption of the *Acquis* (NPAA) on 19 March 2001. The AP defined the priority areas for Turkey's pre-accession phase by dividing the areas into two groups, short and medium term objectives. Additionally, the Commission's regular reports, which were decided to be declared after 1998, highlight the certain areas in which candidate states still have to make efforts for accession. Likewise, Turkey also has to implement all issues indicated in the regular reports. In accordance with my topic, some of the short and medium term political priorities were illustrated in Table 3:[487]

Table 3: Priorities and Criteria of Accession Partnership in 2001

Short-term Priorities	Medium-term Priorities
• to strengthen legal and constitutional guarantees for the right to freedom of expression, • the right to freedom of association and peaceful assembly and encouraging development of civil society, • to align legal procedures with the provisions of the ECHR, strengthening opportunities for legal redress against all violations of human rights, improving the functioning and efficiency of the judiciary, including State Security Courts in line with international standards, • to strengthen in particular training of	• To review the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the European Convention for the Protection of Human Rights, • To ensure the implementation of such legal reforms and conformity with practices in EU member states, • To abolish the death penalty, • To sign and ratify Protocol & of the European Convention of Human Rights, • To ratify the International Covenant

partnership may also be revised in the light of new developments, especially any new priorities identified during the pre-accession process. Accession Partnership, Europa Glossary, http://europa.eu/scadplus/glossary/accession_partnership_en.htm, (15 February 2010).

[486] Flam, *op.cit*., p. 2, (15 February 2010).

[487] Baykal, *op.cit*., pp. 24-25.

judges and prosecutors on EU legislation, including in the field of human rights, • to maintain the de facto moratorium on capital punishment, • to remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting, and • to develop a comprehensive approach to reduce regional disparities and in particular improving the situation in the Southeast, with a view to enhancing economic, social and cultural opportunities for all citizens.	on Civil and Political Rights and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights, • to align the constitutional role of the National Security Council as an advisory body to the government in accordance with the practice of EU member states, • to lift the remaining state of emergency in the Southeast and ensure cultural diversity and guarantee of cultural rights for all citizens irrespective of their origin, • to abolish the legal provisions preventing the enjoyment of these rights, including the field of education.

Moreover, the fourth conclusion of the Helsinki Summit required Turkey to peacefully settle the external disputes in accordance with the UN Charter.[488] Though Turkey criticized that the sensitive issues like Cyprus dispute between Greece and Turkey, and some priorities such as the abolition of death penalty, teaching of the native language and broadcasting in native language were defined as some of the pre-accession conditions firstly, due to the sensitive nature of those issues and secondly, due to certain misinterpretations and misunderstandings,[489] through the NPAA, Turkey accelerated political, judicial and administrative reforms, which has opened a

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488 Helsinki European Council, Presidency Conclusions, 10/11 December 1999,
4. The European Council stresses the principle of peaceful settlement of disputes in accordance with the United Nations Charter and urges candidate States to make every effort to resolve any outstanding border disputes and other related issues. Failing this they should within a reasonable time bring the dispute to the International Court of Justice. The European Council will review the situation relating to any outstanding disputes, in particular concerning the repercussions on the accession process and in order to promote their settlement through the International Court of Justice, at the latest by the end of 2004.

[489] Baykal, *op.cit*., p.26.

new phase of transformation leading to harmonization with the EU standards.[490] Constitutional amendments undertaken by the Turkish Parliament in 2001, 2004 and the recent constitutional amendments' package and significant steps to fulfil the Copenhagen Criteria – for instance, The legislative package of harmonization adopted by the Turkish Grand National Assembly (TGNA) on 3 August 2002 should be regarded as a turning point of historic importance embodying the Copenhagen political criteria in Turkey's accession process to the EU[491] - motivated by the EU harmonization laws were crucial developments towards the system-transformation. These changes removing the formerly draconian restrictions on freedom of expression, and association, improving human rights, accepting more transparent defence budgets and reducing the powers of military in politics rewrote one third of the constitution.[492] In other words, 'when Turkey became an official candidate for membership at the Helsinki summit in December 1999, an avalanche of reforms soon followed in order to meet criteria required for accession talks to begin.'[493] In other

[490] "Political Criteria",*Turkish NPAA*, March 2001:
The Turkish Government will speed up the ongoing work on political, administrative and judicial reforms and will duly convey its legislative proposals to the Turkish Grand National Assembly. The goal is to strengthen, on the basis of Turkey's international commitments and EU standards, the provisions of the Constitution and other legislation to promote freedom; provide for a more participatory democracy with additional safeguards; reinforce the balance of powers and competences between State organs; and enhance the rule of law. In the context of the reform process regarding democracy and human rights, the review of the Constitution will have priority. The constitutional amendments will also establish the framework for the review of other legislation. The Turkish Government will closely monitor progress in the country in the areas of human rights, democracy and the rule of law, regularly evaluate the work underway for harmonization with the EU acquis, and will take all necessary measures to speed up the ongoing work. In addition, legal and administrative measures will be introduced in the short or medium term regarding individual rights and freedoms, the freedom of thought and expression, the freedom of association and peaceful assembly, civil society, the Judiciary, pre-trial detention and detention conditions in prisons, the fight against torture, human rights violations, training of law-enforcement personnel and other civil servants on human rights issues, regional disparities. For the executive summary of the Turkish NPAA see http://ec.europa.eu/enlargement/pdf/turkey/summary_en.pdf, (19 February 2010).
[491] Tanlak, *op.cit*., p. 13.
[492] Independent Commission, *op.cit*., p. 13.
[493] Ragan Updegraff, "Turkey Between East and West", *Washington, DC: Foreign Policy in Focus (FPIF)*, November 10, 2008.

words, 'internally the renewed sense of confidence and optimism in Turkey sparked by the Helsinki decision was tangible and deemed likely to spur Turkey's democratic reform process.'[494] Reform continued unabated following the Justice and Development Party's (AKP)[495] landslide victory in the 2002 elections, and in October 2005, Turkey officially commenced accession negotiations; however, following the Helsinki Summit, the steam driving the reform revolution dissipated, causing the accession process to sputter,[496] until the AKP's proposed third national program and recent constitutional amendment-package. After the beginning of negotiation talks in 2005, the slow pace of reform process can be explained by 'growing resentment of European demands' in Turkish domestic political sphere, 'returning problems with Cyprus and the Kurds' and the severe criticism from the ruling party AKP's opponents on the government itself, reform packages and on the constitutional changes.[497] Therefore, the AKP government missed opportunities and failed to sustain the momentum of reforms as it had to fight off old guard opponents including military, parts of judiciary and the main opposition Republican Peoples' Party. [498] Based on the allegation that the AKP was violating the secular principles of the state, the military openly displayed its reaction and the chief prosecutor of the Supreme Court of Appeals demanded the closure of the ruling party in March 2008 and

[494] Wolfgango Piccoli, "Enhancing Turkey's EU Membership Prospects via Securitizing Moves: The Role of Turkish NGOs in the Country's Europeanization", *7th Annual Kokkalis Graduate Student Workshop*, Harvard University, 4 February 2005, p. 2.
[495] The new ruling party was the coalition of liberal and conservative elements within Turkish elites – mostly concentrated in the Anatolian part of the country – whose common goal was the establishment of a cultural and political hegemony alternative to the Kemalist one as represented by the Republican's People Party (CHP). Emiliana Alessandri, The New Turkish Foreign Policy and the Future of Turkey-EU Relations, Institution of Internatonal Affairs (IAI), Feb 2010, pp. 6. The party's own self-description is that of 'conservative democrats' identifying a close affinity in the process with their Christian democratic counterparts in Western Europe. Öniş, 2006, *op.cit*., p. 10.
[496] Updegraff*, op.cit.*
[497] *Ibid.*
[498] Independent Commission, *op.cit*., p. 14.

banning of 71 politicians, including the President and the Prime Minister.[499] However, Turkey insists on proceeding 'by taking advantage of the opportunities for peace in the country's war-torn southeast and allowing more cultural freedom for its Kurdish citizens; by expanding and ensuring implementation of new human rights legislation; by continuing the very positive economic reform.'[500] The launch of a comprehensive democratic opening process towards the Kurds', and its 'translation into important concrete actions such as the opening of new Kurdish-language media', and 'the granting of a growing number of cultural rights' constitute 'the most tangible progress in areas critical to the EU', and displayed the determination of Turkey to align with European democratic practice. Though the DTP's recent closure by the Consitutional Court testifies to the obstacles which supporters of change still encounter on the path to full conciliation',[501] the AKP came to power three years after the Helsinki Summit had granted Turkey-EU candidate status and displayed from the start the firmest and most explicit pro-EU orientation of all parties[502] by committing the transformation process to eliminate the authoritarian legacies. Thus, today Turkey's political transformation is continuing with new waves of democratization through the latest move of initiative proposed by the AK Party's parliamentary group to amend the 29 articles of the constitution which is currently being considered in the Turkish parliament, is one of the most comprehensive amendments to the current constitution.[503] This new age of democratization process

[499] *Ibid.*
[500] Europe's Helsinki Summit: Now Make Turkey a Serious Offer, *The New York Times*, December 10, 1999.
[501] Alessandri, *op.cit*., p. 8.
[502] *Ibid*., p. 7.
[503] Ihsan Dagı, "Editor's Note", *Insight Turkey*, Vol. 12, No. 2, April-June 2010.

may provide Turkey with the accelerated accession process and transformation of internal institutions and functions.

4.3 Crucial Steps towards Democratic Consolidation and Elimination of Non-liberal and Non-democratic Elements from the 1982 Constitution

> Actually what were the Copenhagen criteria have now become the Ankara criteria. The reform agenda has been adopted by the government. … And that is exactly the way it should be. It is a democratic project, which is conceived of and prosecuted by the government of Turkey on behalf of the Turkish people.
>
> David L. Phillips[504]

> Political and economic reforms received new impetus because of the determination of the government to meet the Copenhagen criteria.
>
> Commission of the European Communities[505]

The continuous efforts since the year 2000 that aim at linking modernisation and democracy with one another and more importantly, at consolidating and deepening Turkish democracy forced political and state elites to come to terms with the fact that democracy is not only a normatively good system of governance, but also constitutes a valuable strategic and political device to enable any country to be strong and stable in its homeland and in international relations.[506] Since the Helsinki Summit, a certain road to the EU was drawn, which leads the EU to play a positive international role in democratic consolidation in Turkey. Moreover, the rise of a single-party majority government in 2002 national elections, and the increasing calls of civil society organizations for more democracy in Turkey resulted in a liberal,

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[504] "US Analyst Phillips: Kurdish Opening is a Turkish Democracy Initiative", *Today's Zaman*, 17 September 2009.
[505] Commission of the European Communities, "2004 Regular Report On Turkey's Progress Towards Accession", Brussel, 6 October2004, p. 20, pp. 1-178.
[506] Senem Aydın and E. Fuat Keyman, European Integration and the Transformation of Turkish Democracy, *Centre for European Policy Studies: EU-Turkey Working Paper,* No. 2, August 2004, p. 11.

plural and multicultural state system. Hence, the European Union has influenced the democratisation process of candidate countries primarily by empowering reformist elements in their societies and by altering the domestic opportunity structure during the accession process.[507] Henceforth, as a challenge to the mono-cultural structure of Kemalist traditional state, state-society relations started to be democratized.

After the approval of the NPAA, the most comprehensive political reform was made when the Turkish Grand National Assembly (TGNA) convened on 17 September 2001 to discuss the thirty-seven-article constitutional amendments package, for which the Democratic Left Party (DSP), the Motherland Party (ANAP) and the AKP unconditionally declared support.[508] The Nationalist Movement Party (MHP), whose reservations on the amendments to articles 13, 14, 26 and 28 coincided with the 'sensitivities' of the General Staff,[509] was generally in favour of the amendments.[510] The pressure of other domestic actors, especially of military, caused the amendments to the Preamble and 13th and 14th articles of the Constitution to be reconfigured. Constitutional amendments involve not only political but also cultural reforms ranging from balancing civil-military relations to the improvement of human rights and individual freedoms, which will be analysed in detail later. Moreover, 'the abolition of Article 15, which had banned the constitutional review of

[507] Gergana Noutcheva et al. (2004), "Europeanization and Secessionist Conflicts: Concepts and Theories", in Bruno Coppieters et al., *Europeanization and Conflict Resolution: Case Studies from the European Periphery*, Ghent: Academia Press, p. 17, quoted in *Ibid*., p. 17.
[508] Levent Gönenç, "The 2001 Amendments to the 1982 Constitution of Turkey", *Ankara Law Review*, Vol. 1, No.1, p. 96.
[509] The amendments to these articles aimed to improve human rights and freedoms: Article 13 under the heading of 'Restriction of the Fundamental Rights and Freedoms' of the Constitution and Article 14 under the heading of 'Prohibition of the Abuse of Fundamental Rights and Freedoms have been amended to limit the grounds for restirictions. Article 26 and 28 have been amended to expand the scope of the right of the freedom of thought and expression and remove restrictions on the use of different languages, dialects and tongues by citizens in their daily life.
[510] Gönenç, *op.cit*., p. 96.

acts passed during the NSC regime established after the 1980 coup,'[511] and the approval of the new Turkish Civil Code with regard to Copenhagen political criteria in January 2002 were followed by harmonization packages[512] between 2002 and 2004 after the Copenhagen Summit of the EU, aiming to ensure that the constitutional amendments are put into practice, and to extend the scope of reforms in the protection of human and minority rights, especially to abolish the restrictions on the right to broadcast in different languages. The conclusion taken in the Summit that 'if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the EU will open negotiations without delay'[513] disappointed Turkey; however, the reform process was not slowed down since 'the Copenhagen Summit has provided Turkey with the prospect that full EU membership is a real possibility.'[514]

After the election of AKP in November 2002, legislative reforms aiming to put more emphasis on democratization and the protection of human/minority rights and freedoms accelerated through the increasing legitimacy provided by the EU for the ruling party. The authoritarian attitude of the 1982 Constitution to fundamental rights and freedoms liquidated in 2001 to a great degree has transformed into a more liberal and democratic approach through the comprehensive democratization reforms that entered into force successively in 2003 and the following constitutional

[511] Aydın and Keyman, *op.cit*., p. 15.
[512] During the reform process, a 'harmonization package' came to be the term of reference for a draft law consisting of a collection of amendments to different laws, designed to amend more than one code or law at a time, and which was approved or rejected in a single voting session in Parliament. World Bank, "*Turkey* Report", *Contract Enforcement and Judicial System (CEJS)*, Poland*, Warsaw, June 2005.*
[513] European Council, "Presidency Conclusions", Copenhagen European Council, SN400/02, 12-13 December 2002,
[514] E. Fuat Keyman and Ziya Öniş, op.cit., p. 176.

amendments approved in May 2004. Close and direct links with civil society and reformist leaders have been improved. The primary aim of all efforts made to reduce the role of Turkish army in domestic politics, strengthen the civilian control over military, reform judiciary system, expand individual freedoms like speech of expression and association or human rights such as expansion of broadcasting in Kurdish, and the abolishment of death penalty enabled the 'semi-democratic' structure of Turkish politics to transform, thereby adjusting the domestic political culture to the contemporary epochal needs, providing for Turkish citizens more participatory democracy, preventing it to become the 'government of judges', and freeing Turkey from its over 70 year-old authoritarian confinement. By helping to create a strong language of rights in the country, the EU started to play an important role in furthering the change in state-societal relations and provided legitimacy for a vast amount of civil society organisations calling for a more democratic Turkey and demanding recognition of cultural/civil rights and freedoms.[515] Even some civil society institutions such as Turkish Industrialists' and Businessmen's Association (TÜSIAD), the Union of Chambers, Commodity Exchanges of Turkey (TOBB) and Turkish Confederation of Employer Associations (TISK) and such offered normative resolutions of the draft of Turkish Constitution in civilianization process.

As these changes toward democratic consolidation challenged the interests of some elite groups in Turkey, strong oppositions from different segments arose especially against the signing of the Protocol 6 of the ECHR requiring parties to restrict the application of the death penalty to times of war or imminent threat of war

[515] E. Fuat Keyman and Ahmet İçduygu, "Globalization, Civil Society and Citizenship in Turkey: Actors, Boundaries and Discourses", *Citizenship Studies*, Vol. 7, No. 2, 2003, pp. 219-33, quoted in Aydin and Keyman, op.cit., p. 17.

and later the abolition of death penalty in 2004 or subordination of domestic law to international law in terms of human rights and freedoms with the claims of loss of national sovereignty. Such oppositions have slowed down the reform process immediately after the beginning of negotiations talks; however, the ruling party AKP did not give up the EU project. With its second rise after the 2007 elections, the government prepared a new civilian constitution draft as the most decisive step towards further civilianisation of the political scene. Yet this draft proposal did not find the sufficient support from other parties, and resulted in opening of a closure case against the party; therefore, after overcoming this closure case, the government changed its route towards a new dynamism such as appointing 'a new full-time, full-fledged chief negotiator, Egemen Bagıs, who unlike previous ones serves also as minister for EU affairs.'[516] The determination to gradual civilianisation and liberation of the constitution has led the submission of the recent draft of constitutional amendments package consisting of 29 Articles to the Parliament on 30 March 2010 to be able to eliminate the current key challenges – the influence of military in politics, protection of human/minority rights and the judicial system. 'The proposal includes measures that increase standards of democracy, the law and protect individual rights while expanding the right of collective bargaining,' Bekir Bozdağ, a senior member of the governing Justice and Development Party, or AKP, said after submitting the draft law.[517] Rigorous attempts to change the perceptions of the political and military elite, particularly among those in the security forces and the

[516] Alessandri, *op.cit*., p. 8.
[517] "Turkey's Ruling Party Submits Constitutional Amendment Package to Parliament", *The Journal of Turkish Weekly*, 30 March 2010.

judiciary would prove beneficial as they would be helpful in fostering socialization with European norms and values.[518]

Conclusively, when Turkey was defined as a candidate country after the Helsinki summit of 1999 and offered a pre-accession strategy, the reform process which began during the coalition government of DSP, ANAP, and MHP accelerated after the 2002 elections with the rise to power of the AKP government.[519] Hence, a reform process started in Turkey, in which several important harmonization packages for democratic consolidation in a short span of time passed. Procedural Code, the Press Law, the Law on Associations and so on was a lengthy legislative process that could have taken years, Turkey chose to redress its shortcomings *vis-à-vis* the political criteria as quickly as possible through harmonization packages, so that, together with the harmonization packages and individual laws, very important Constitutional amendments also were carried out by the Parliament after Helsinki Summit,[520] which David L. Philips summarized in the following statements: [521]

> Encouraged by the EU, Turkey has pursued legislative and constitutional reforms liberalizing the political system and relaxing restrictions on freedom of the press, association, and expression. Turkey signed and ratified Protocols 6 and 13 of the European Convention on Human Rights. It abolished the death penalty and adopted measures to promote independence of the judiciary, end torture during police interrogations, and reform the prison system. In addition, Turkey has significantly reduced the scope of its antiterrorism statutes, which had been used to curtail political expression, and it amended the Penal Code and Codes of Criminal and Administrative Procedure. Police powers

[518] Aydin and Keyman, *op.cit*., p. 19.
[519] Atila Eralp, "Temporality, Cyprus Problem and Turkey-EU Relations", *Centre for Economics and Foreign Policy Studies (EDAM)*, Discussion Paper Series, July 2009.
[520] World Bank, "*Turkey* Report", *Contract Enforcement and Judicial System (CEJS)*, Poland, *Warsaw, June 2005*.
[521] David L. Phillips. "Turkey's Dreams of Accession". *Foreign Affairs*. Sept/Oct. 2004, http://www.foreignaffairs.com/articles/60100/david-l-phillips/turkeys-dreams-of-accession, (28 May 2010).

> have been curbed and the administration of justice strengthened, due partly to the dismantling of state security courts.

Whereas Turkish Parliament has passed a series of reform packages since 2001, domestic cleavages have appeared with regard to sovereignty sharing in domestically sensitive issue-areas. When the EU's requirements contradict to the fundamental values of Turkish society, domestic voices rise in opposition to the political or cultural changes motivated by the EU's demands. As in the very recent case of 2010 reform package, the opposition party, CHP, tries to impede the amendment process again as in the past. Additionally, the nationalist basis of Turkey provides for more protective structure of national sovereignty on the contrary to the EU's supranational and integrationist basis.

On the contrary, the Turkish government is determined to comply with the EU requirements and attain eventually full membership as can be obviously seen in the recent developments - the adoption of recent NPAA in December 2008, the President's efforts to promote positive dialogue between political parties and civil societies and a positive atmosphere in external relations and Kurdish issue,[522] the appointment of a full-time EU Chief Negotiator, with the status of State Minister in January 2009, regularization of meetings of the Reform Monitoring Group that is made up of the Ministers of Foreign Affairs, State Minister and EU Negotiator, Justice and the Interior, enhancement of public administration, in July 2009 to deliver better public services to citizens[523], ratification of the UN Convention on the Rights of Persons with Disabilities, democratic opening to protect minority and

[522] The President, Abdullah Gül, is the first of a Turkish President for 33 years who has a trip to Iraq.
[523] Turkey 2009 Progress Report: They focus on enhancing e-services and information, establishing services standards and taking measures for the disabled. 170 regulations have been simplified and 421 administrative documents were eliminated.

human rights and to resolve the Kurdish issue, proposal of a new constitutional draft to set limitations to the jurisdiction of military courts and increase civilian control over security forces, to strengthen the legislative oversight over military budget and expenditure, judicial reform strategy aiming to strengthen the independence, impartiality, efficiency and effectiveness of the judiciary, enhancement of its professionalism. All these efforts to civilianize the Constitution by reducing the influence of the military on Turkish politics and by investigating the criminal network Ergenekon, democratic opening to minorities, and to eliminate the non-liberal and non-democratic elements from the Constitution are the crucial ways to balance the fears of loss of sovereignty and cultural values arising from domestic scene due to the EU candidacy goals, thereby letting go of the authoritarian past of Turkey.[524]

4.3.1 Democratic Opening: Redefinition of National Identity

> It is common opinion that Turkey needs a new Constitution. The Constitution from 1980 is probably one of the most discussed constitutions in the world. The provisions were maybe suitable for the circumstances in 1982 [before the first government after the military coup was formed], but they do not meet current needs in Turkey in terms of priorities, philosophy and internal balance. Our current constitution falls short of our time's expectations and demands. This constitution is not the right approach for Turkey in the 21st century. The economy has grown and democracy has changed in every aspect. It is not possible for Turkey to carry on with a constitution that has not been amended.
>
> Deputy Prime Minister and Government Spokesman **Cemil Çiçek**[525]

[524] In Turkey 2009 Progress Report it is stated that the government, reshuffled following the March municipal elections, expressed its commitment to the EU accession process and to political reforms, which proves that the EU is also contented with the developments recently made by the government.
[525] AKP Announced Constitutional Reform Package, *BIA News Center*, 23 March 2010.

The impact of EU accession process is reverberated on the consolidation of democracy, especially through constitutional amendments, as 'the main official reason for keeping Turkey out of the EU has been its failure to live up to the political criteria for membership, that is, the democratic and human rights criteria.'[526] Several amendments to the Constitution made in key issue-areas in 1987 and 1995 to liquidate non-liberal and non-democratic elements were followed by a more intensified reform process when Turkey-EU relations have gained certainty in the aftermath of Helsinki Summit of 1999. Harmonization with the EU *Acquis* requires an approach that is in conformity with not only political but also socio-political transformations with regard to the consolidation of democracy, the strengthening the guarantee of fundamental freedoms and the protection of human rights. In that sense, Turkey has made great efforts to harmonize the political and judiciary systems with contemporary norms and standards. Therefore, the 1982 Constitution of Turkey has undergone a transformation process to meet the 21st century's needs and conditions. As the 2009 Progress Report has criticised Turkey for failing to 'put forward any proposal for amending the Constitution, nor did it propose any methodological approach, based on consultation,'[527] following the comprehensive amendments in 2001 and 2004 and the 2008 constitutional draft, the government has proposed the

[526] Flam, *op.cit*., p. 2.

[527] *Turkey 2009 Progress Report: Constitution*

The political and societal debate on constitutional reform continued. There is a growing awareness in the country that Turkey's Constitution, drafted in the aftermath of the 1980 military coup, needs to be amended in order to allow further democratisation in a number of areas and give stronger guarantees of fundamental freedoms in line with EU standards. These include, for example, rules on political parties, institution of an Ombudsman, use of languages other than Turkish and enhancement of trade union rights.

However, no consensus could be reached between political parties on constitutional reform.

There was no follow-up to the draft constitutional reforms prepared in 2008 by a group of academics. Despite numerous announcements, the government did not put forward any proposal for amending the Constitution, nor did it propose any methodological approach,

recent reform package aims to democratize and liberalize the Constitution in line with the EU standards. In this part, the most crucial steps toward the democratic opening and the elimination of non-liberal and non-democratic elements from the 1982 Constitution will be handled in two categories: the expansion of human rights and fundamental freedoms, and the protection of minority rights.

4.3.1.1 Expanding the Scope of Human Rights and Fundamental Freedoms:

> To its supporters, the death penalty has been a sign of Turkey's resolve against terrorism, and to its opponents, a sign of state brutality and backwardness.
>
> BBC's Jonny Dymond[528]

On the basis of EU's regular progress reports on Turkey, 'in the period following 1999 when the EU accession prospect arose, important steps to broaden the scope of fundamental freedoms and to improve cultural rights were taken.[529] The Turkish government established, *inter alia* socio-political changes and a Human Rights Inquiry Commission as a parliamentary screening system, national Human Rights Boards monitoring the implementation of human rights.[530] Under this heading the reform efforts of the government to provide Turkish citizens with a more liberal and democratic living standards in alignment with the accession requirements will be examined.

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[528] "Turkey passes key reform package", *BBC News*, Europe, 3rd August, 2002.
[529] Aydın and Keyman, *op.cit*., p. 22.
[530] *Turkey 2009 Progress Report:* Several State bodies share the task of promotion and enforcement of human rights. These include the Human Rights Presidency under the Prime Minister's office and the Human Rights Boards (931 in all). These bodies have the tasks of visiting places of detention (including State-sponsored social services) and of reviewing allegations of human rights violations. Overall, the number of applications to these bodies has increased substantially. Human rights training for public officials, judges, public prosecutors and police officers continued. In-service and on-the-job training for the gendarmerie includes training on human rights and was supplemented by specialist training on techniques to review allegations of human rights violations.

In line with the fourth, sixth and seventh harmonization packages for democratic consolidation and the Union's regular reports, amendments as regards freedom to expression and thought, the fight against torture and ill-treatment, restrictions imposed on Freedom of Thought and Expression, freedom of press in context of cultural rights, freedom of association and assembly, strengthening civil society, the pre-detention trial, the prohibition of discrimination, the abolition of death penalty etc. not only guarantee the protection of human rights and freedoms but also constitute a crucial step toward letting go of the traditional perception of 'state over society.'

First of all, with regard to human rights, the Article 13 of the Constitution which functioned as an overall restriction of the fundamental rights and freedoms has been transformed into an overall protection of those rights and freedoms in 2001, thereby taking them under guarantee.[531] In order to eliminate the legal grounds for restrictions – the indivisible integrity of the state with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest and public morals or the protection of public health – the Article has been amended as 'fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.' Further, in the fifth paragraph of the Preamble the word 'activity' is

[531] Yazıcı, *op.cit*., p. 12.

written instead of the phrase 'thoughts and opinions',[532] the Article 14 that regulates the prohibition of the abuse of fundamental rights has been reconfigured to limit the grounds for restriction of fundamental rights.[533] An even more profound amendment has been made to Articles 26 and 28, by constitutionally guaranteeing the freedom of press and the right of expression without censorship.[534]

With the 2001 amendments have also contributed to the expansion of political party freedoms, by introducing criteria for determining whether the political party has become a centre of the execution of prohibited activities, by adding the seventh paragraph in Article 69 stating that 'instead of dissolving them permanently in accordance with the above-mentioned paragraphs, the Constitutional Court may rule the concerned party to be deprived of State aid wholly or in part with respect to intensity of the actions brought before the court.' Moreover, within this context, the Article 149 related to the procedures of the Constitutional Court under the heading

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[532] **The Fifth Paragraph of the Preamble:** The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics…

[533] **Article 14: (**As amended on October 17, 2001)
None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.
No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.
The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.

[534] **Article 26:** (As amended on October 17, 2001)
…Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing…
Article 28: (As amended on October 17, 2001)
The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.
The state shall take the necessary measures to ensure freedom of the press and freedom of information…

Functioning and Trial Procedure has been amended in order to make it more difficult to dissolve a party and to extend the scope for the exercise of the freedom of thought and expression; thus, the phrase 'and the dissolution of parties' has been added to the first paragraph of Article 149 and the phrase 'two-thirds majority' is replaced by the phrase 'three-fifths majority.'[535] With these amendments, it becomes more difficult to dissolve political parties.

Among 2001 amendments, another significant step toward the democratization process is the deletion of the last paragraph of Article 15. This amendment abolished the ban of the legislative changes enacted in the military ruling between 1980 and 1983 to be brought before the Constitutional Court on grounds of conflict with the Constitution.

On pre-trial detention, the amendment to the fifth provision of Article 19 has limited the time of pre-trial detention with four days in the case of offences committed collectively. The last paragraph of the same article has redefined as 'Damage suffered by persons subjected to treatment contrary to the above provisions shall be compensated by the State with respect to the general principles of the law on compensation.

Moreover, death penalty whose scope was limited to the cases of terrorist crimes, and in times of wars or imminent threat of war in Article 38 of the constitution with 2001 amendments was abolished in 2004. Thus, the statements related to death penalty in Articles 15, 17 and 87 of the Constitution have been deleted. Thus, Turkey not only fulfils the requirements of the ECHR and but also

[535] Baykal, *op.cit*., p. 33.

removed the constitutional obstacles to ratification of the Additional Protocol no. 13 of the ECHR.[536]

2004 constitutional amendments as regards the Article 10 under the heading 'Equality before the Law', and the Article 90 under the heading 'Ratification of International Treaties' have also contributed to the expansion of human rights and freedoms and their guarantee under the Constitution. The 2004 amendment to the Constitution regulating the equal rights of men and women constitute a significant change, as it emphasizes the equality principle explicitly and similar to EU draft constitution.[537] The amended version of Article 90 has stated that 'in the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.' Thus, placing international treaties between the Constitution and the laws increased the effectiveness of ECHR and other international treaties concerning human rights, thereby expanding the scope of freedoms through judicial ways.[538]

In spite of the growing political tension in the domestic arena, Turkish government adopted a series of harmonization packages touching upon the sensitive issues; this signalizes that Turkey is eager to transform its political structure in accordance with the EU accession requirements. Within this perspective, total 49 articles of the Constitution, which is almost one-third of the 177 articles of the Constitution, were amended between the period 2001-2005 within the framework of

[536] Yazıcı, *op.cit*., p. 13.
[537] *Ibid*., p. 13-14.
[538] *Ibid*., p. 15.

the harmonization to the EU, in compliance with contemporary standards and principles.[539]

Harmonization Packages

'In order to raise democratic right and living standards of all Turkish citizens, the government has made additional 218 legislative changes in 53 laws through eight harmonization packages enacted between January 2002 and July 2004.'[540] Thus, 'the expansion the scope of human rights and freedoms aimed to strengthen the rule of law and democracy.'[541] The progress reports published by the EU not only functioning as a mechanism evaluating the national programs but also determining their success in fulfilling the priorities[542] paved the way to transformation in the fields of democracy, rule of law, freedom to expression and thought, human rights. The ninth harmonisation package entered into force in 2006. Thanks to the initiative of the government and its decisiveness the reform process is still on progress.

With the first harmonization package that entered into force in February 2002 and second harmonization package that entered into force in April 2002, as regards freedom of expression, 'a number of existing restrictions have been lifted, leading to both acquittals and the release of a number of prisoners sentenced for non-violent expressions of opinion.'[543] With the aim of harmonization with the ECHR standards, Turkey has undertaken significant reforms to expand the freedom of expression. 'Among these, the amendments to Article 312 of the Penal Code (inciting people to

[539] World Bank, *op.cit*., p. 1.
[540] *Avrupa Birliği Uyum Yasa Paketleri*, Başbakanlık Avrupa Birliği Genel Sekreterliği, Ankara, 2007.
[541] *Ibid.*
[542] Elif Kurşunlu, "Avrupa Birliği Müktesebatının Uygulanması Çerçevesinde İdari Kapasite", ABGS Uzmanlık Tezi, Ankara, 2004, p. 9, quoted in M. Akif. Özer, Temel belgeler Eşliğinde Türkiye-Avrupa Birliği İlişkileri, Sayıştay Dergisi, Vol. 66, No. 67, Temmuz 2007, p. 69.
[543] Aydın and Keyman, *op.cit*., p. 27.

enmity and hatred by pointing to class, racial, religious, confessional or regional differences), Article 159 of the Penal Code (insulting the state and state institutions and threats to the indivisible unity of the Turkish Republic), Article 169 of the Penal Code (aiding and abetting an illegal organisation), Article 7 of the Anti-Terror Law (propaganda encouraging the use of terrorist methods) and the abolition of Article 8 of the Anti-Terror Law (propaganda against the indivisible unity of the state) are the most significant.'[544]

On August 3rd of 2002, the Turkish Government has adopted the third package of EU harmonisation laws on highly sensitive issues such as 'the abolition of death penalty except in the cases of war and imminent threat to war, and broadcasting and education in native language that Turkish citizens use in daily life, amendments to the Code of Civil Procedure and the Code of Criminal Procedure allowing for retrial in light of the decisions of ECtHR for civil and criminal cases together with amendments in other laws concerning the civil society and freedom of thought and expression.'[545]

With the adoption of third democratization package by August 2002 and the following packages of January and February 2003 extended the freedom of establishment and membership of associations, thereby strengthening the civil societies. 'On freedom of association, further amendments and simplifications to the Associations Law and the procedures required for associations to obtain government approval have often been cites as necessary measures to enable civil society to

[544] *Ibid.*
[545] Başbakanlık Avrupa Birliği Genel Sekreterliği, "Avrupa Birliği Uyum Yasa Paketleri", Ankara, 2007.

flourish in Turkey.'[546] On the road to the EU accession, Turkey-foreign association relations displays a tremendous increase, which functioned as the incentive to repeal the restrictions related to cooperation areas and funding in foreign associations. Moreover, in 2003, the fourth harmonisation package has harmonized the Political Parties Law with the 2001 constitutional amendments and the fifth and sixth packages have extended the scope of the retrial of the cases in light of the ECtHR decisions. Under the seventh package, cultural rights and freedoms are regulated together with the restriction of the scope of military courts' competences with regard to civilian individuals.

With the fourth harmonization package in January 2003, 'as regards the closure of political parties the sanction of depriving political parties partially or fully of state aids has been adopted as an alternative to closure thereby complying Political Parties Law with the Constitutions.'[547] It also expanded the scope of the freedom of expression and reconfigured the laws on pre-trial detention. 'Some new provisions have been introduced on minors that further enhance the rights of the child in accordance with the UN Convention on the Rights of the Child together with the adoption of new provisions expanding the use of petition right of Turkish people as well as foreigners.'[548]

The fifth harmonization package entered into force February 2003 and expanded the scope of retrial on the basis of European Court of Human Rights decisions by amending the Code of Criminal and Civil Procedure. The following harmonization package which entered into force in July 2003 has made it possible to

[546] Aydın and Keyman, *op.cit*., p. 29.
[547] World Bank, *op.cit*., p. 3.
[548] *Ibid.*

broadcast in different languages and dialects traditionally used Turkish citizens in their daily lives and also introduced amendments with regard to religions freedom and community foundations. 'Retrial has been adopted in Administrative Procedure Law in light of ECtHR for administrative law cases.'[549]

The seventh harmonization package that entered into force in August 2003 introduced significant changes in the freedom of expression, freedom of demonstration, freedom of association, right of prisoners, religious freedom, rights of children, cultural rights. With the eighth harmonization package that entered into force in July 2004, instead of death penalty aggravated life imprisonment was introduced in compliance with the constitutional amendments.

In addition to constitutional amendments and harmonization packages, the Parliament approved a great number of new laws prepared for the harmonization to the EU *Acquis*. For instance, the new Turkish Penal Code adopted by the parliament significantly liberalises the country's criminal justice system by increasing penalties against human rights abuses and torture and also improves the rights of women and children. With the amendments to Article 301 of Turkish Penal Code in May 2008, which replaced the Article 159 on 1 June 2005, the term "Turkishness" has been replaced with "Turkish Nation", and the term "Republic" is replaced with "the State of Republic of Turkey" after fierce criticism from NGOs and the EU, which caused a hot debate in the political field. The amendments also required the permission of the Minister of Justice in order to carry out a criminal investigation.[550] However, some human rights institutions still find these changes unsatisfactory.

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[549] *Ibid.*, p. 4.

[550] *Turkey 2009 Progress Report:*The amendments to article 301 entered into force on 8 May 2008. These amendments introduced amongst other a permission requirement by the Minister of Justice in

2010 Proposed Constitutional Amendments to Human Rights and Fundamental Freedoms in Respect to Turkey 2009 Progress Report

> Despite its shortcomings, the proposed reforms will relatively improve human rights and strengthen parliamentary rule and the rule of law.
>
> Can Paker, Chairman of TESEV's Executive Board[551]

The ruling party AKP valuing the adoption of the fundamental norms of participatory democracy has been following a dynamic approach on its road to the EU accession. In this sense, AKP's recent constitutional amendments package sent to Parliament on 30 March 2010 is another crucial step to eliminate the deficiencies in democracy, human rights and the rule of law declared in Turkey 2009 Progress Report published by the EU. 'The package, except the rejected article 8th over the shut-down of political parties and a related provisional article – Article 18 - was adopted by 336 votes in favour and 72 against on May 6.'[552] 'Turkey's Higher Board of Elections (YSK) has set September 12 as the date for holding the referendum on Constitutional amendments.'[553] However, the main opposition party, CHP, appealed to the Constitutional Court to annul the amendments and the Court decided on 8 June to assess the changes from a procedural perspective.

Today, in a wholehearted manner, the Turkish government tries to eliminate deficiencies in the Constitution stated in the 2009 Progress Report, primarily to

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order to launch a criminal investigation on the basis of article 301. Further to the entry into force of the revised article the Minister reviewed 914 pending cases (either at the prosecution or trial phase) and authorised in total 77 criminal investigations to continue (i.e. 8% of the cases referred to him). Furthermore, the Minister of Justice reviewed 210 investigations initiated after the entry into force of the amendments to article 301 on 8 May 2008, out of which he granted permission to eight criminal investigations to continue (i.e. 3% ofthe cases referred to him).

551 "Constitutional Court Cannot Review Substance of Reform Package", *Today's Zaman*, 07 May 2010.

552 *Ibid.*

553 "Turkey to hold referendum on Constitutional Amendments September 12", *Panaroma: Armenian News*, 14 May, 2010.

provide for consolidated democracy and liberalism and thus to facilitate its accession to full membership.

First of all, 'the deficiency in Article 10 under heading Equality before Law is improved in alignment with anti-discrimination principle of the 2009 Progress Report,'[554] and thus, the indirect discrimination is constitutionally guaranteed by adding the following statement at the end of the second paragraph:

> 'As regards the equality of men and women, the discretions in favour of the socially vulnerable persons such as women, children, old persons and the persons with disabilities are not against the anti-discrimination principle.'

With regard to respect for private and family life and, in particular, the right to protection of personal data, the 2009 Progress Report states that 'Turkey needs to align its legislation with the data protection acquis, in particular Directive 95/46/EC'[555], and, in that context, 'to set up a fully independent data protection supervisory authority and also needs to ratify both the CoE Convention for the protection of individuals with regard to automatic processing of personal data (CETS No 108)'[556] and 'the additional protocol to it on supervisory authorities and trans-border data flow (CETS No 181).'[557] The changes in Article 20 proposed by the government aims to guarantee the right to protection of personal data under the Constitution.

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[554] *Turkey 2009 Progress Report*: There has been no progress on **anti-discrimination**. There is no definition in law of direct and indirect discrimination. The *acquis* concerning discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation has not yet been transposed. There is still no Equality body in Turkey, as required by the *acquis*. Dialogue with non-governmental operators in this area needs to be improved. Preparations in this area are not very advanced.

[555] See http://ec.europa.eu/justice_home/fsj/privacy/docs/95-46-ce/dir1995-46_part1_en.pdf, (01 March 2010).

[556] See http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm, (01 March 2010).

[557] See http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=181&CM=1&CL=ENG, (01 March 2010).

As regards 'the rights of the child', the Report states that efforts need to be further stepped up in all areas including administrative capacity, health indicators, education, the juvenile justice system and child labour and cases of children between 15 and 18 years of age tried as adults and facing disproportionate sentences raise serious concerns. In that sense, amendments to Article 41 strengthens and expands the children's rights in alignment with the EU requirements.

As regards 'Labour rights and trade unions', with amendments to Articles 51, 53, 54 and 128 the government tries to constitutional compliance with EU standards and International Labor Organization (ILO) Conventions.[558]

The introduction of a provision for constitutional complaint and the establishment of an Ombudsman are among other innovations in the proposed reform package. The amendment to Article 74 as regards 'Public Administration' aims to adopt an ombudsman institution 'in order to modernise human resources management and further develop a coherent personnel policy framework, based on transparency, accountability, political and merit-based career perspectives and to enable legal guarantee for the reform of civil service to avoid politicisation of the appointment and promotion system where appropriate.'[559]

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[558] *Turkey 2009 Progress Report*: As regards labour rights and trade unions, the reinstatement of 1 May as 'Labour and Solidarity Day' and a public holiday and the decision to allow trade unions to demonstrate (in small numbers) on Taksim Square in Istanbul were two symbolic steps, as trade union rights had been curtailed in Turkey after the 1980 military coup.

[559] *Turkey 2009 Progress Report:* "Promotion and Enforcement of Human Rights"
At parliament level, the Human Rights Investigation Committee established four subcommittees on: torture, ill treatment and prisons; freedom of thought, expression, religion and conscience; economic and social rights (including children's rights); and harmonisation of legislation with the EU *acquis*. The committee also issued several reports on specific human rights cases.
However, some human rights defenders have continued to face criminal proceedings in relation to their work. Lack of resources, independence and public awareness are hampering the smooth operation of human rights institutions. Discussions on the creation of a new
National Human Rights Institution to address these shortcomings have not been finalised. The government signalled its commitment to this process. The Ombudsman Law adopted in 2006 was annulled by the Constitutional Court on the grounds that the Constitution does not allow such an

Conclusively, if the changes concerning human rights and fundamental freedoms proposed in 2010 reform package eliminating the deficiencies stated in Turkey 2009 Progress Report are approved, it will be inevitable that Turkish citizens' rights and freedoms will undergo another transformation process in line with the EU standards.

4.3.1.2 The Shift from Traditional Nationalist Politics – The Protection of Cultural Rights and Minorities:

The Republic of Turkey is founded as a modern state based on the principle of absolute nationalism, which is also reverberated on the provisions of 1961 and 1982 Constitutions. 'Kemalist nationalism typically follows the line of reasoning that the state as a complex of political and administrative institutions must be legitimized in its ties with the society-as-nation, that is, as the bearer of a homogeneous cultural identity.'[560] Thus, the definition of Turkey's identity as monolithic in the constitutions have resulted in the violation of minority rights concerning both Muslim and non-Muslim ethnicities. Turkey's transformation regarding minority rights on its path to the EU accession will be analysed in respect to Muslim and non-Muslim minorities whose legal status was defined by the 1923 Treaty of Lausanne on the basis of religious belief.

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institution to be affiliated to parliament. Establishment of the Ombudsman therefore requires an amendment to the Turkish Constitution. However, the necessary consensus was not secured in parliament.
Overall, there was some progress on observance of international human rights law. However, implementation of some ECtHR judgments requiring legislative amendments has been outstanding for several years. Further efforts are needed to strengthening the institutional framework on human rights, in particular as regards the establishment of an independent human rights institution and of an Ombudsman. The ratification of the OPCAT is overdue.

[560] Levent Köker, "A Key to "Democratic Opening": Rethinking Citizenship, Ethnicity and Turkish Nation-State", *Insight Turkey*, Vol. 12, No.2, 2010, p. 60.

Advancement of Minority Rights After the Helsinki Summit

Although the Treaty of Lausanne has granted the right to enjoy the same rights as other citizens (negative rights) and the right to live in accordance with their own culture and traditions and to use their own language (positive rights) to non-Muslim minorities in line with the international standards,[561] the practical implementation of these rights in Turkey has failed to comply with the international norms. In spite of the fact that the religious, linguistic, educational and other social and economic rights of non-Muslim minorities in Turkey were recognized by the Lausanne Treaty, 'their legal status as "Turkish citizens" seemed far from being a status of "full citizenship" devoid of any kind of discrimination.'[562]

Minority rights started to be emphasized in international arena in 1990s and the EU requires member states and candidate states to protect minority rights. In that sense, Turkey has made efforts to resolve the minority problems in accordance with the Accession Partnership requirements by changing the existing laws and adopting harmonization packages. Aydin and Keyman explain the main problems concerning non-Muslim minorities in Turkey with two reasons: 'First only three main non-Muslim communities enjoy the rights given by the founding treaty of the Republic and deprivation of other religious minorities from a legal personality, and second, the shortcomings in the implementation of these rights, especially regarding property issues and religious/educational institutions.'[563]

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[561] Most significantly, the Treaty gives non-Muslim minorities the right to equal protection and non-discrimination, the right to establish private schools and provide education in their own language, the conditional entitlement to receive government funding for instruction in their own languages at the primary level in public schools, the right to settle family law or private issues in accordance with their own customs and the right to exercise their religion freely. Aydin and Keyman, *op.cit*., p. 31.
[562] Köker, *op.cit*, p.57.
[563] Aydin and Keyman, *op.cit*., p. 31.

After the 1999 Helsinki Summit, as in all spheres, Turkey has entered into a transformation process in the sphere of minority rights, as well. As the EU urges Turkey to comply with the Copenhagen criteria, substantial improvements concerning the protection of minority rights through constitutional provisions and laws have been on progress since the Helsinki. The first legal regulation after 1999, Law no. 4709 proposing to change some articles of the 1982 Constitution resulted in 27 articles related to human rights. First of all the above-mentioned amendments to Articles 26 (removal of restrictions on the use of any language prohibited by law in the expression and dissemination of thought) and 28 (removal of the legal provisions banning the use of Turkish citizens' mother tongue in broadcasting) in 2001 pave the way for the use of languages other than Turkish. Further, the amendment to Article 90 of the Constitution regulating the supremacy of the provisions of international treaties over national laws in case of conflict constitutes another significant change for minority rights.

The adoption of harmonization packages also enabled the further advancement of minority rights by additional legal changes. In general, ban on publishing in a language prohibited by law was repealed from the Press Law (second harmonization package); Law on Learning and Teaching of Foreign Languages and Law on Broadcasts of Radio and Television Channels were changed so as to lift restrictions on the right to learn languages and dialects traditionally used by Turkish citizens in line with the constitutional changes (second, third, sixth, seventh harmonization packages); amendments to Foundation Law[564] – solving the problem of real property

[564] The requirement for a Council of Ministers decision for the acquisition of immovable property by community foundations was replaced with that of the Directorate-General for Foundations, putting them on equal footing with other foundations. *Ibid*., p. 32

of the community foundations belonging to minorities in Turkey,[565] and 'prolongation of the application period allowed to community foundations for registering real estate holdings - and rephrasing the Law on Construction for the needs for places of worship of diverse religions and faiths (third, fourth, sixth harmonization packages); amendments to the Anti-Terror Law regulating the use of force and violence as a prerequisite in definition of the crime of terror, removal of the restrictions that were imposed on naming the children by amending the Law on Census.'[566] 'Alongside these amendments, above-mentioned constitutional amendments to human rights and freedoms, the addition of a new paragraph to Article 312 of Turkish Penal Code that prohibits degrading a part of society in a way that violates human dignity and hence penalises individuals who express degrading comments about ethnic and religious groups within the country, and indirect recognition of non-Muslim groups whose foundations are annexed to the January 2003 regulation and who are exempt from the rights granted by the Treaty of Lausanne'[567] are the further steps toward guaranteeing the protection of minority rights.

As a result of the democratization packages and constitutional changes the government try to eliminate the problems encountered by minority rights and comply

[565] Thus, amendments in line with the 'prohibition of discrimination' of Article 14 of the ECHR, with the right to property ensured by Article 1 of the Porotocol No. ! of the Convention. Tanlak, op.cit., p. 10. The amendments in line with the proviso in the Turkey's NPAA that take further practical measures, within the framework of the legislation on the protection of the publicorder, to facilitate religious practice for non-Muslim foreign nationals residing in Turkey and practices in other areas pertaining to these persons have been realised. *Ibid.*

[566] Baskın Oran, "Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues," *Human Rights in Turkey*. Ed. Zehra F. Kabasakal Arat. Philadelphia: University of Pennsylvania Press, April 2007, pp. 53-55, also see Oran, 2003, *op.cit*., p. 61, Hakan Taşdemir and Murat Saraçlı, (2007), "Avrupa Birliği ve Türkiye Perspektifinden Azınlık Hakları Sorunu", *Uluslararası Hukuk ve Politika*,Vol. 2, No. 8, pp. 33-34. Başbakanlık Avrupa Birliği Genel Sekreterliği, *op.cit*., Aydin and Keyman, *op.cit*., p. 31-39., Tanlak, *op.cit*., pp. 8-12.

[567] Aydın and Keyman, *op.cit*., p. 32.

with the principle of non-discrimination, the ECHR and the EU recommendations. In this process, the national identity and citizenship concepts are unconsciously undergoing a transformation process.

Democratic Initiative Shaped Around the Kurdish Question: The Unity and Brotherhood Initiative

> Türkçemizi o kadar güzel kullanan Yunus Emre ne kadar bizimse, Farsça'yı bu kadar güzel kullanan Mevlana Celaleddin Rumi ne kadar bizimse, Kürtçe'yi o kadar güzel kullanan Fekiye Teyran o kadar bizimdir.
>
> Turkish Minister for EU Affairs and Chief Negotiator, Egemen Bağış[568]

'Kurdish question is a perennial problem in Turkey due to a mix of regional under-development, denial of cultural rights, human rights abuses by Turkish state security forces and 25 years of terrorist attacks by the PKK.'[569] Therefore, 'in the Turkish context, the issue of human rights is very much linked with the treatment of minorities, particularly the Kurds; and mostly owing to the measures taken to combat PKK terrorism, the most significant of which was the state of emergency that extended to cover ten cities (where the military and governors enjoyed immense power), the establishment of the village guards system and the Anti-Terror Law, which contained severe restrictions on human rights and liberties, Turkey's human rights record was poor in the 1990s.'[570] As the most serious domestic problem in Turkey constitute one of the main obstacles to its full integration with the EU, which defines the problem as suppression and denial of cultural rights and identity of an ethnicity by the majority group of Turks. On the contrary, until the beginning of

568 "Bağış'tan AB ve 'Demokratik Açılım' Değerlendirmesi", *Haber Senindir*, 20 January 2010.
569 Independent Commission, *op.cit*., p. 21
570 Aydın and Keyman, *op.cit*., p. 35.

accession negations with the EU, the political elite in Turkey supporting the national conception during the early years of the Republic insisted on promoting that there did not exist a Kurdish problem in southeast Turkey or 'an ethno-political question but a question of reactionary politics, banditry, tribal resistance and regional backwardness'.[571] The above-mentioned constitutional and legal changes in line with the EU demands stated in progress reports on Turkey has paved the way for revealing the obscure essentials of the problem and eventually for the declaration of 2009 Democratic Initiative shaped around Kurdish issue by the Turkish government. The main reasons behind this initiative is to realise the implementation of the numerous reforms made between 2001 and 2004, thereby providing for transition from rhetoric to practice, to resolve terrorism by enabling ethnic groups to enjoy their own cultural rights through democratic consolidation, and to protect internal peace and order with unity in the country through the respect for and recognition of differences and pluralist structure of the country.

As the most numerous ethnic group, 'the Kurds number about 12 million people or 15% of the inhabitants of Turkey.'[572] As the successor of the Ottoman State, the Republic of Turkey was founded as a result of a national struggle attempted to achieve independence by the 'multicultural sense of solidarity'[573] '(especially between Turks and Kurds) based upon the dominant ideological concept, Islam.'[574] However, in the early years of the Republic the dilemma appeared is that,

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[571] Mesut Yeğen, "Banditry to Disloyalty: The Kurdish Question in Turkey", *Siyaset Ekonomi ve Toplum Araştırmaları Vakfı* (*SETA)*, September 2008, p. 1.
http://www.setav.org/ups/dosya/16058.pdf, (02 March 2010).
[572] Independent Commission, *op.cit*., p. 21.
[573] Aydin and Keyman, *op.cit*., p. 34.
[574] When the Turkish republic was created in 1923, a large proportion of its population consisted of recent immigrants of Slavic, Albanian, Greek, Circassian, Abkhaz, and Chechen origin, whereas

'in contrast to the Ottoman efforts to prevent the dismemberment of the empire by creating the idea of Ottomanism (Ottoman citizenship), and also under war conditions, the new Republican establishment had to opt either for Islam or Turkishness, or both, as the fundamentals of the new identity.'[575] 'Whereas during the troubled days of national struggle in the early 1920s Islam was picked as the most powerful pillar of the newly emerging political organization, the Kemalists emphasized Turkishness from the 1930s onwards.'[576] This emphasis on ethnic Turkishness was the alternative that would replace the Islamic elements and would lead to Turkification of Kurdish-populated regions. 'Not only the normative framework of the constitutional-legal system adopted after the Republic, but also the policies implemented by the single-party (CHP) government from the second half of the 1920s until the late 1940s makes the intentions of the Republican establishment to bring about a homogeneous ethnic nation-state clear.'[577] According to Kemalist policies, uniting all Muslim groups under the majority of Turks did not lead to discrimination against any national identity.

There were numerous Kurdish rebellions between 1925 and 1938 suppressed violently. Yet, 'hopes for Kurdish independence were especially high after World War II sounded the death knell for colonialism, and again in the 1970s when the

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people that could claim descent from the Turkic tribes that had come from Central Asia were certainly a minority of Anatolia's population. It was in this complex setting that Ataturk and his associates aimed to create a modern nation-state, an integrated, unitary polity of the French type. For that reason, the model of the nation that Ataturk and his associates adopted was civic, as expressed by the maxim that lies at the basis of Turkish identity. Svante E. Cornell, (Winter 2001), "The Kurdish Question in Turkish Politics", *Orbis*, Vol. 45, No. 1, http://www.cacianalyst.org/Publications/Cornell_Orbis.htm, (02 March 2010).

[575] Köker, *op.cit.*, p. 54.

[576] *Ibid.*

[577] *Ibid.*, p. 56.

Soviets supported Marxist anti-imperialist movements, including PKK.'[578] As recognition of different identities was seen as a threat to territorial integrity, severe measures were taken against an emergence of a separated Kurdish nation,[579] especially during the military junta ruling between 1980 and 1983. Alongside with the restrictive and de-cultural measurements against the prevail of the Kurdish populace declared in the 27 May Kurdish Report by the military[580] and prohibition of Kurdish language in administrative decrees, with the military coup of 12 September 1980, which led to further restrictions, neglect, and policies of repression. 'After 1980, the military leadership, under General Kenan Evren, banned the use of Kurdish completely, as well as in private and persecuted Kurdish intellectuals and activists,'[581] as a natural result of 1991 Anti-Terror Law defining terrorism within a broad framework. 'The military government that had ruled the country until 1983 turned much of the Kurdish region in the southeast into a militarized zone, committing human rights abuses there.'[582] Consequently, 'the serious human rights violations, especially in military prisons in Diyarbakır and constitutional prohibition

[578] Association of the United States Army's Institute of Land Warfare, "Defense Report: The Kurdish Question", *AUSA's Institute of Land Warfare (ILW),* September 2009, p.1.
[579] After the foundation of the Republic, traditional religious schools in Kurdish regions, which were instrumental in reproducing Kurdish cultural practices were closed and publication in Kurdish was not allowed. During the heyday of the Republic even speaking Kurdish in public was forbidden. More recent examples of Kurdish language suppression are exemplified in Law 2932, enacted in 1983. This law, which was cancelled in 1991, prohibited publication and broadcasting in Kurdish. Even today, Article 42 of the current constitution prohibits the instruction of a language other than Turkish as the mother tongue for Turkish citizens. The third article of the Surname Law of 1934 prohibited using "the names of tribes, foreign races and foreign nations" as surnames. Likewise, the Provincial Administration Law of 1949 authorised the Ministry of Internal Affairs to change the names of places and this authority was used quite liberally. Moreover, Article 16 of the 1972 Population Law prohibited giving Kurdish names to new-borns. Specifically, this law prohibited giving such names which are not in accordance with our national culture", Yeğen, *op.cit*., p. 2-3.
[580] With the Law No. 1587 on 5 January 1961, the names of Kurdish places were replaced with Turkish ones.
[581] Ekrem Eddy Güzeldere, "Turkey: Regional Elections and the Kurdish Question", *Caucasian Review of International Affairs (CRIA)*, Vol. 3, No. 3, Summer 2009, p. 293.
[582] Aydın and Keyman, *op.cit*., p. 34.

of the use of Kurdish language have deepened the Kurdish problem.'[583] Major tools used against PKK such as state emergency and village guards system in Kurdish provinces worsened the situation. 'State emergency in declared in 1987 was applied to ten cities with the heaviest concentration of Kurdish population whereas village guards violated the human rights because of loose control over them.'[584] Consequently, the struggle between PKK and TSK resulted in massive human rights abuses, long lasting state emergency in south-eastern Turkey, spread of terrorist activities in western side of Turkey, and a huge amount of military expenses.

As can be seen above, the major reason behind the Kurdish question is the exposition of Turkish nationalism in a highly multicultural territory reflected in the military's conduct that caused serious human rights concerns from 1984 to 1999. The perception of Kurds started to change for the first time the then Foreign Minister Ismail Cem spoke of the right to education and broadcasting in mother tongue.[585] The consequent capture of the PKK leader in 1999, the announcement of cease-fire until 2004, and 'the emergence of EU conditionality triggered a change in the official view on the Kurdish issue, leading the significant reforms that directly intended to

[583] Arşivci, "Kürt Sorunu", *Ülke TV*, 11 June 2010. Law No. 2932 also prohibited the expression of thought and broadcasting in any language other than Turkish. *Ibid.*
[584] Aydın and Keyman, *op.cit*., p. 34.
[585] Only two months previously the EU had approved Turkey's candidate status on the understanding that the deepening of democracy in Turkey was assured. Indeed, the early signs were encouraging. In December 1999 the then Foreign Minister Ismail Cem had indicated that Kurdish cultural rights were to be extended, particularly in the field of language and broadcasting. Rumfold, *op.cit*., p. 99. In accordance with the Accession Partnership requirement of the right to education and broadcasting in mother tongue, Ismail Cem reacted quite surprisingly by stating that 'everyone living in turkey should have the right to broadcast in their own mother tongue and Turkey must prepare a law that would abolish the ban on Kudish language broadcasting.' This development was of very significance since it symbolizes a hift from traditional Kurdish conception of Turkey. Özgür Doğan, (2001), "Kürtçe Yayın Konusunda Avrupa Birliği-Türkiye Tartışmaları", *Ankara Üniversitesi İletişim Fakültesi (ILEF)*, http://ilef.ankara.edu.tr/id/yazi.php?yad=793, (03 March 2010).

improve the lives of Kurds in the country.'[586] In other words, 'since the end of the 1990s Turkey has adopted a program of democratic reform that directly affects its Kurdish population. Since the start of membership talks with the EU, the Turkish government has made important strategic reforms that will ultimately help in better integrating its citizens of Kurdish origin.'[587] Following the amendments to Articles 26 and 28 of the Constitution in October 2001 removing the limitation on the use of any language prohibited by law, the reform process of Kurdish issue has speeded up with the election of the AKP in 2002, which displays its decisiveness on all occasions to overcome the ethnic complexities of its society. 'It has also proved to be a party with strong support among both Turks and Kurds, winning half of the vote in the Southeast, and has arguably done more to improve the situation of the Kurds than any previous government.'[588] With the adoption of seventh democratization package, broadcasting in Kurdish expanded for both public and private radio and television stations, and determined the Council of Ministers as the only organ that can decide the languages to be thought in courses following the permission of broadcasting in Kurdish and teaching Kurdish in private courses with the third package. The prohibition on naming new-borns in Kurdish was abolished with the Civil Registry Law in 2003. The most significant reforms to improve the situation of Kurdish people in Turkey are 'Social Re-insertion' that provides for a partial amnesty and reduction in sentences for persons involved in the activities of an illegal organization, namely PKK, and 'Return to Village and Rehabilitation Project' that supports the

[586] Aydın and Keyman, *op.cit*., p. 35.
[587] Geoffrey Gresh and Matan Chorev, (Fall 2006), "Turkish-Kurdish Reconciliation: Promise and Peril", *Turkish Policy Quarterly*, Vol 5, No. 3, http://www.esiweb.org/index.php?lang=en&id=291&tpq_ID=9, (07 March 2010).
[588] Independent Commission, *op.cit*., p. 22.

return of those displaced during the conflict to their villages.'[589] The gradual lifting of state emergency from ten cities has also contributed to strengthening the rule of law in these areas. All these developments have lead the idea used by 'the Kemalist modernist elite to legislate and legitimate their essentially anti-liberal platform that throughout republican history that all kinds of differentiation – ethnic, ideological, religious and economic – have been viewed not only as natural components of a pluralist democracy but as sources of instability and as threats to unity'[590] to gradually turn into the idea that there also exists a problem of minority rights 'prioritizing the unity of Turkish society over pluralism and diversity'[591] in Turkey other than terrorism and underdevelopment in south-eastern territory. Despite the implemented reforms in the fields of freedom to expression, freedom to education and broadcasting in Kurdish, and reforms for internally displaced persons from the conflict, there are still deficiencies in full expression of Kurdish language. For instance, due to the Article 301 of the new Penal Code, 'some judges prosecuted or, in some cases, convicted individuals, vocal about the grievances of societal sub-groups in Turkey and perceived state discrimination.'[592] However, the consequent changes in the Penal Code and judicial reforms have brought forward the retrial of such cases. Thus, 'a group of Kurdish nationalist politicians in jail since 1994 on

[589] Aydın and Keyman, *op.cit*., p. 35. By December 2003, 524 prisoners out of 2067 applications had been released and about 586 PKK militants have surrendered. According to official sources, 124,218 people were authorised to return to their villages from June 2000 to May 2004. More than 400 villages and hamlets have reportedly been reopened with government assistance. *Ibid.*

[590] Nilufer Gole, "The Quest for the Islamic Self within the Context of Modernity", Sibel Bozdogan and Resat Kasaba, Rethinking Modernity and National Identity in Turkey, Seattle: University of Washington Press, 1997, p. 85.

[591] Rumfold, *op.cit*., p. 98.

[592] European Commission, "2004 Regular Report on Turkey's Progress towards Accession" Brussels: 6 October 2005, p. 25.

charges of PKK links were released in 2004.'[593] Therefore, the European Commission's progress report on Turkey in 2005 stated that the amount of prosecutions and convictions in cases regarding freedom of expression had declined. 'Overall, Turkey has made significant improvement in adopting new legislative reform to help in curbing future human rights violations and such reforms aid in the process of democratization with greater governmental transparency and are improving the individual rights of Kurds and other members of Turkish society who have previously been penalized for voicing views that state institutions have interpreted as harmful to the interests of the country'[594] Such reforms have strengthened Turkey-EU relations; however, more developments are required to fully guarantee human rights.

'Especially from 2000-2001 the Turkish parties and governments were under increasing European pressure to eliminate these authoritarian residues, and it was then that the idea of a gradual amendment of 1982 Constitution was replaced by that of a new "civil" or "civilian" Constitution.'[595] Henceforth, 'the Turkish government has begun to openly acknowledge more of the Kurds' demands for political representation and cultural rights with a new wave of democratic reforms and outside assistance from the EU.'[596] 'In a landmark speech in Diyarbakir, Recep Tayyip Erdogan became the first Turkish leader ever to admit that Turkey had mishandled its rebellious Kurds and noted that Turkey needed to face up to its past; therefore, more

[593] Independent Commission, *op.cit*., p. 22.
[594] Gresh and Chorev*, op.cit.*
[595] Andrew Arato, "The Turkish Constitutional Crisis and the Road Beyond", *Thoughts on the Middle East, History and Religion*, 30 June 2008, http://www.juancole.com/2008/06/arato-turkish-constitutional-crisis-and.html, (09 March 2010).
[596] Gresh and Chorev, *op.cit*.

democracy, not more repression, is answer to the Kurds' long-running grievances.'[597] To advance the goal of EU membership, Erdogan vigorously pursued legislative and constitutional reforms that liberalized the political system and relaxed restrictions on freedom of the press, association, and expression.[598] Moreover, the government has made efforts in improving the infrastructure and unemployment problems in the Southeast alongside with crucial steps towards domiciliation and education.

After the July 2007 elections[599], the second AKP government was established and presented a draft constitution which would lead the country to undergo a new wave of democratic transformation towards a more civilian and liberal politics. With the aim to replace the 1982 Constitution adopted by the military after the 1980 coup with a new civilian one that would harmonize the Turkey's policies in regard to ethnic and religious problems with the ECHR norms was the new government's first step toward elimination of non-democratic values in domestic politics. But this process ended in the opening a closure case against the AKP and thus shadowed the reform agenda of the government. Yet it is accurate to say that 'to back up liberalization processes with full legal and constitutional protections for the use of minority (Kurdish) languages in broadcasting, public buildings, schools and political speeches, and rewrite of constitutional articles that appear to privilege one ethnicity

[597] "Peace be unto you; Turkey and the Kurds (After Recep Tayyip Erdogan's visit to Diyarbakir)", The Economist, 20 August 2005.
[598] The government abolished the death penalty, revised the penal code, reinforced the rights of women, reduced restrictions on minority language broadcasts, ended random searches without a court order, and implemented a policy of zero tolerance towards torture. It adopted measures to dismantle state security courts, enhance independence of the judiciary and reform the prison system. It amended the anti-terror statutes as well as the Penal Code and the Codes of Criminal and Administrative Procedure. Turkey signed and ratified protocols 6 and 13 of the European Convention on Human Rights. David L. Phillips, "Disarming, Demobilizing, and Reintegrating The Kurdistan Worker's Party", 15 October 2007, *National Committee on American Foreign Policy (NCAFP)*, p. 19, **pp. 1-38.**
[599] In these elections, Kurds credited AKP for legislative reforms that enabled greater cultural rights including Kurdish language broadcasts and education. *Ibid.,* p. 17.

over another are crucial in terms of giving all citizens of Turkey genuine equality as denial of Kurdish citizens' identity and culture in Turkey is incompatible not only with Turkey's EU membership but also with the Article 39[600] of the Treaty of Lausanne.'[601]

Another big step of the second AKP government was the 'imprisonment of some members of the armed and security forces as suspects of death squad killings of Kurdish nationalists in the 1990s after 2008 in the Ergenekon conspiracy trial that allowed reopening some cases of Kurds who disappeared in those years through new evidence.'[602] In addition to liberalization of restrictions on expression of Kurdish culture for example through opening private Kurdish language centres, World Bank poverty relief program began to be implemented by the government. Hence, Turkey-EU convergence helps a fundamental European interest to encourage broader respect for human rights and cultural freedoms in Turkey, not just to create a more secure environment in the European neighbourhood but also to prevent the blowback violence inside the EU among immigrant communities of Turks and Kurds seen in the 1990s. Tensions between Turks and Kurds have been, to a degree, relieved through economic and socio-political developments. Aware of the significance of sustaining the social peace throughout Turkey, the government continue its reform processes constantly by opening a new channel broadcasting 24 hours in Kurdish language in January 2009.[603] Additionally, the government has introduced very

[600] No restrictions shall be imposed on the free use by any Turkish national of any langugae in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.
[601] Independent Commission, *op.cit*., p. 24.
[602] *Ibid*., p. 23.
[603] The AKP's statements in late 2008 were not very appealing to the Kurds, but they still had one trump card in their hands that they played on 1 January 2009: The first state-run Kurdish language channel, TRT 6, was launched. Erdogan spoke at the opening of the channel, ending his speech in

recently the 'National Unity and Brotherhood Project' and the 133-page booklet on the democratic initiative. In the booklet prepared to inform the Turkish nation more about democratic opening and the project it is stated that the government aims to minimize and find solutions to problems of Alevi citizens, minority groups, and several economic problems in Turkey particularly the unemployment problem, and that 'the national unity and brotherhood project aims to develop Turkey, raise its prestige nationally and internationally, raise Turkish citizens' prosperity and peace and solve any problems before improvement of brotherhood.'[604] Also, 'the booklet enumerated some of the democratic steps as ending emergency rule implementation, amending Anti-Terror Law, adopting a regulation that enabled opening courses in different languages and dialects, changing names of villages in case of any demand from villagers, minimizing highway controls, lifting plateau bans, amending political parties law to enable propaganda in different languages and dialects, preparing a law on establishing Human Rights Agency, and founding an independent mechanism to deal with complaints against security forces.'[605] A crucial point here is that the

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Kurdish: "TRT ses bi xêr be" (May TRT 6 be beneficial). The channel broadcasts twenty-four hours a day in Kurmanci. The preparations concerning the new channel began more than a year before the launch. TRT 6 contacted Kurdish intellectuals, such as Ümit Firat,29 to get their opinion and to reach to potential contributors. To be able to broadcast in Kurdish, the Act on the Radio Television Supreme Council (RTÜK) had to be changed. The sentence "the institution can broadcast in languages and dialects other than Turkish" was added to the current act in a vote in parliament on 11 June 2008. Güzeldere, *op.cit*., p. 297.

[604] "Turkey's AKP Prepares 133-page Booklet on Kurdish Opening", *World Bulletin*, 23 January 2010.

[605] *Ibid.* The booklet says:

Also, the government aims to handle problems of all ethnic and sectarian groups, particularly the terror problem, and minimize those problems, it was out of question to make concessions of "single state, single nation, and single homeland" principle; there would be no change in the official language and the language of education; but all obstacles before use of mother tongue and radio and TV broadcasting in different languages and dialects should be lifted; terrorism could not be eradicated only with military measures, and fight against terrorism also had economic, social, cultural, psychological and sociological dimensions; eliminating the atmosphere that feeds terrorism is a *sine qua non* requirement for countering terrorism and finding a solution to problems exploited by terrorism; AK Party government would never make concessions of any illegal formation, and take any

democratic initiative aims not only a re-evaluation of Turkish-Kurdish relations but also an overall extension of cultural rights and a preservation of Turkey's cultural heritage, thereby consolidating democracy in Turkey. And the booklet, in proper, is of very importance of transforming the traditional conception of national unity of the society by providing for more transparency and consciousness. Therefore, 'the democratic initiative process, which has a wide coverage in Turkey's agenda since July 2009, has opened a new era of democratic transition from rhetoric to practice.'[606] In that sense, there have been considerable attempts of the government to engage in national dialogue with all minority groups ranging from non-Muslim to Muslim groups to obtain their ideas for the reform packages and to increase trust and support between them with the aim of compensation of the missed opportunities throughout the republican period. In an effort to form a more heterogeneous public space including not only ethnic but also religious elements, 'Turkey has earnestly vowed to work in closer unison with the EU and uphold the enforcement of previously adopted reforms.'[607] Especially recent laws enacted by the government in accordance of the criticism of the EU in progress reports have direct effects on elimination of separatist elements and integration of different ethnic groups in its centralized government, and thus, Turkey shows that it can bolster democracy and provide for stability in the region of conflict through implementing democratic reforms though the EU forgets at times that democratization of any country and

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steps, contradicting best interests of the nation; democratization steps are never a concession, but the way the government is granting the citizens their most natural right, and though Turkish is defined as the official language of Turkey, "official language" should not be confused with the concept of "mother tongue."

606 Ertan Beşe, "A New Era in Democratic Initiative, From Rhetoric to Practice", *Stratejik Düsünce Enstitüsü (SDE)*, 3 March, 2010.

607 "Turkey vows to stick to EU reforms, defiant on Cyprus," (10 November 2005), *EU Business*, http://www.eubusiness.com/East_Europe/0511101129737.z0baa3a1, quoted in Gresh and Chorev, *op.cit.*

establishment of a stable democracy take too long, especially in a country like Turkey which was founded upon the principle of unity of all ethnic origins under a national identity, and may be hindered by some reasons beyond the control of the governments, and expects a rapid transformation or quickly passes critical judgements on Turkey. Rather, the EU takes into consideration that the parameters of Turkish political culture based on a cohesive national identity and the denial of ethnic origins constitute the main obstacles in front of reform processes in the alignment with its demands.

Today, 'the picture is changing; signs in circulation at the moment signify that the status of Kurds *vis-à-vis* Turkishness is on the brink of a major change.'[608] Due to the decisiveness shown by the AKP government to consolidate democracy and protect the peace through respecting cultural and religious differences and the legal reforms implemented on Turkey's path to EU membership are gradually eroding the traditional long-standing image of monolithic society alienating minorities and ignoring democratic rights, and emphasizing the ethnic distinctiveness. 'Helped by a new openness and a greater tolerance in the era of EU reforms, the ruling AKP has presided over more progress on Turkey's long-running Kurdish problem than any previous government, and also old taboos about dealing with the Kurdistan Regional Government in Iraq have been put aside, bringing Turkey more genuine cooperation in combating the PKK.'[609]

In other words, the new era in which 'the latest constitutional move by the AK Party is expected to reactivate the democratic opening initiative launched by the

[608] Yegen, *op.cit*., p 4.
[609] Independent Commission, *op.cit,* p. 45.

government in the summer of 2009 that aims to address the identity-based claims of the Kurds, Alevis, non-Muslims and the Roma people,'[610] signalizes 'the ongoing process of transition in Turkey from a 'homogeneous national identity', which produced a notion of 'equality as sameness', to a 'multi-culturalist democracy' that requires a new constitutional system that has a conception of 'equality in difference'.'[611]

4.3.2 Strengthening the Rule of Law in the Judiciary

> The reforms, overhauling the judiciary and making the army answerable to civilian courts, simply meet European Union entry demands.
>
> Prime Minister Tayyip Erdogan[612]

The reform processes in the judiciary not only consolidate democratic governance but also strengthen the rule of law and respect for human and minority rights. 'In order to satisfy its international obligations as well as the popular aspirations of its people, Turkey has undertaken important legislative reforms regarding its judicial system and has made considerable efforts towards the training of its judges.'[613] The rapid reform process in the 2000s is followed by the recent proposal of constitutional amendments of the second AKP-government announced in 2010 based on the principle problems of the Judiciary declared in 2009 Progress Report. Its main aims are to strengthen the rule of law, make the closure of political parties more difficult and increase the democratic legitimacy of the judiciary by transforming the structure of the Constitutional Court and the High Council of Judges and Public Prosecutors (HSYK) and by increasing their functional efficiency.

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[610] Ihsan Dagı, April-June 2010, *op.cit.*
[611] Köker, *op.cit.*, pp. 49.
[612] "Turkish Parliament Approves Whole Reform Package", *World Bulletin*, 07 May 2010.
[613] Aydın and Keyman, *op.cit.*, p. 40.

Therefore, the reform package is as a whole a big step toward the transformation of the judiciary system together with consolidation of democracy.

Since 1999, one of the most significant improvements in Turkish judiciary system was the abolition of the state security courts dealing with the crimes against the state in May 2004.[614] The transfer of some of their competencies to the Regional Serious Felony Courts eliminated 'the most important remnants of the infamous years of the state emergency and one of the main mechanisms of human rights violations.'[615] The establishment of specialised courts like Justice Academy[616] aimed to improve the efficiency of the judiciary by training on international law and human rights for judges and prosecutors.[617]

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[614] Jurisdiction over most of the crimes falling within the competence of the State Security Courts – principally organised crime, drug trafficking and terrorist offences – has been transferred to newly-created regional Serious Felony Courts. Some crimes formerly heard by the State Security Courts, notably under Article 312 of the Penal Code, have been transferred to the jurisdiction of the existing Serious Felony Courts. The rules of procedure applying by the Regional Serious Felony Courts are identical to those applied by other Serious Felony Courts save that the former courts exercise jurisdiction over a wider geographic area and the maximum period which can elapse between detention and charge is forty-eight rather than twenty-four hours. The office of the Chief Public Prosecutor for State Security Courts was also abolished; prosecutions before the Regional Serious Felony Court are handled by the office of the Chief Public Prosecutor. Suspects before both types of Serious Felony Courts enjoy identical rights, including the right to consult a lawyer as soon as they are taken into custody. Commission of the European Communities, "2004 Regular Report On Turkey's Progress Towards Accession", Brussel, 6 October2004, p. 24.

[615] Aydın and Keyman*, op.cit.,* p. 40.

[616] The Justice Academy, which was legally established in July 2003, started to operate. The Academy is responsible for training both candidate judges and prosecutors as well as for the continuing training of serving judges and prosecutors. The Academy also provides training for Ministry of Justice personnel, lawyers and notaries. Between January and July 2004, the Academy trained 210 candidate judges and prosecutors. In September 2004, the Academy will start training a further 239 candidate judges and prosecutors and will provide continuing training for 660 judges and prosecutors. As well as Turkish law and legal procedure, the training will cover the European Convention on Human Rights, EU law and languages, 2004 Regular Report On Turkey's Progress., p. 25.

[617] The National Judicial Network Project has continued to progress. All judges and prosecutors and all courtrooms have been provided with computers and have received information technology training. During 2003-2004, all judges and prosecutors received training on the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case law of the European Court of Human Rights (ECtHR). Moreover, seminars were held throughout Turkey for judges and prosecutors on *inter alia* EU law, judicial cooperation, intellectual property rights, juvenile criminal justice and organised crime. The Ministry of Justice distributed to courts throughout Turkey a manual on the case-law of the European Court of Human Rights and seven handbooks on human rights, including the right to a fair trial and the prohibition of torture. A study on the legal changes introduced

Among other noteworthy amendments is the adoption of a new Civil and Penal Code in April 2005 allowing the retrial of civil and criminal cases where the ECHR has indicated the abuses of ECHR provisions and its additional protocols, and amendments to the Military Courts Law. The new Penal Code functions in line with the modern European standards and the improved criminal law in many European countries, and strengthens sanctions against human rights abuses. The amendment to the Military Criminal Code and the Law on the Establishment and Trial Procedures of Military Courts in January 2004 aligned the detention procedures of the military courts with those of other courts and the competence of military courts was narrowed and their jurisdiction over civilians ended. They will no longer try civilians held responsible for offences related to criticizing the military service.

With the proposal of constitutional amendments in May 2004, the revision of Article 90 has enshrined the supremacy of international and European treaties ratified by Turkey over national legislation when a conflict exists between them concerning human rights and domestic legislation.

Other structural changes included the creation of Intermediate Courts of Appeal coming into force in June 2005 that helped to reduce the case load of the Courts of Cassation and enabled them to function more efficiently by increasing their concentration to guide the lower courts, and a family courts system throughout the country approved in April 2004 in order to narrow the jurisdiction of the family

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by the seven reform packages was also distributed to judges, public prosecutors and law enforcement officials. "2004 Turkey Progress Report", p. 26. In relation to the *professionalism and competence* of the judiciary, the Ministry of Justice and the Justice Academy have organised training on a wide range of issues for judges, prosecutors and court staff. The training covered, among other things, the new Criminal Code and the Criminal Procedure Code, freedom of expression, courts of appeal, court management, internet crimes and juvenile justice. Commission of the European Communities,"2007 Turkey Progress Report", Brussels, 6 November 2007, p. 59.

courts solely to the family law matters.[618] 'The Law on Juvenile Courts was amended in January 2004 to establish juvenile courts in all cities with a population exceeding 100,000 persons.'[619]

Further, in addition to the new Penal Code and Law on the Establishment of the regional Courts of Appeal, the judicial system has been strengthened via the adoption of additional structural reforms, the Code of Criminal Procedure, and the Law on Enforcement of Sentences that entered into force in June 2005. 'The adoption of a new Code of Criminal Procedure represents a major step forward as it introduces the concept of cross examination of witnesses during trials, which did not previously exist in the Turkish legal system.'[620] 'The Law on Enforcement of Sentences is generally in line with EU best practice and addresses issues such as prisoners' rights and obligations, order and discipline within prisons, and rehabilitation and reintegration of offenders and it establishes the concepts of community service and probation.'[621] In this respect, the Ministry of Justice issued 100 new circulars mainly addressed to public prosecutors in January 2006 and updated all existing circulars in order to provide for a clearer and more concise

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[618] The task of these courts is to take protective, educational and social measures for children and adults including financial protection of the family. The courts are established in all towns with a population of more than 100,000 inhabitants. Aydın and Keyman, *op.cit*., p. 40.

[619] "2004 Turkey Progress Report", p. 25. The system of judicial records has been brought into line with Article 1 of the UN Convention on Children's Rights. The criminal record of children under 18 can now only be made available to public prosecutors under strict conditions. The law concerning Juvenile Courts has also been amended, raising the age at which young people must be tried in juvenile courts from 15 to 18.

[620] European Commission, "2005 Turkey Progress Report", Brussels, 9 November 2005. The Code establishes the concept of plea bargaining. In order to reduce the number of unmeritorious prosecutions, the Code increases the discretion of prosecutors, who are now able to assess the strength of the evidence before preparing an indictment. Moreover, judges are given the power to return incomplete indictments. Under the new Code, criminal investigations must be carried out by a judicial police force under the authority of the public prosecutor. The Chief Public Prosecutor will be responsible for preparing annual evaluation reports on the judicial police under his command. The Code introduces the requirement that certain trials are to be recorded on audio and video tape. Judges and prosecutors throughout Turkey have received training on the Code. *Ibid*., p. 15.

[621] *Ibid.,* p. 16.

implementation of the new Code of Criminal Procedure and the Law on Enforcement of Sentences.[622]

Although the structural reforms and positive changes in the Turkish laws have strengthened the judicial system to great extent, and progress reports pointed that in the implementation of reforms, judges and prosecutors play an important role by applying ECHR norms or by issuing judgements in align with the laws concerning the freedom of expression, freedom of religion, and the fight against torture and ill-treatment and honour crimes, to enhance the efficiency, concerns related to the quality, independence and impartiality of the judicial system still remain. In this respect, recent EU progress reports require Turkey to bring the functioning of Turkish courts in line with European standards. Therefore, to improve the quality and efficiency of judiciary and modernise it through the use of information technology, the government continued the National Judicial Network Project (UYAP) introduced in March 2007.[623] Thus, through the use of information technology and gradual increase of fund for the judiciary and appointment of new judges and establishment of new courts and court houses are the noteworthy efforts to enhance the quality and efficiency of the judicial system.

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[622] One circular of particular importance concerns the implementation of legislation on arrest, detention and statement taking and the prevention of human rights violations during these practices. This circular underlines the duty of prosecutors to monitor the situation of detainees through regular visits to places of detention. It also requires prosecutors to report periodically to the Ministry of Justice on implementation by law enforcement authorities. Commission of the European Communities, "2006 Turkey Progress Report", Brussels, 8 November 2006, p. 8.

[623] As regards the *efficiency* of the judiciary, judges and lawyers have reported positive results from the national judicial network project (UYAP) on court proceedings. Software has been developed for use by the provincial probation units in their daily work. UYAP has been made available to the national security police so that it can conduct research on persons for whom an arrest warrant has been issued. Lawyers are also reportedly using the system increasingly following integration of their portal into the network in March 2007. Commission of European Communities, "2008 Turkey Progress Report", Brussels, 5 November 2008, p. 68.

Though the principle of the independence of the judiciary is enshrined under Article 138 in the Turkish Constitution, it is to a degree undermined by several other Constitutional provisions. In the Constitution it is stated that judges and prosecutors shall be attached to the Ministry of Justice in so far as their administrative functions are concerned. Furthermore, the High Council of Judges and Prosecutors (HSYK), which is chaired by the Minister of Justice, and one of whose members is the Under-Secretary of the Ministry of Justice, determines the appointment, promotion, or more generally the careers of all judges and prosecutors. With the fear of removal or transfer to less attractive places in Turkey, the judges who are regularly evaluated by judicial inspectors attached to the Ministry of Justice may lead them to act partially in their decisions. When the lack of a specific secretariat and budget are taken into consideration, it is obvious that the High Council is entirely dependent on a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks. What exacerbates the problem is the fact that the decisions of the High Council are not subject to review, contradicting both the independence of the judiciary as well as the basic principle of the rule of law. The members of the HSYK consist of the Minister and the Undersecretary of the Ministry of Justice and the other five judges appointed among the judges of the Court of Cassation and the Council of State. This composition unable to represent the judiciary as a whole constitutes a contradiction to the principle of independence of Justice explicitly pointed in the Constitution. The close relationship between judges and prosecutors and that the public prosecutor's and the judge's offices are not separated, which seems that the prosecutor may have an influence. Upon the above listed reasons, in

the 2005 Progress Report Turkey is required to establish a clear cut of the rights and duties of judges and prosecutors.

Other concerns remain as regards the impartiality of the judiciary. In the context of the election of the new president in April 2007[624], the Constitutional Court ruled by a majority of seven to four that a quorum of two thirds (367 deputies) is necessary for the first and second rounds of presidential elections in Parliament, and annulled the first round of voting. Upon this decision, strong political reactions and allegations had arisen claiming that the Constitutional Court did not act impartially in making that decision. as regards the election of the President of the Republic by Parliament, a one-third blocking minority was introduced by the Court. The tensions between the government and the judiciary were seen as an obstacle for the smooth and effective functioning of the system in the 2007 progress report and the EU expressed a criticism of Turkey in terms of failing to implement an overall National Reform Strategy for the elimination of deficiencies encountered in the judicial system. Additionally, political comments made by senior members of the armed forces in public on some occasions such as on domestic and foreign policy issues including Cyprus, secularism, the Kurdish issue, and on the indictment concerning the Semdinli bombing and the dismissal of the civilian prosecutor of Semdinli from office by the HSYK in April 2006 due to his indictment concerning the Semdinli event[625] sparked the debate in the country that the judiciary was going beyond its

[624] When the military and the AKP administration disagreed about the party's choice for president, the AKP decided to hold a referendum, which overwhelmingly supported the party's candidate, Abdullah Gül.

[625] This case concerns the bombing in November 2005 that killed one person and injured others in the town of Şemdinli in Southeast Turkey. The prosecutor on the case published the indictment in March 2006. The indictment included also accusations against high-ranking military commanders. The General Staff criticised the indictment and urged those bearing constitutional responsibility to take

remit and taking positions on political issues and thus raised the questions about the impartiality and independence of the judiciary.

On 26 June 2006, 501 judges and prosecutors established an association under the heading the Union of Judges and Prosecutors (YARSAV). The founding members of YARSAV mostly consist of judges from the Court of Cassation, the Council of State and judges and prosecutors from Ankara and Istanbul. It primarily aims to ensure judicial independence, impartiality, professional rules and ethics and the security of tenure. As regards the independence of the judiciary, in October 2006, YARSAV applied to the Council of State for the limitation of the role of the Ministry of Justice in the process of appointment of judges and prosecutors and for the suspension of the conduct of examinations to recruit some 600 candidate judges and prosecutors. With the decision of the Council of State in March 2007 the organization of the written examination to select the candidate judges and prosecutors for the Judicial Academy should be under the responsibility of the Student Selection and Placement Centre (ÖSYM) and should be conducted impartially and objectively and during the interview the members of the Justice Academy representing the Council of State and the Court of Cassation should also be seated.[626] In December 2007, the selection procedure laid down in the Law on judges

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action. In April 2006, the High Council of Judges and Prosecutors dismissed from office the Şemdinli prosecutor. The disproportionate character of this decision raised questions on the independence of the High Council form other state institutions. A first instance civil court sentenced the accused - two non-commissioned officers and a PKK informant - to a total of thirty-nine (39) years of imprisonment. On appeal, the Court of Cassation ruled that the offences had not been properly constituted and that the case falls under the jurisdiction of the military court. "2008 Turkey Progress Report".

[626] However, after the regulation by the Council of Ministers apparently meeting the conditions set by the Council of State in June, YARSAV appealed to the Council of State again for the annulment of the regulation. In March 2007, YARSAV also appealed to the Council of State for the annulment of the regulation, stating that inspectors should not be attached to the Ministry of Justice.

and prosecutors was amended so that specific selection criteria and a transparent scoring system are included which are considered as positive changes by the EU.[627]

Due to the criticism concerning the judiciary system in 2007 progress report, arguing the lack of an overall plan to improve the judicial system in Turkey, the Ministry of Justice put a draft 'judicial reform strategy' on its website in Spring 2008 and approved it in August 2009, which is of key importance in terms of the consultative process followed before its approval but also of its content that broadly provides for the right direction for reforms. The proposed strategy is considerably comprehensive project covering issues ranging from impartiality and independence of the judiciary to enhancement of quality and efficiency of the judicial system.[628]

Despite positive opinions expressed in the 2009 annual report towards the developments in the judiciary – the adoption by the government of the judicial reform strategy following a process of consultation with all stakeholders - , it also pointed that concerns remain with regard to the independence, impartiality and effectiveness of the judiciary, such as the composition of the High Council of Judges

[627] However, criticism has been voiced by bar associations and academics that the new selection criteria are open to subjective interpretation. Two opposition parties applied to the Constitutional Court for annulment of certain provisions of the new legislation. As a result of the November 2007 examinations, the Justice Academy recruited 387 candidate judges and prosecutors. Another 397 were recruited following the March 2008 examinations. Three more examinations were planned in 2008. However, in response to an appeal by YARSAV in March 2008, the Council of State suspended the recruitment of a number of candidate judges and prosecutors. The Council of State decided that the assessment protocol signed between the Ministry of Justice and the Student Selection and Placement Centre outlining the procedure for the examination does not comply with the legislation in force. The Council of State is due to issue its final decision on the case. Commission of European Communities, "Turkey 2007 Progress Report", 6 November 2007, Brussels, p. 58.

[628] The Ministry of Justice had presented a draft strategy in spring 2008, further to which consultations with stakeholders, including civil society, took place. Judges and prosecutors, including the High Courts, discussed the draft strategy on a number of occasions. The draft was also posted on the website of the ministry for comments. The strategy is comprehensive and covers issues related to the independence, impartiality, efficiency and effectiveness of the judiciary, enhancement of its professionalism, the management system and measures to enhance confidence in the judiciary, to facilitate access to justice and to improve the penitentiary system. An action plan to implement the strategy has also been approved. "2009 Turkey Progress Report", p. 70.

and Prosecutors and the establishment of the regional courts of appeal. In other words, in 2009 progress report the EU demands Turkey to ensure independence and impartiality of the judiciary alongside with amending the composition of the HSYK through more concrete steps towards the enhancement of the judiciary system. Additionally in March 2009 the Venice Commission of the Council of Europe issued an opinion stating that 'constitutional and legal provisions relevant to the prohibition of political parties in Turkey failed to uphold the minimum standards required under Article 11 of the ECHR on freedom of assembly and association.'[629] According to the Commission, 'legal provisions regarding the prohibition of political parties in Turkey allow closure cases to be brought against almost any party whose programme advocates for changes to the constitutional model regardless of whether it is through the threat of violence or peaceful democratic means.'[630] Consequently, the Constitutional Court frequently decides on the closure of political parties in Turkey, especially the political parties promoting Kurdish identity.

Consequently, in order to strengthen the democratic legitimacy in the judiciary, the recent constitutional amendments package is of key significance on Turkey's road to the EU membership as it includes prominent changes to the composition of HSYK as well as to the military courts.

2010 Proposed Constitutional Amendments to the Judiciary System

'In a move that may further exacerbate tensions between the ruling AK Party and the Turkish military, Prime Minister Tayyip Erdogan's government submitted a package of constitutional amendments to parliament that would change the method

[629] European Parliament, "Background Paper to the 6th International Conference on EU, Turkey and the Kurds," Brussels, 3-4 February 2010.
[630] *Ibid.*

of judicial appointments and, perhaps more significantly, allow military officials to be tried in civilian courts.'[631] In the articles concerning the judiciary, the impartiality as well as the independence of the judiciary is emphasized by the proposal within the framework of the modern examples and EU practices with regard to the composition of HSYK and also the Constitutional Court. The proposed amendments to the Article 144 and 159 of the Constitution are related to the formulation of the HSYK, selection and qualifications of its members, working conditions and methods and the transfer of the competence of the Ministry of Justice to inspect the judges and prosecutors to the HSYK. The changes proposed to Article 159 paves the way to establishment of a separated General Secretary of the HSYK, which could no longer function under the Secretary of the Ministry of Justice. Thus, the government makes efforts to align the judiciary system with the EU standards as 2008 and 2009 progress reports criticise that HSYK is not able to represent on the whole the judiciary and is lack of independence and impartiality due to the criteria used for the selection of judges and prosecutors which is also open to subjective interpretation. The amendments to the judiciary regulated in this reform package are included by the 2009 judiciary reform strategy which has been formulated through a broad and comprehensive consultative process with all concerned stakeholders. With these amendments, the enhancement of efficiency and effectiveness of the HSYK as well as providing for a fair and impartial functioning of the judiciary system is among the main objectives.

There have been efforts to lift the restrictions on judicial review in the package, which proposes the changes to the current provisions regulating that

[631] "Turkey: Reform Package Sent To Parliament", *Project on Middle East Democracy Turkey*, 30 March 2010.

military personnel cannot be tried by civilian courts. However, in modern countries the trial of military personnel by military courts is limited to the charges relating to their duty and when the issue is other charges, civilian courts try them under equal conditions with civilian citizens. Therefore, in order to modernize the judiciary system in Turkey, parallel to these practices, a series of proposed changes to the Constitution in the reform package could enable top military personnel to be tried by civilian courts on charges of crimes against the state and the constitutional order.[632]

In that sense, 'the changes to Article 125 will enable the decisions made by the Supreme Military Council (YAŞ) regarding expulsion from the military to be taken to the court at the same time when the amendment package also enables the appeal of the decisions of the Constitutional Court, which tries the head of state, prime minister and ministers as the Supreme Tribunal.'[633]

'The draft aims to limit the jurisdiction of military courts by proposing changes to Article 145, a step that the AKP undertook last year but was thwarted by the Constitutional Court at the same time while it seeks to put anyone who allegedly committed crimes against the state, including military officers, on trial in civilian courts and allow those fired from the armed forces by a high military council for alleged links to radical Islamic or other groups to appeal the verdict.'[634] This amendment also aims to limit the jurisdiction of military courts to the issues of

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[632] Under the draft package, civilian courts would try military personnel in peace time for coup attempts paving the way for the trial of those who carried out the 1980 coup, annulling a temporary clause in the current Constitution drafted under the auspices of the military. "Turkey's Ruling Party Submits Constitutional Amendment Package to Parliament", *The Journal of Turkish Weekly*, 30 March 2010.

[633] Cüneyt Yüksel, "Constitutional amendment package: A big step in democratic reforms toward full EU membership", *Today's Zaman*, 26 March 2010.

[634] "Turkey's Ruling Party Submits Constitutional Amendment Package to Parliament", *The Journal of Turkish Weekly*, 30 March 2010.

military staff related to the military in accordance with the EU recommendations proposing the increase of civilian oversight of armed forces. Furthermore, this proposal also complies with Article 6 of the ECHR regulating the fair trial.

Changes proposed to Articles 146, 147 and 149 aim to reconfigure the composition, working conditions of the Constitutional Court and criteria for the selection of its members. These amendments could pave the way to increase of the number of members of the Court from 11 to 19 who would be appointed through a double majority system among different candidates proposed by different judicial bodies such as the Council of States, Court of Cassation and High Military Administrative Court of Appeals together with the The Higher Education Council. In addition, the membership of the Court in Article 147 would be limited to 12 years. Thus, the capacity of the Constitutional Court to represent different parts and elements of the judicial system has been increased, thereby reflecting the societal transformation towards a participatory and pluralist democracy.

Also, the amendment to Article 148 would enable Turkish citizens to apply to the Constitutional Court after exhausting all other domestic remedies. Thus, citizens could have the right to individual application and would have to apply to the Constitutional Court before taking a case to the ECHR. This change would considerably contribute to the resolution of the most domestic problems through internal judicial ways rather than by the decisions of the ECtHR when the number of cases against the country is taken into consideration. At the same time, this individual application mechanism is of key importance in terms of strengthening the rule of law and the protection of human rights and individual freedoms as this mechanism is developed against the violation of fundamental rights and freedoms,

which has been evaluated as positive changes by the reports of the EU and Venice Commission.

The recent closure cases opened against the AKP in 2008 which resulted in limitations to its public funding as a penalty, and a issue of serious warning, and the Democratic Society Party (DTP) in 2007 which resulted in its closure in December 2009 by the unanimous decision of the Constitutional Court raised the questions about Articles 68 and 69. 'Turkey became the target of harsh criticism by the EU when the closure cases against the AK Party and the DTP were filed as the closure of political parties is not an ordinary incident in Europe.'[635] In that sense, considering that political parties are vital elements of democratic life in a country, the government proposed amendment to Article 69, which would make the process more difficult by first seeking consensus within Parliament to open a case against any party.[636] In the current constitution, the Chief Public Prosecutor of the Republic can file a suit to the Constitutional Court and the latter can decide to dissolve a political party; however, according to the amendment proposal though the Constitutional Court remains the ultimate organ to ban political parties, the Chief Public Prosecutor should have authorization from a Commission of the Grand National Assembly. Turkey has to observe the universal standards concerning political parties shut down as Turkey is a democratic state respecting human rights and based upon the rule of law. Since the adoption of the 1961 Constitution 25 political parties were shut

[635] Betül Akkaya, "DTP closure case presents second test of Turkish democracy", *Today's Zaman*, 17 August 2008.

[636] However, the Parliament rejected on May 3rd the proposal to amend legislation on political parties that would have made it much harder to ban them. (The Article 8 and its provisional Article18 of the reform package, which would make it more difficult to close down political parties, failed to receive the required 330 votes on May 3)

down.[637] Under the amendment, deputies would maintain their seats even in case of the closure of their parties and those banned from politics by court decision could not participate in a political party for three years instead of five. Speeches of the deputies in the Parliament would no longer be seen as evidence of opening a closure case. Additionally, the Audit Court would be responsible for the financial control of political parties. The last paragraph of Article 84 relating to the termination of the membership of a deputy having caused the dissolution of his party is abolished on the account of that it is against the fundamental democratic principles, ECHR and the jurisprudence of the ECtHR.

As the Constitution is the most prominent indicator of democracy, it is vital to take courageous steps towards aligning it with universal democratic standards in order to better meet the needs and expectations of the society, 'which will rid the country of the shackles that fetter democracy.'[638]

4.3.2 Letting Go of the Authoritarian Past: Civilianization of Turkish Politics

> The prospect of trying military personnel in a civilian court, as proposed in government's package, is an "excellent" step for Turkey's bid to join the 27-member bloc.
>
> Hélène Flautre[639]
> **(**EU-Turkey Joint Parliamentary Committee co-Chairperson)

[637] The fact that the European Court of Human Rights has found all but one of the political party closure decisions made by the Constitutional Court in violation of the European Convention on Human Rights and Fundamental Freedoms is evidence that the practice in Turkey does not conform to universal standards. The principles set by the Venice Commission have been taken into account to this end. It should not be ignored that Venice Commission principles (in its report on the closure of Political Parties in Turket on 14 May 2009) bring strong safeguards for political parties; according to these principles, only parties advocating violence shall be closed down. Yüksel, *op.cit.*

[638] Yüksel, *ibid.*

[639] "Europe backs reform package, urges civilian constitution", *Today's Zaman*, 04 June 2010.

'It was with the assistance of the military being from then on deeply anchored within Turkish society that Atatürk was able to pursue his whole agenda.'[640] The constitutional establishment of the NSC, which is a body of top generals and politicians, also displays the pivotal role of the military in Turkish politics. The military actions such as the establishment of the Article 118 of the constitution regulating the government's responsibility for taking the NSC considerations regarding national security issues into account, and the overthrow of the democratically elected governments periodically as they are not following the tradition of Kemalism or being too Islamic – were able to find acceptance within the public as it was regarded as the safeguard of sustainable order and stability in the country. The NSC has not only political but also economic role, as 'it has its own budget, not subject to parliamentary control', which makes military 'a state within a state.'[641] However, 'since Recep Tayyip Erdogan and his Justice and Development Party (AKP) came to power in late 2003, the military sector underwent far reaching changes as the AKP pushed a policy of civilization.'[642]

One of the most crucial steps taken by the AKP government on its road to democratic opening is towards the elimination of the influence of the authoritarian past on today's political and social life in Turkey. Among these crucial steps, the recent reform proposal and Ergenekon crack-down, which 'has helped the ruling party emerge as an actor, taking advantage of its ambitious identity, and shaped new

[640] Eric Rouleau, "Turkey's Dream of Democracy", *Foreign Affairs*, Vol. 79, No. 6, 2000, p. 102.
[641] Rana Deep Islam, *Turkey on its Way to Europe, Recent Developments in Turkish Reform Politics*, Study Report, Strasbourg: International Institute for Democracy (IID), March 2004, p. 18, quoted in RanaDeep Islam, The Accession of Turkey to the European Union - Security Implications for Transatlantic Relations, DIAS-Analyse, No. 29, Düsseldorf, Mai 2008, p. 13., pp. 1-40.
[642] *Ibid.*

opportunities for restructuring the civil-military balance and addressing the Kurdish question.'[643]

Since Military has been one of the most important actors in Turkish politics through the constitutions formulated by the armed forces which guaranteed their role in civilian regimes throughout the republican history since 1960, when Turkey's democratization process was impeded by the military and a 'vicious circle-politics' was introduced. By 'incorporating into the Constitution certain substantive values cherished by the military – territorial and national integrity of the state and the modernising reforms of Atatürk and establishing formal institutions dominated by the military with the duty of preserving such values,'[644] the armed forces created pseudo-democratic constitutions that aim to protect the state against the nation rather than a constitution based on full-democracy that would protect national values against the state and make the state serve for the nation's utility. Similarly, the 1982 Constitution has granted some distinctive competences to the armed forces, which essentially contradict the universal democratic principles. Especially since the Helsinki Summit of 1999, parallel to the EU-motivated democratization packages and the European Commission's annual reports on Turkey, a civilization process has been carried out to a degree in order to ameliorate the Constitution, and strengthen the democratic civilian control of the military with a view to aligning it with practice in EU member states.

[643] Umit Cizre and Joshua Walker, Conceiving the New Turkey After Ergenekon, *The International Spectator*, Vol. 45, No. 1, March 2010, p. 90.
[644] Aydın and Keyman, *op.cit*., p. 19.

4.3.2.1 Reforms towards the Redefinition of Civil-Military Relations

'The external impetus, which is the necessity to make reforms to meet the Copenhagen criteria and the EU standards of a democratic country, has fed the internal stimulus.'[645] As Turkey prepares for EU membership, civil-military relations in the country are changing. 'Besides, improvements in the human right regime and expanding the civil liberties, issuing an Accession Partnership Document for Turkey after the Helsinki Summit, the European Commission required the government to align the constitutional role of the National Security Council as an advisory body to the government and to build constitutional mechanism of transparency in military budgeting in accordance with the practice of EU member states.'[646]

With the two far-reaching constitutional amendments of 2001 and 2004 and the EU harmonization packages, especially 6th, 7th, 8th and 9th reform packages adopted by the government beginning from November 2002 introduced significant institutional and constitutional changes to various spheres of decision making system in accordance with the EU demands pointed in annual reports. The crucial steps towards the civilization of Turkish politics include reforms aiming the transformation of the role of the NSC and the NSC General Secretariat; the removal of the NSC representatives from the civilian boards; full accountability of the military to the elected representatives and full parliamentary control of the defence expenditure; restricting the jurisdiction of military courts.

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645 Ayşe Nilüfer Narlı, "Aligning Civil-Military Relationsin Turkey: Transperancy Building in Defense Sector and the EU Reforms", *9th Workshop of the Study Group: Transforming National Armed Forces in South East Europe - from the Social to the Military Challenge*, 21-24 October 2004, p. 161.

646 *Ibid.*

Parallel to 6th and 7th democratization packages, the October 2001 constitutional amendments, especially in an amendment to the Law on the National Security Council, Article 118, at the beginning of 2003, the number of civil members of the Council and its influence on Council of Ministers has been reduced. The participation of the Ministers of Justice and Deputy Prime Ministers in the Council and the addition of the provision to Article 118 stating that 'the National Security Council shall submit to the Council of the Ministers its views on the advisory decisions that are taken and ensuring the necessary condition with regard to the formulation, establishment, and implementation of the national security policy of the state' instead of the provision that 'the NSC will report to the Council of Ministers the views it has reached and its suggestions.'

Another amendment was introduced to the Law on the National Security Council (Law No: 2945, 1983) with the adoption of the 7th harmonisation package in July 2003, which introduced some additional fundamental changes to the duties, functioning and the composition of the NSC with an amendment to Article 4 of the Law of the NSC. Accordingly, 'the scope of the NSC's involvement in political affairs is confined to national security issues: the NSC is to determine national security concept and develop ideas about the security in accordance with the state's security approach and recommend these security views to the Council of Ministers.'[647] The 7th democratization package also brought the amendment to the Law on the NSC brought the abolition of the extended executive and supervisory powers of the Secretary General of the NSC and, in particular, abrogation of the provision empowering the Secretary General of the NSC to follow up, in the name of

[647] *Ibid*., p. 164.

the President and the Prime Minister, the implementation of any recommendation made by the NSC,[648] together with the abrogation of other provisions authorising unlimited access of the NSC to any civilian agency.[649] Moreover, another amendment enabled the appointment of a civilian, upon the proposal of the Prime Minister, to the post of Secretary General.[650] Consequently, 'in August 2004, a senior diplomat was appointed as the first civilian Secretary General of the NSC by the President upon the proposal of the Prime Minister in accordance with the changes introduced in July 2003.'[651] It was also determined that the NSC would no longer meet once a month but every two month.[652] This package also repealed the previously required consent of the NSC to the regulation of the languages to be taught in Turkey. Thus, with fundamental changes in the duties, functioning and composition of the NSC made the NSC an advisory body with no executive powers and with a majority of civilians.

The EU harmonization packages reduced the NSC's role on the civilian boards influencing the education, art and broadcasting policies. The sixth harmonization package adopted in July 2003 removed the representative of NSC from the Supervision Board of Cinema, Video and Music through an amendment to

[648] Articles 9 and 14 of the NSC and the Secretariat General of the NSC were removed.
[649] Article 19 of the Law of the NSC was deleted. (The Ministries, public institutions and organizations and private legal persons shall submit regularly, or when requested, non-classified and classified information and documents needed by the Secretariat General of the NSC').
[650] An amendment of Article 15 of the Law of the NSC revised the appointment procedure of the Secretary General of the NSC; the Secretariat General is appointed upon the proposal of the PM and the approval of the President, allowing a civilian to serve in this office. The amendment provides that the post National Security Council General Secretariat will no longer be reserved exclusively for a military person. In August 2003, it was decided to appoint a military candidate to replace the outgoing General Secretariat for one year. In early July 2004, the names of the potential civilian candidates for the post appeared in the press, and in September, Mr. Yigit Alpogan, who served for the Ministry of Foreign Affairs, was appointed to the post. Narli, *op.cit*., p. 166.
[651] 2004 Turkey Progress Report, p. 22.
[652] The frequency of the meetings of the NSC was redefined with an amendment to Article 5 of the Law of NSC.

the Law No: 3257, which was evaluated as a positive change in 2003 Progress Report. The following comprehensive constitutional reform package consisting of amendments to ten Articles in May 2004 aimed to eliminate the military control over civil boards remained after 2003 reform process. Through the 2004 constitutional amendments the Higher Education Board has been civilized completely by the removal of the military representative. With the amendment to Article 131 of the Constitution regulating the composition of the Board the competence of the General Staff to appoint members to the Board was abolished. Similarly, with the eight harmonization package, a member appointed by the Secretary General of the NSC was removed from the High Audio-Visual Board (RTÜK). Thus, civilian bodies like the YÖK and RTÜK freed from military control. In order to eliminate the role of the military on high councils, with the 9th EU Harmonization Package adopted in 2004 abolished the right of the Chief of General Staff to the appointment of a member to the High-Education Board and to the High Audio-Visual Board.

Measures have been adopted enhancing the transparency of military and defence expenditure through the harmonization packages and 2004 constitutional amendments.[653] These changes aimed to provide for the full accountability of the military to the parliament like other organizations by expanding the role of the Court of Auditors in controlling military budget and by enacting a new Law on Public Financial Management and Control (Law No: 5018, which brings extra-budgetary

[653] An economist and a columnist Osman Ulagay, talking to Nese Duzel in an interview, criticised the lower level of spending on health and education, albeit high defence spending."Military expenses must be subject to inspection like other expenses. I do not agree to the statement every sent spend in defence is for the wellbeing of the motherland. We should discuss if these defence expenses are rational or if there are alternatives to them. I do not trust the publicly announced figures on the defence budget. Because not all military expenses are transparent. Nobody knows the accurate amount of the money spent on military expenses. Military expenses cause higher public spending that is detrimental to anti-inflation policy." Nese Duzel, Military Expenses Again, *Radikal,* 10 July 2000, quoted in Narlı, *op.cit*., p.160.

fund into the overall state budget and requires more detailed information and documents to be attached to the budget proposals, including the defence budget proposals. Additionally, it introduced a system of budgeting based on performance, where performance reports are submitted to the parliament and increased the parliamentary control on military expenses. Thus, as regards ensuring control over military expenditure by the civilian authorities, the crucial steps towards the enhancement of defence expenditures were made. With an amendment to the Article 160 of the Constitution in 2004, the Court of Auditors, on behalf of the TBMM, was charged with auditing all accounts related to all types of organisations including the state properties owned by the armed forces. The exemption of the 'state property in possession of the Armed Forces in accordance with the principles of secrecy necessitated by national defence' was also deleted. Thus, like other public organizations, armed forces have undergone the control of the Court of Auditors, with 2004 constitutional amendments.

The 7th harmonization package also aimed to limit the competences of the military courts. The trial of civilians in military courts was abolished with an amendment to the Military Criminal Code and the Law on the Establishment and Trial Procedures of Military Courts (Law No: 353, on 25 October 1963). Thus, the detention procedures of the military courts have been aligned with those of other courts.

Further, the abolition of the State Security Courts (DGM) established after the 1980 military intervention with the 2004 constitutional amendments was also another positive change in terms of civilization process in Turkey.

Abolition of the last paragraph of provisional Article 15 of the Constitution, which provided the decisions of the NSC with the immunity from judicial oversight also contributed to the civilization process by strengthening the constitutional guarantee of fundamental rights and freedoms as well as by eliminating one of the distinctive competences granted to the military power in contrary to civilian power.[654] This change opened the way to review the military norm judicially like other norms, which is a prerequisite of the rule of law and supremacy of the constitution.[655]

Despite all these positive efforts there remain some concerns relating to trial of civilian by military courts and immunity of decisions of military courts in regard to expel of military staff from judicial review. To eliminate the formal channels through which the Armed Forces exercise influence in Turkey as pointed in 2009 progress report, the government proposed another reform package recently. As mentioned above the restriction of the competences of military courts will be increased and the way to judicial review will be opened for the decisions of YAŞ through the amendments to Articles 145 and 125.[656]

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[654] Yazıcı, *op.cit*., p. 16.
[655] *Ibid.*
[656] **Scope of military courts will be limited (Article 145)**: The 1982 constitution allows military courts to try non-military persons for military offences, or against military personnel on military places. The proposal, however, limits military courts to only military personnel for military offences related to military services and duties. If passed, non-military personnel will not be tried in military courts except during war time. In addition to war time, the current version of the article regards the time of martial law as exceptional as war time. Modification of this article is very important because AKP's attempt to change this law bounced back from the Constitutional Court. Semdinli case (2005) showed that court decisions change a lot in civilian and military courts. In civilian courts, prosecutor demanded 36 year imprisonment, while the suspects were cleared in the military court.
Decisions of the Supreme Military Council will be liable to recourse (Article 125): Every year in August, when the Supreme Military Council gathers in Ankara, usually many people are expelled from Turkish Armed Forces. Decisions of this meeting are not subject to judicial review and the amended law will allow expelled personnel to file a suit against the Armed Forces. Hasan Öztürk, "Pros and Cons of Proposed Constitutional Reform, *BILGESAM*, 30 March 2010."

With all these reforms – EU-motivated harmonization packages and constitutional amendments - the authoritarian past inherited by the military has been to a great extent liquidated. Thus, Turkey has become a part of the globalizing contemporary international arena by aligning Turkish judicial system and civil-military relations with the democratic principles of the EU.

4.3.2.2 The Ergenekon Crack-down and the Changing Role of Military in Domestic Politics:

> '…the Ergenekon case as a real test of the government's will to dig deep and expose any ties between illicit gangs and the state.'
>
> Sarah Rainsford[657]

> No one has the right to establish a militia to overthrow a democratically elected government.
>
> Egemen Bağış[658]

> Because of the alleged magnitude of the Ergenekon criminal network, the ongoing probe into the network will eventually serve as proof of the maturity of Turkey's democracy.
>
> Slovakian Ambassador to Turkey Vladimir Jakabcin[659]

'Despite their formal separation, military and civilian authorities have forged a partnership based on an imperfect concordance among the military, political elites, and the citizenry, which is the product of Turkey's specific cultural, social, and institutional context, featuring a stratified society and political culture as well as historic conflicts with neighbouring states and the constant fear of losing territorial integrity that is synonymous with national integrity.'[660] The half century-year old image of the military is twofold: It safeguards the country in general against the internal and external enemies, and enables Turkey to remain as a secular country in

[657] "'Deep state plot' grips Turkey", *BBC News*, 4 February 2008.
[658] "In Turkey, Trial Casts Wide Net of Mistrust", *The New York Times*, 21 November 2009.
[659] Interview With Slovakian Ambassador to Turkey, "Slovakian Ambassador: Ergenekon Case to Eventually Prove Turkey's Progress towards Universal Values", *Today's Zaman*, 27 April 2010.
[660] Narlı, *op.cit*., pp. 157-158.

particular, which has sustained military's role in legislative process for years, thereby preventing the civilian sphere to formally separate from military sphere.

The recently intensified efforts towards the transformation of the rooted perception of Turkish politics aim to balance the civil-military relations by increasing the parliamentary control of the military in alignment with the EU recommendations. In other words, underlying Turkey's foreign policy formulations and recalibrations is a domestic struggle to redefine the real parameters of Turkish politics, whose primary focus in the last two years has centred on the still ongoing historic court case known as Ergenekon[661] that 'is altering the status quo framework and understanding of Turkish politics.'[662] The main actors of this struggle are the ruling party, AKP which is rooted in Islamist and conservative tenets on the one hand and the military as the safeguard of secular system on the other. As the main driving force the EU, through its harmonization packages and annual reports, and the changing perception of the internal dynamics of the Turkish political culture by the society, through the

[661] The Ergenekon operation, which started in June 2007 with the discovery of grenades in a house in Istanbul's Umraniye district, is allegedly a crackdown on an illegal organization believed to be planning provoking events that would pave the way for a military coup to overthrow the AKP government.The extent of the operation had widened since the closure case against the AKP filed in March. Prime Minister Tayyip Erdogan had linked the two cases saying the closure case against the AKP was filed due to the government's determination in the Ergenekon case. "Turkish Prosecutors File Indictment on Controversial Ergenekon Case", *Hürriyet Daily News*, 25 June 2010. Turkey surely is in an important situation with the Ergenekon Case. This case, regarded as the most important in the history of the Turkish Republic, has long captivated the public attention with buried guns and grenades, links with the previous staggering assassinations, and plans for further assassinations. This is common for terrorist organizations. In order to overthrow the government or at least share the power sources, terrorists use such violent attacks. Terrorist organizations use symbolic, violent, and shocking attacks in order to prove their existence and voice their goals; they terrorize and suppress the society to attain their goals in the shortest way. Ihsan Bal, "Ergenekon Case and Indecent Proposals", *Turkish Weekly*, 2 February 2009.

[662] Cizre and Walker, *op.cit*., p. 89., Labeled as the 'case of the century', *Ergenekon*, is the name given to an allegedly clandestine, ultra-nationalist organization in Turkey with ties to members of the country's military and security forces. The investigation has , since July 2008, led to the arrest of over hundred people, including military, party and police officials, and a former secretary general of the NSC. *Ibid.*

substantial enhancement of transparency and democracy, have led the basic parameters of Turkish political culture to undergo a radical transformation.

For the last several decades, 'the Turkish military was untouchable; no one dared to criticize the military or its top generals, lest they risk getting burned.'[663] 'The Turkish Armed Forces were the ultimate protectors of founding father Kemal Ataturk's secular legacy, and no other force in the country could seriously threaten its supremacy.'[664] Therefore, 'the subject is sensitive in Turkey and any attempt to question the position and role of the armed forces is met with scepticism or hostility from various quarters, partly because an expression of national pride and a reflection of the high level of trust and respect enjoyed by the army.'[665]

As this military guardianship is incompatible with democratic principles and constitutes an obstacle to the EU membership, Turkey has to ensure full democratic oversight of military by the civilian authorities. Today, 'with the outbreak of the investigation into the alleged criminal network Ergenekon first launched in June 2007, whose defendants consider themselves defenders of secularism, and national sovereignty, the arrest of a considerable number of people, including retired Army

[663] Soner Cagatay, What is really behind Turkey's Coup Arrests?, *Foreign Policy*, 25 February 2010.
[664] *Ibid.* The founding fathers of the modern Turkish Republic – Mustafa Kemal (Atatürk) and Ismet (Inönü) – were both former generals. They made the military an important partner in establishing and safeguarding a *unitary* and *secular* state with a reforming agenda and a European vocation. They embraced democracy, adopting a parliamentary system of government, with the assurance that the Turkish Armed Forces (TAF) would defend their 1924 Constitution if the republic's unity or secular character (or the democratic ideal) were ever endangered. David Greenwood, "Turkish Civil-Military Relations and the EU: Preparation for Continuing Convergence", Sami Faltas and Sander Jansen(Eds.), "Governance and the Military: Perspectives for Change in Turkey", *Centre for European Security Studies (CESS)*, 2006, p. 38.
[665]Sami Faltas and Sander Jansen(Eds.), "Governance and the Military: Perspectives for Change in Turkey", *Centre for European Security Studies (CESS)*, 2006, p. 11.

generals led, so to say, to transform the traditional understanding of Turkish military.'[666]

'While the military are less and less inclined to interfere in the daily business of politics, even today they may resist, and even see it as their duty to prevent anything that they think will change the secular nature of the state established by Atatürk, affect the indivisibility of the state and the nation, or squander Turkish rights in Cyprus.'[667] As the most controversial court case in recent Turkish history, Ergenekon case aims to purge Turkey of corruptions and 'to eradicate a vast and immensely powerful clandestine organization which has been responsible for countless deaths and acts of violence, that it still poses a major threat to public security and that its destruction would make Turkey a safer and better place'[668] on the contrary to the claims of 'many hard-line secularists regarding the Ergenekon investigation as a politically motivated attempt to intimidate, discredit and disable the opposition to what they believe are the AKP's long-term plans to establish an Islamic state,'[669] or to the speculations of opponent parties regarding the Ergenekon investigation as a method used by the government to silence opposition to itself.

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[666] 2008 Turkey Progress Report, p. 6. An investigation started in 2007 into an allegedly criminal network, known as Ergenekon, led to the arrest of a number of people, including retired Army generals. The indictment against Ergenekon, presented on 14 July 2008 by the Istanbul Public Prosecutor Office, is based on charges such as forming a terrorist organisation and attempting to overthrow the government and to undermine its operation by use of violent means. During the course of the investigation, there were reports regarding the insufficient safeguarding of the rights of defence and the excessive duration of detention period without indictment. The first hearing of the trial, first of this kind on such a scale, was held as planned on 20 October.

[667] Andrew Mango, *The Turks Today*, London: John Murray, 2004, pp. 137-138., quoted in Faltas and Jansen, *op.cit*., p. 11.

[668] "Gareth Jenkin's interviews with sources close to the Ergenekon investigation", Istanbul, April-May 2009, quoted in Gareth H. Jenkins, "Between Facts and Fantasy: Turkey's Ergenekon Case", *Central Asia-Caucasus Institute*, August 2009, p. 32. pp. 1-86.

[669] Jenkins, *op.cit*., p. 32. The generals believe the AKP has a hidden agenda to subvert the country's secular system. Roger Hardy, Turkish Military at Uncomfortable Crossroads, *BBC News*, 24 February 2010.

The foresaid institutional modifications and amended laws were crucial steps towards changing Turkish military relations and the Ergenekon investigation[670], which was also regarded as a positive step towards both the civilization process and paying more respect to human rights by the European Commission's 2009 report, 'has cemented these modifications as it plays the leading role in eroding the influence of the military in domestic politics at the same time when it eliminate the concerns raised about the rule of law and democracy in the country.'[671] Ergenekon case and recent modifications have also a crucial influence on changing the traditional mood of the society by increasing their confidence in the civilian authorities and the ruling politicians. 'Such efforts might help to break the taboo on the custodianship role of the army in politics and society, and when this taboo is overcome, reforms in civil-military relations would cause less anguish and enjoy wider public support.'[672] In other words, 'because of its role in late Ottoman and

[670] As the story has unfolded and arrests made, commentators have argued that a number of political assassinations are in fact linked to this network, for example, those of a priest in Trabzon (2006), a judge in Ankara (2006) and Hrant Dink in Istanbul (2007). Among those arrested are Dogu Perincek, chairperson of the Workers' Party; Ilhan Selcuk, columnist at the Cumhuriyet newspaper; and Kemal Alemdaroglu, a former rector of Istanbul University. On 12 June 2009, the liberal left Taraf daily published an unclassified document reportedly discovered during a police raid on 4 June at the office of Ergenekon suspect, retired military lawyer Serdar Ozturk; the document revealed a covert ''Action Plan to Combat Islamic Reactionaries''. Prepared by senior active Colonel Dursun Cicek, it involved psychological warfare, bomb attacks and intelligence gathering. The plan aimed to use various means to undermine public support for the AKP by discrediting and framing the party and the hugely influential Gulen movement, a global educational network for Turkish nationalist-Muslim renewal that is said to have infiltrated the Turkish armed forces. Cizre and Walker, *op.cit*., p. 93.

[671] 2009 Turkey Progress Report, pp. 6-7. Investigations into the alleged criminal network Ergenekon continued. Charges include attempting to overthrow the government and to instigate armed riots. Ammunition and weapons were discovered in the course of the investigation. A first trial, which started in October 2008, is ongoing. A second indictment, covering 56 suspects including three retired generals and a former commander of the gendarmerie, was submitted to court in March 2009. A third indictment covering 52 suspects was presented to the Court in July. The cases concerning these two indictments are discussed in one single trial, which started in July 2009 and is ongoing. This is the first case in Turkey to probe into a coup attempt and the most extensive investigation ever on an alleged criminal network aiming at destabilising the democratic institutions. Furthermore, for the first time a former Chief of Staff testified voluntarily as a witness. Concerns have been raised about effective judicial guarantees for all the suspects.

[672] Faltas and Jansen, *op.cit*., p. 12.

early republican history as the most progressive force in society from which the founder of the nation, Kemal Atatürk, also emerged, the military remains the most trusted institution in Turkish society.'[673] However, public's beliefs and expectations are gradually changing with the recent developments in the country, thereby changing the role and perception of the military in Turkey.

The EU documents and representatives have not refrained from explicitly criticising the state's security ambitions and their deleterious perspective on the country's democratic governance.[674] In other words, despite the risk of the antagonism of the defendants of traditional status quo, the EU acknowledged that 'the so called internal security problems may in fact be the result of the extant civil-military imbalance.'[675] Henceforth, it is widely accepted that the enhancement of civil-military balance is a prerequisite to achieve the required and expected results in democratic consolidation process.

Turkey is undergoing a very important transformation process, especially by the efforts towards the elimination of 'the unchallenged control of the military in defining and deciding what constitutes security or threats to the nation, which serves to promote its own legitimacy and to perpetuate its own veto power in politics.'[676] The Ergenekon case also serves to change the half century-old notion that western

[673] Aydin and Keyman, *op.cit*., p. 21.
[674] Cizre and Walker, *op.cit*., p. 92,
[675] Umit Cizre, Problems of Democratic Governance of Civil-Military Relations in Turkey and the EU Enlargement Zone, European Kournal of Political Research, Vol. 43, No. 1, 2004, p. 118, quoted in Cizre and Walker, *op.cit*., p. 92.
[676] *Ibid*., p. 93. In April 2007, the military bureaucracy attempted to block the presidency of the ruling party's candidate, Abdullah Gul, through morally and (in the eyes of many constitutional lawyers) constitutionally questionable means; Gul was in fact one of the founders and major figures of the party, but his wife wears a headscarf. The most extreme strategy, however, for dealing with the AKP was the attempt to close the party down: less than a year after its landslide victory in the 22 July 2007 general elections, the prosecutor general launched closure proceedings in the Constitutional Court in March 2008. *Ibid*., p. 94.

(EU's) demands for the enhancement of accountability and transparency of the military and security forces, and western emphasis on protection of human rights and sub-identities, and consolidated democracy were regarded as the hidden agenda of European countries to weaken Turkey. It is, therefore, interesting that once an advocate of westernisation, the military, tends to interpret the intense reformation process recently adopted by the government to align democracy in all spheres of Turkish politics with the EU standards both as the Western hidden agenda and as the hidden Islamic agenda of the AKP government.

Conclusively, 'still clinging to its traditional role as guardian of the nation, but aware the tide of history is moving against it, the Turkish military finds itself at an uncomfortable crossroads.'[677] All the foresaid reforms have not only improved the civil-military relations by increasing the civilian control of the armed forces but also proved that 'how far the country has already progressed towards putting the relationship between civil and military power on a new footing, and rendering the 'old' image invalid.'[678] Since 1999 the executive and legislative powers of the NSC were removed and has a role of consultative body which conveys its views upon request and a civilian Secretary General has been appointed, and various constitutional amendments and legislation have been made with regard to the functioning and composition of the military and the limitation of military courts in accordance with harmonization packages, which is an obvious sign of evolution towards EU standards and practice, and a transformation of the military's role and the public's evaluation of military. This leads a crucial drift from the omnipresent

[677] Hardy, *op.cit.*
[678] Greenwood, *op.cit.*, p. 40.

role of the military towards the increasing role of civil political institutions prevailing over it. Perhaps the most significant effect of the Ergenekon case is, thus, its infliction of tutelary democracy conception of the military. Slovakian Ambassador to Turkey Vladimir Jakabcin interpreted Turkey's recent developments in an interview with Today's Zaman:

> Turkey is undergoing a very important change. And if you ask me whether it is leading to more democracy, rights, freedoms, I think it is. I think all these pieces of the mosaic are contributing. Maybe in some areas it is not so visible, and maybe in some areas it is a subject of political struggles -- in fact this is normal. It also leads to more democracy. We wouldn't be able to say this if opposition was suppressed. Everybody can explain and make opinions public; there is a freedom of expression, and it is moving towards the direction of democracy. I'm sincerely convinced that Turkey, with the reform process, is moving towards becoming a more democratic, more European style country.[679]

Briefly, 'the government tries to make good on its promises to both the EU and its own people to renew the reform process, in particular enacting a new constitution, a functioning ombudsman, full freedoms for religious organizations, respect for cultural liberties and wider freedom of expression.'[680] 'This chain of events has undeniably had the impact of changing the balance of power in Turkey in favour of civilian elements.'[681]

4.4 To What Extent Does the Accession Process Transform Turkish Sovereignty Culture?

'Perhaps the most significant dynamic of the 21st century is the transformation of sovereignty.'[682] In that sense, if Turkey wants to remain as a sovereign in Europe or in the global arena, it has to align the parameters of its

[679] Interview with Slovakian Ambassador to Turkey, *op.cit*.
[680] Independent Commission, *op.cit,* p. 44.
[681] Öniş, 2006, *op.cit*., p. 8.
[682] Davutoglu, *op.cit*., p. 58.

political culture with the international norms and practices, especially because of its devotion to EU membership. In fact, 'the results of the Europeanization process are in general asymmetric and experienced differently by member states and candidates, depending on factors such as the specific state formation, the administrative tradition and the patterns of policy-making, the political culture, the nature and structure of domestic market, the country's competitiveness, but also the balance of power between state and society on the one hand and national and sub national units on the other.'[683] As the main driving force the EU's demands cause Turkey to undergo a radical transformation in terms of its national identity and socio-political traditions whereas 'this Europeanization process collides with the idiomorphic authoritarian model of modernist nationalism and uniform identity that was inflicted by the Kemalist elites leading to the establishment of the narrow and monolithic Turkish nation-state, which fully conflicts with the model of post-modern state which continues to evolve in Europe (from the early 1990s) as a result of the integration process.'[684] 'This vision of a post-modern state and associated notions of liberal internationalism come into direct conflict with the earlier vision of modernist or authoritarian visions of nationalism based on a single identity, creating significant tensions in the process.'[685] Therefore, 'a hallmark of this kind of post-modern state is recognition of multiple identities with a strong emphasis on the promotion of minority rights.'[686] In case of Turkey's accession to EU, with ups and downs, Turkey is decisively on its way to enhance its sovereignty culture in favour of the public at

[683] Sotiris Serbos, "Between the Functional and the Essential: European Perceptions & Domestic Choices in the Framework of Contemporary EU-Turkish Relations", *Research Journal of International Studies*, Issue 7, March 2008, p. 8.
[684] *Ibid.*
[685] Öniş, 2003, *op.cit*., p. 11.
[686] *Ibid*.

the same time when it has been preparing its domestic political system to be able to share its sovereignty with other European states on equal terms in case of full membership status. Thus, what we are currently witnessing is the regeneration of Turkey in the EU accession process.

Expecting to access the EU membership Turkey has undertaken a series of institutional reforms in order to fulfil the requirements of the Copenhagen criteria. Implementation of these reforms has required the attitudes and practices of judicial, bureaucratic and civil society actors to change. Despite all the current difficulties and deficiencies in implementation due to the severe opposition of Kemalist bureaucratic elite, 'the combination of the credible policy of conditionality on the part of the EU and the recent effective implementation of the Copenhagen political criteria on the part of Turkey'[687] has led to a significant enhancement of the corruptions in Turkish political scene in relation to democratizing, civilianizing and liberalizing. Such changes achieved in political, cultural and social life in a short time are of very importance for a state like Turkey whose history has failed to link modernization with democratization since its foundation.

Having emerged in the end of the Cold War, the post-modern norms of the globalized era are in conflict with the Kemalist values on which Turkish modernist revolution is based. The globalization phenomenon favours the sub-identities and sub-cultural structures over nation-states and national societies. In fact, globalization under the masquerade of post-modernism causes the erosion of nation-states, which will ultimately touch upon the 1930's traditional Kemalist model of the Republic of Turkey. That's why, they are against both economic and socio-cultural

[687] Aydin and Keyman, *op.cit*., p. 46.

reconfiguration of the Republic in accordance with the 21st century's requirements, and determined to preserve the conventional sovereignty and its institutions in Turkey. However, such efforts may ultimately lead to the loss of the cultural and national identities, and thus will result in the territorial and national disintegration.

In fact, with the impact of globalization, Turkey has already compromised its sovereign rights by joining international treaties as bargaining sovereignty in today's international system is commonly accepted as a necessity. For instance, with the signing of Customs Union Turkey has accepted to comply with the customs regulations of the Union though it has no say in regulation of customs regimes and tariffs. The reforms in economic sphere, which is regarded as less sensitive than domestic political matters, were the first steps towards the prospective full EU membership. The preparatory stage to reconcile the sovereign institutions with those of the EU by sharing sovereignty in political sphere has been accelerated just with the status of official candidacy given at the Helsinki Summit of 1999. With the political restructuring to guarantee the rule of law, stability of democracy, and to respect for and protect human and minority rights 'Turkey has made sacrifices of its sovereign rights that touch upon the problematic domestic issues according to the EU.'[688] From Krasnerian perspective, the effects of globalisation on technological, economic and socio-political areas has eroded Turkey's interdependence sovereignty as those of other states at the same time when the revolutions and reforms in domestic political sphere in order to comply with the universal and European standards Turkey has sacrificed its Westphalian sovereignty, domestic sovereignty and even its juridical independence. However, it is not until 2000s that Turkey has

[688] Tekin, *op.cit*., p. 9.

undergone a deliberative transformation by making its reforms and regulations more transparent to the public, thereby increasing the awareness among the people, and by providing for more accountability.

Turkey differs from other candidate and member countries as it is trapped within the historical reflex, namely Serves Paranoia. 'Despite westernization policies, Turkish state ideology', that was imposed by some segments of the elite society in the direction of their own interests, 'has not achieved a process of common identification with the West that would diminish its sensitivities to issues of national independence.'[689] Founded upon the ashes of the Ottoman Empire, Turkey could not rid of the possible scenarios of its territorial partition by the European powers throughout the republican history in spite of the Kemalists' devotion to westernization. With security concerns, attempts to create a homogeneous nation upon an essentially multiethnic state based on nationalism principle that resulted in the ignorance of cultural values and rights of other ethnic and religious minorities in the country as they are regarded as the basic threats to the integrity of the state, at the same time while the army has risen as the most trusted body that would safeguard the Kemalist state against internal and external threats. As a result of the misinterpretation of Kemalism which was inherited by Kemal Atatürk, but turned into military Kemalism taboo, there existed a heated internal debate over Turkey's accession process to the full EU membership, especially between the reformed Islamist government openly supporting Turkey's EU membership with its reformation of political system and the military backed Kemalist republican elites

[689] O. Matthew, "Reality Check: Ready for Europe, or No?, *Newsweek*, May 2004, quoted in *Ibid*.

insisting on 'approaching the Copenhagen criteria through the prism of Sevres.'[690] Even in the post Helsinki period, they continues to interpret the European interest in the sensitive issues such as the minority and human rights 'as a siege on Turkey, pressuring it to make fraught reforms that would endanger its national security.'[691] In fact, the Kemalist elite contradicts itself: It tries to realize the Atatürk's ideal to modernize and civilize Turkey whereas it resists reforms concerning internal sensitive issues – 'delegation of sovereignty to Brussels, recognition of the cultural, social and educational rights of different ethnic communities, the introduction of reforms in the field of the freedom of religion that could undermine the secular regime and the role of military in politics.'[692] 'The idea that the EU's democratic expectations and human rights principles could in any way make it easier to guard against threats to democracy and strengthen the principles which Kemalism has worked so hard to gurantee, while at the same time underpinning minority and democratic rights, seems to not have entered the political calculations of the Kemalists.'[693] With the aim of westernization on their own terms and without any change in the existing status quo in the domestic field, Kemalist republicans support the system that 'was essentially the literal upholding of Atatürk's original model centered on the myths of national and social homogeneity of the Turkish nation, on an undemocratic secular regime, and on the notion of absolute sovereignty.'[694] For instance, the Kemalist republican elite still tries to preserve 'the conception of

[690] Piccoli, February 2005, *op.cit.*, p. 6.
[691] H. Kösebalaban, "Turkey's EU membership: A Clash of Security Cultures," *Middle East Policy*, Vol.9,
No.2, (2002), p. 139.
[692] Piccoli, February 2005, *op.cit.*, p. 3.
[693] Rumfold, *op.cit.*, p. 103.
[694] Piccoli, February 2005*, op.cit.*, p. 3.

national sovereignty in which states treat their nationals as they see fit, in spite of the recognition of universal human rights.'[695] They think that 'under the present conditions and historical development of the national structure of the Turkish State, granting any special rights to some sections of the Turkish nation carries the risk of encouraging separation.'[696] However, individual states are still responsible for the exercise of universal rights in order to retain its legitimate form in the international arena and to prevent domestic politics from any external interference related to human rights violations. Yet Kemalists are still reluctant to share sovereignty and autonomy on national sensitive issues, which would lead a threat to the integrity and unity of the state according to their narrow and dogmatic interpretation. In other words, their reluctance to pay the political costs of the EU membership impedes the rise of Turkey as a contemporary civilization.

'The so-called Kemalist elite are unaware of the fact that Kemalism itself is a temporary formula found by Atatürk to be able to respond to the demands of the immediate policy environment, to realize the dream of an independent state; therefore, it was natural to give priority to the state and its integrity.'[697] 'Elite guardianship over the country's political and economic systems was to be temporary, lasting only until the bulk of the people had embraced modern norms and institutions.'[698] 'Thereafter, the guardians would relinquish their control over the

[695]Cees J. Hamelink, "Globalism and National Sovereignty", (Eds.) Kaarle Nordernstreng and Herbert I. Schiller, *Beyond National Sovereignty: International Communication in the 1990s*, USA: Ablex Publshing Corperation, 1995. p. 385.
[696] Foreign Policy Institute , 14 May 2002, "The Advantages of Greater Clarity to Turkey's Path for Full Accession to the European Union",
http://www.foreignpolicy.org.tr/documents/wg_140502_p.htm, (15 May 2010).
[697] Tekin, *op.cit*., p. 8.
[698] Dariush Zahedi and Gokhan Bacik, "Kemalism Is Dead, Long Live Kemalism: How the AKP Became Ataturk's Last Defender", *Foreign Affairs*, 23 April 2010.

economy, institute multiparty elections, and extend greater rights to the citizenry.'[699] Therefore, similar to any other policies, Kemalism should also reconfigure itself and comply with the principles of the 21st century to be able to respond the epochal needs of the people. Turkey has undergone a revolution in legislative and institutional terms in a relative short period of time since 2002. Therefore, Kemalist bloc, who are the conservative supporters of authoritarian Kemalist heritage, reaches an impasse as 'they could neither reject integration with Europe nor provide a viable alternative for Turkish foreign policy'[700] with the fear of the betrayal of fundamentals of their ideological legitimacy.

This attitude is still held by various segments of the political arena; however, Turkey is gradually riding of remnants of its authoritarian past by ignoring the severe opposition from opponent parties and especially from the military which manages to preserve its extensive role in domestic politics through 'the entrenched belief in insecurity of regime and incessant threats to the territorial integrity.'[701] The reflections of post-sovereignty configuration of the EU on Turkey can be summarized by a two dimensional change of the conception of national identity and the traditional state ideology based on the secularist principles and the concerns of security and national independence imposed by the military and Kemalist republican elite since 1930s, both of which have led the assessment of national sovereignty to change gradually in the eyes of the public. The candidacy status gained on the road to the EU which is seen as the final step of westernization, however, started a radical transformation in Turkey from a majorities' democracy to a pluralist, multi-

[699] *Ibid.*
[700] Piccoli, *op.cit*., p.11.
[701] Tekin, *op.cit*., p. 8.

culturalist and participatory democracy, from 'a notion of equality as sameness' to a 'equality in differences.' All the recent developments during 2000s – the constitutional amendments and legislations relating to the expansion of human and minority rights and individual freedoms, restriction of the role of military in domestic politics, strengthening of the rule of law and the enhancement of judicial system and the Ergenekon case – have reconfigured the elements of Turkish political culture, thereby gradually diminishing the effect of historical reflex and the sensitivities in internal political issues, which Turkey is required to align with the EU standards and practice.

The exclusive postmodern structure of the EU and its post-sovereignty configuration not only transforms Turkish state ideology in internal political atmosphere by emphasizing cultural and ethnic differences but also aims to integrate Turkey into a common supranational identity by diminishing its sensitivities to the issues concerning national independence. Therefore, it is not wrong to say that Turkey is processing through a bilateral transformation. Turkish politics trapped with the vicious circle of security concerns based on the Sevres Syndrome started to change its state-base national sovereignty concept by developing a new socio-political synthesis and by changing the social fabric of Turkey as the state-society relations are improving, civil societies are no longer passive subjects but are more and more involved in domestic politics, and the deadlock encountered by military-backed Kemalist republicans has become more clear to the public since 2002.[702]

[702] The implementation of such an ambitious project of cooperative coexistence will strengthen the process of progressive integration between the state and the society and will pave the way for cultivating a more genuine Turkish-Islamic synthesis, which, reversing the frame of long-lasting tradition that determined the process of interaction between the secular "centre" and increasing Islamic-friendly "periphery" (Ali Carkoglu, "Conclusion", *Turkish Studies*, (vol. 6, no. 2, June 2005),

Thus, Turkey started to see the EU through 'a "window of opportunity" for consolidating democracy, strengthening the rule of law, modernizing the party system and finally contribute to the establishment of an open and pluralist polity, the political elites will have to pursue the initiation of radical policies aiming at the essential liberalism and eventual democratisation of the Turkish state.'[703]

4.4.1 Redefinition of Turkish State Ideology:

'By expelling foreign Western military forces out of the country, Atatürk paved the way for the birth of a new state – the Turkish Republic; he cut off the Muslim tradition of the country, abandoned Muslim brotherhoods and instead initiated significant changes according to Western thinking, which then became the state ideology as codified in the Turkish Constitution and which still remains the guiding principle of Turkish social life.'[704] Historically, the qualities of a collectivist culture were embedded in Turkish political culture which 'was a reflection of the Kemalist state: nationalistic and authoritarian, with a preference for order over broadening individual rights.'[705] Such a collectivist political culture is based on the suppression of social divisions by dominant elites, the acceptance of authority decisions to resolve the conflicts and disputes in the country and an authoritarian and bureaucratic government system. However, since the Helsinki Summit, Turkey has

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p. 318.) will promote the harmonious and peaceful coexistence between secular and religious society and mutual respect between one other. Nowadays, the achievement of this synthesis is considered necessary more than ever before, in order that the Turkish society, by learning to combine the modern with the traditional, realises its nature and its dynamics, so that it finally determines its national identity and orientation. Serbos, *op.cit*., p. 12.

[703] *Ibid.,* pp. 11-12.

[704] Islam, *op.cit*., p. 12.

[705] Paul Kubijek, "The European Union and Grassroots Democratization in Turkey", *Turkish Studies*, Vol. 6, No. 3, September 2005, p. 370.

been making dramatic strides towards transition from a 'collectivist political culture' to a 'polyarchal political culture'.[706]

Despite sovereignty concerns inside, Turkey has achieved a lot in transforming its collectivist character on its way to the EU, especially by improving the state-society and civil-military relations. Based on the protection of authoritarian, dogmatic fashion emphasizing 'equality as sameness' the Turkish state ideology is under transformation through the changes in constitutional national identity and the drift from traditional taboo of sensitivity in issues regarding national independence and state integrity.

One of the main effects of Westphalian sovereignty on the establishment of modern nationalism is 'the creation of unity and communality out of the experience of heterogeneity, dissonance, and contradiction.'[707] Since the end of the WWII, nation states have experienced a transition from this traditional conception of communality and unity based on the 'equality as sameness.' When citizens started to question the conventional features of the system with the help of history and science, the common identity conception started to be challenged by the emergence of 'liberal democracy based on the equality among those who are different, in religion, in ethnicity, and in language and, with the invention of multiculturalism, it was required to be reconfigured without the denial of difference.'[708]

Since 2002, Turkey has been experiencing a similar transition from 'equality as sameness' to 'equality in diversity' in light of EU-motivated revolution. In other words, Turkey is under the transformation from pseudo-democracy to consolidated

[706] Oliver H. Woshinsky, *Culture and Politics*, Upper Saddle River, NJ: Prentice Hall, 1995.
[707] Seyla Benhabib and Türküler Isiksel, Ancient Battles, New Prejudices, and Future Perspectives: Turkey and the EU, *Constellations*, Vol. 13, No. 2, 2006, p. 230.
[708] *Ibid*., p. 231.

or mature democracy. 'In conceptual terms, the Turkish debate mirrors the European controversy over the Union as such: striving to reconcile the particularistic identities of its constituents with a universalist political project.'[709] However, 'whereas Europe struggles to balance regional and national identities with an idealistic, supranational vision, Turkey's battle is between its unitary nation-state identity and its pluralistic reality.'[710] 'From the ruins of a multiethnic empire, the republican elites wanted to construct an entirely homogeneous nation based on the 'civic nationalism' understanding of Atatürk, while the cultural and religious rights of non-Muslim citizens were protected as minority rights by the Lausanne Treaty, all the Muslim ethnic minorities including the Kurds were recognized by this treaty as Turkish citizens and thus were deprived of minority rights.'[711] In order to eliminate all the factors to cause any possible disintegration and chaos in the country, which led the Ottoman State to fragment, Kemalist republicans considered the pressure of all Muslim ethnic and cultural differences under a homogenous national identity, Turkishness, the only way to ensure the security of country against internal and external threats led people to see the problem through the same framework. Through the principles of nationalism, populism and secularism, they aim to 'preserve the specificities of Turkish society and its thoroughly independent identity'[712] on its road to development as a contemporary civilization. Although the military and its Kemalist supporters still perceive the religion and the ethnic question as critical factors threatening the country, since 2002, Turkey has begun to transform this

[709] Hen Tov, *op.cit.*, p. 3.
[710] *Ibid.*
[711] Tekin, *op.cit*., p. 8.
[712] Kemalist definition of the principle of nationalism in the 1935 Program of CHP, quoted in Köker, *op.cit*., p. 53.

traditional understanding of homogenous national identity with the EU-motivated reforms accelerated by a stable and effective government and this improvement provided the Turkish society with a more optimistic look into the future.

The very recent and still ongoing project of democratic opening under the heading of the Unity and Brotherhood Project of the AKP government revealed the multiethnic reality of the country and enabled Turkey's transition to the multi-culturalist democracy which introduces the notion of 'equality in difference'. The rise of the Kurdish problem, the public recognition of multiethnic structure of the country, and the acceptance of linguistic and cultural rights make a radical change in Turkish national identity inevitable. 'Democratic iterations' described by Seyla Benhahib as 'the linguistic, legal, cultural and political repetitions in transformation not only change established understandings but also successively transform what once was the valid or established view of an authoritative precedent.'[713] Thus, the current government has taken crucial steps to reverse the established judgement that draws the picture of Turkish society as unified by ignoring its underlying structure based on the combination of multiple identities. These developments have led the public to replace the vision of homogenous national structure with the vision of 'diversity as richness' and to support democratic initiative of the government. As clearly stated in the progress reports, Turkey has made impressive legislative efforts and significant progress towards achieving compliance with the Copenhagen political criteria. Thus Turkey has opened the door to be able to rid of its vicious-circle politics consisting of non-democratic and non-liberal elements, which shows Turkey's bid of a radical transformation.

[713] Seyla Benhabib, "Turkey's Constitutional Zigzags," Dissent, Vol. 56, No. 1, Winter 2009, p. 28.

The recent attempts in Turkey on the denial of its own multicultural and multi-faith origin – struggles over the wearing of headscarf in official institutions, the announcement of cultural and ethnic rights or struggles against the homogenous national identity of Turkey – 'proved to be too much for some, as is evidenced by the near-hysteria of nationalist elements in the judiciary,'[714] military and military backed Kemalist elite as 'that it is possible to have Kurdish cultural autonomy and territorial integrity, or pluralist political representation and secularism breaks with the rigid form of binary thinking (homogenous national identity and state integrity) that characterizes Kemalism and curtails the democratic potential of contemporary Turkey.'[715] In the recent decisions of the Turkish Constitutional Court on the freedom of religion, or on the presidential elections in 2007, and of the Turkish Court of Cassation (*Yargıtay*) on the right to education in the mother language, and the unwillingness of representatives of the ultranationalist bloc in judiciary to interpret the new laws in consistent with the ECHR, it has been clear that the universal values protected under international treaties such as the UN Universal Declaration of Human Rights, the twin international covenants of 1966 on social, economic, cultural, civil and political rights, and the ECHR, to which Turkey is also a party, are not paid much attention and that judiciary system is also 'haunted by this overstated concern about the protection of the indivisible integrity of the state together with its territory and the nation'.[716] Parallel to the rejection of the demands for the freedom of

[714] Benhabib, 2006, *op.cit*., p. 231.
[715] Rumfold, *op.cit*., p. 103.
[716] Köker, *op.cit.,* p. 62. The Turkish Court of Cassation (*Yargıtay*) found an article in the bylaw of a trade union in the education sector as "illegal". Article 26 of the Trade Union in Education (*Eğitim-Sen*) stipulated that the trade union "defends the right to education in the mother language." The decision said that the bylaw of the trade union mentioned above as violating the unity of the state. The interesting point here is that HGK reached this verdict through a series of references to several articles

religion (wearing a headscarf) in higher education, the 2008 constitutional amendments package was annulled by the Constitutional Court, which is a clear violation of the constitutions in terms of the transcending the jurisdiction of the Constitutional Court due to its substantial review of the amendment package. These violations reverberate a strong commitment to the authoritarian values of Kemalism at the same time while displaying Kemalist mentality of the judiciary in Turkey. In other words, 'all this shows how well the Kemalist idea of a unitary nation-state has been entrenched in the constitution and statute law of Turkey, but more than that, this decision gives us an important clue about the "inner legal culture" now prevailing in Turkey.'[717]

As a result of the illegal actions of the military and the judicial decisions violating the Constitution for the sake of the preservation of the state integrity discredited both institutions in the eyes of the public. Judiciary's arbitrary decisions violating the rule of law serving the interests of military led the public to open their eyes and realize the traditional system preserved by the conservative bloc is the main reason lying behind the political and cultural chaos in the country and the main obstacle for the further development. The people started to question its confidence in

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in the 1982 Constitution, the Law of Public Servant Trade Unions and a rather inadequate reading of Articles 10 and 11 of the ECHR. To begin with, the court mentioned Turkey's "constitutional identity" as the "Turkish Republic is a unitary state with a monolithic structure". Mentioning Article 3 of the constitution that promulgates that "the Turkish State is an indivisible whole with its territory and nation", the court argued that this provision is supported further by Article 42, which says that "No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education". Relying primarily on these articles, the court also mentioned Article 26 which says that trade unions cannot be involved in acts against the constitutional order of the state, and following a line of reasoning that sees advocating education in a mother language other than Turkish implies at least the existence of different mother languages in Turkey, and judging that this would amount in the end to arguing even tacitly that there are different peoples on Turkish territory. On these ground, the court, taking account of the fact that the ECHR does not prohibit limitations on human rights and freedoms and for the court the protection of the state is a reasonable purpose for the limitation of the freedom of expression and freedom of association, issued its final verdict and the trade union was to be closed unless it got rid of the bylaw. *Ibid*., p. 64.

[717] *Ibid.*

the military and the judiciary system in light of the recent developments – demilitarization process including Ergenekon investigation, the gradual removal of extraordinary powers of military, increasing civilian control over military, increasing role of civil society organizations in politics. In other words, the military's claim that 'it is the protector of Kemalist values is increasingly falling on deaf ears as many of the AKP's policies represent an actual fulfillment of Ataturk's notion of Kemalism and Western values are no longer abstract, but codified in the Copenhagen criteria for EU accession.'[718]

Another significant result of all these developments is that the security syndrome imposed throughout the republican history of the country or the scenario of perceiving Europe as a source of threat is waning. The EU-reform process mainly aiming to consolidate democracy in Turkey is no longer perceived as an intrinsic plan of the West to weaken Turkey rather as a positive step towards the strengthening of Turkey both internally and externally. Thus, as 'the political culture in the EU has moved from a traditional, realist perspective to one of cooperation and integration in a legal context and win-win expectations', Turkey is preparing to give up the 'strong and distinct marks left by the political culture and history on the Turkish approach to foreign policy, which reflects Realist power politics and zero-sum thinking.'[719] 'Turkey's inclination to look at security from a one-dimensional hard-power perspective stressing military strategic aspects' is transforming towards 'the EU's soft-power political strategic approach to security in

[718] Zahedi and Bacık, *op.cit.*
[719] "Perceptions and Misperceptions in the EU and Turkey: Stumbling Blocks on the Road to Accession", *Center for European Security Studies (CESS),*(26-27 June 2008) p. 6, pp. 1-10, http://www.cess.org/events/pdfs/Conference%20Prospectus.pdf, (25 May 2010).

which political, economic and social factors bear on stability and development.'[720] Eventually the extensive role of the military in domestic politics is losing its legitimacy in the eyes of Turkish people.

The transformation in Turkey is striking as both the citizens and Kurdish minority enjoy a much improved situation. Therefore, it is not wrong to say that Turkey's political culture has clearly undergone a revolution by letting prospective polyarchal culture replace the collectivist past. In this sense, 'the elimination of the centralist tutelary power, and enabling the people of Turkey to have more open public and political participation' will resolve 'Turkey's current crisis which is a consequence of the failure of the early 20th century nationalism aiming to create a homogeneous cultural entity called the "nation" and uniting it with the political apparatus in such a way as to produce a legitimate order.'[721] All in all, 'the crisis is a crisis of Turkey's constitutional identity and there is no doubt that this identity has to be re-written.'[722]

4.4.2 Transformation of National Sovereignty:

The redefinition of the state ideology in light of the harmonization packages brought forward the transformation of national sovereignty conception in Turkey. Since the Helsinki Summit of 1999, a more relaxed national attitude to the concept of national sovereignty in Turkey emerged, 'whereby subjects related so much as with historical, political and institutional tradition, which accompany and determine the role of the Turkish state, the protection of national sovereignty and national interests

[720] *Ibid.*
[721] Köker, *op.cit.*, p. 67.
[722] *Ibid.*

towards the supranational models of enhanced cooperation that apply in the EU in a wide area of policies, are regularly discussed.'[723]

Turkey is preparing its political structure to pool sovereignty under a supranational identity through constitutional changes and new laws at the same time while breaking the traditional taboos and transforming the exercise of citizens' sovereign rights. In other words, 'the ideology of Turkish nationalism and the role of the state which preserves Kemalist heritage regarding the context of national sovereignty, internal cohesion and overall stability resist to the dynamic transforming notion of national sovereignty in the member states of the EU, especially in an era when the Union continues to evolve and transfigure itself into a very unique, highly complex supranational morphom.'[724]

After the national struggle, Kemalist elite considered the Western modernity as the only way to create a civilized and modernized nation while 'the image of the West in their mentality continues to represent other.'[725] In this sense, Turkey had to rid of the fundamental problems that had led the Ottoman State to decline – Islamic basis of the Ottoman State (religious community), impersonal rules, and class-divided state system. Therefore, the nation-state system of Western world was adopted as a pre-condition for the possibility that Turkey would take its place in the midst of contemporary civilization. Especially republicanism, secularism and national sovereignty through nationalism were the principles through which Kemalists, who define themselves as the safeguard of civilization and stable democracy, tried to reconceptualise the Turkish Republic by removing all the

[723] Serbos, *op.cit*., p. 14.
[724] *Ibid*., pp. 9-10.
[725] Kösebalaban, *op.cit*., p. 131.

obstacles for Turkey's progress, and by emphasizing solidarity within the whole community. However, 'their solidarist preoccupation with secularism and secular morality for the preparation of society to an ideal democracy paradoxically became the basic obstacle in front of the Turkish democratic consolidation.'[726] To motivate the society towards a homogenous national identity and a secularist modernization Kemalists started a top-down reform process which 'was designed to equate the general will with the national will, thereby creating a vision of society not as an aggregation of different interests, but as an almost Platonic vision of an organic totality organised around the principles of division of labour and the reciprocity of needs.'[727] Hence, 'the Solidarist line of argumentation not only created tension between democracy and secularism but also provided justification for postponing democracy to an uncertain stage of time when the democratic eligibility of the people would be proven by the true representatives of the national will.'[728] Half-century-old Kemalist political image was realized through the creation of a monotypic nation based on an organic unity of populist, nationalist, secularist identities, which resulted in the creation of the self and the marginalisation of the other. Therefore, what defines the basis of Kemalist nationalism, is the fact that the identification of popular sovereignty with national sovereignty within the context of the organic conception of society was not derived from 'to whom sovereignty belonged' but from 'to whom it did not belong'.[729] The hegemony of Kemalism over political and social sphere, namely the dominant role of state over society sustained in spite of the transition to

[726] Ertan Aydın, "PhD Thesis: The Pecularities of Turkish Revolutionary Ideology in the 1930s: The Ülkü Version of Kemalism 1933-1936", Ankara: Bilkent University, September 2003, p. 5, pp. 1-364.
[727] Aydin and Keyman, *op.cit*., p.4.
[728] Aydın, *op.cit*., p. 5.
[729] Aydin and Keyman, *op.cit*., p. 5.

multiparty and parliamentary democracy during the period of 1945-1980. Nevertheless, 'Turkish modernisation in this period was able to reproduce its hegemony by according primacy to state over society, modernity over democracy and secular/organic national identity over the language of individual/group rights and freedoms.'[730] Consequently it was inevitable Kemalist tradition to clash with the 'institutional structure of the EU, swinging between the magnetic fields of national sovereignty and of common action, the one with its comforting autonomy and identity and the other offering the benefits of integration, but at a price.'[731] In other words, 'this Euro-sceptic segment of the state is not against the idea of EU membership, in principle but nevertheless, are against the implementation of key components of the Copenhagen criteria (such as education and broadcasting in Kurdish language) on the grounds that such reforms would undermine national sovereignty, leading to the break-up of the Turkish state.'[732] Therefore, it is interesting that though 'traditional Kemalists were natural supporters who viewed Turkey's EU entry as a final historical confirmation of their mission,'[733] it is again the Kemalist elite countering the EU integration.

By excluding other identities, especially the Islamic one, the modernization project, which gave the priority to the industrialization and civilization of Turkey rather than democratization of state-society relations, was, to a degree, successful in the political sense; however, during 1990s Turkey witnessed the revival of demand for a more liberal, pluralist and multicultural modernization process as the dictated

[730] *Ibid*., p. 7
[731] William Wallace, "Government Without Statehood: The Unstable Equiibrium" in Wallace Helen and Wallace William (eds), *Policy-Making in the European Union*, Oxford: Oxford University Press, 1996, p. 441, quoted in Serbos, *op.cit*., p. 10.
[732] Öniş, 2006, *op.cit*., p. 7.
[733] Hen-Tov, *op.cit*., p. 10.

nationalist political framework turned into an impasse. In the post-Helsinki period when Turkey-EU relations have gained certainty, Turkey's modernization started to be more democratic. Especially after 2002, crucial developments transformed state ideology and system by changing state-society relations in Turkey and also showed that democratic consolidation enables not only good governance within the territorial boundaries but also a strong and stable representative in international relations. Therefore, national sovereignty conception in Turkey has undergone a two dimensional transformation to be eligible for the EU membership. Nationally citizens are no longer only the subjects of the political system whose boundaries are defined by an interest group but the active participants of the system through the 'true representatives of general will', and internationally Turkey is preparing its internal institutions to give up its sovereign rights in some issues under a supranational identity.

Through the harmonization packages, and institutional and legislative changes, the AKP government has achieved that many sensitive issues such as the protection of minorities are no longer a taboo subject. By the elimination of the corruptions in the exercise of sovereignty vested in the nation Turkey starts to form the space where citizens and civil societies need to exercise their own sovereign rights both collectively and individually. The increasing role of the civil society organizations paved way for the active and pluralist participation of the people in the domestic politics, thus they are able to have a direct say in political issues. This democratization process in Turkey is creating '"jurisgenerative politics," which takes place when a democratic people that considers itself bound by certain guiding norms and principles reappropriates and reinterprets them to expand the arc of equality and

freedom, thus showing itself to be not only the subject but also the author of the laws.'[734] Thus, breaking the taboo issues, enhancing the civil-military, state-society relations, and adopting significant reform packages in bureaucratic institutions such as the judiciary to consolidate democracy and to strengthen the rule of law have changed the mindsets of citizens and increased their confidence in civil politicians whereas changing the assessment of the military's role in the eyes of the public and more importantly led the proportion of the citizens supporting the visions of Kemalist elite claiming that the EU has intrinsic reasons such as causing separatist movements or aiming to damage the national independence by emphasizing religious and cultural differences behind its democratization recommendations to decrease as 'they are ideologically opposed to EU membership and will highlight each infringement on Turkish sovereignty to make their case to the Turkish public.'[735] Thus, the transformation of Turkey into a liberal-pluralist democracy in line with the EU requirements would result in 'added security by improving relations between state and society and by elevating society, and not the state, as the most significant security referent object',[736] and by reversing 'the Kemalists' failure to approach the dynamics of European integration with the constant flow of mutual pulling and sharing of traditional national sovereignty.'[737]

During the accession process, Turkey signed and ratified several international as well as European Conventions concerning human rights such as such as the International Covenant on Civil and Political Rights, on Social and Economic Rights and Protocol 6 of the ECHR. Moreover, constitutional amendments were introduced

[734] Benhabib, 2009, *op.cit*., p. 28.
[735] Hen-Tov, *op.cit*., p. 11.
[736] Piccoli, *op.cit*, p. 14.
[737] Serbos, *op.cit*., p. 10.

allowing for the primacy of international law over national law. For instance, since the pooling or partial transfer of sovereign rights of states is the sine qua non of the EU membership, Article 90 of the Constitution was amended clearly to establish not only the primacy of international law over national law, 'de facto abrogating Turkish sovereignty,'[738] but also the supremacy of international and European human rights conventions over internal law. In this sense, the judiciary is, to a degree, limited as the domestic courts have to apply the international law when a conflict occurs between them. In case of full membership, Turkey would have to make amendments establishing the supremacy of the ECJ, which would abrogate Turkey's judicial independence.

The EU-motivated developments towards the strengthening of the rule of law and impartiality in the judiciary system touch upon the interests of the Kemalist republican bloc who has judicial representatives; therefore, military Kemalism and its judicial representatives are unwilling to bring Turkey's judiciary into harmony with the EU practice and ECHR standards. However, in this dynamic country, where 'the ECtHR is slowly becoming a sort of supreme court above the Turkish Court of Appeals, and where the national court decisions violating the ECHR are subject to retrial, the reversal of the progress and a diversion from the reform path seem most unlikely.'[739]

It is an undeniable fact that sovereignty conception in Turkey is being harmonized with the international standards in order to qualify the domestic political structure in alignment with the EU norms and practice in the same manner as

[738] Benhabib, 2006, *op.cit*., p. 223.
[739] Oran, 2007, *op.cit*., p. 56.

transition to the nation-state system of the Europe in the beginning of the 20th century was regarded as the only way to modernize the country. While the European integration melts sovereign states into a supranational entity on the one hand, ethnic and cultural characteristics are emphasized on the other. In other words, the EU requirements diminish the authority of nation-state in its homeland whereas granting more rights to local public administrations and recognising the cultural and ethnic rights of diverse ethnic groups. 'These trends within the EU apparently clash with the basic credentials of the unitary character of the Turkish republic and its state-base definition of national sovereignty.'[740] The gradual removal of basic concerns stemming from the sensitivities to national independence or based on the domestic political structure in line with the historical reflex enables democratic modernization to replace anti-innovative modernisation based on the tutelary democracy. 'In the current period of interdependence, in which the means and instruments of maintaining national sovereignty have radically changed, the reinforcement of the Europeanization process, as is set by the EU, will ensure the territorial integrity of Turkey, setting an end to the historical tradition of the famous "Sevres syndrome" and of the conspirator approach that Turkey is surrounded by internal and external enemies that work out scenarios of its destabilisation, aiming at its deconstruction and progressive disintegration.'[741] 'There also seems to be a learning process carrying over from the external issue areas to the domestic domain indicated by more

[740] Tekin, *op.cit*., p. 9.
[741] Ayten Gundogdu, "Identities in Question: Greek-Turkish Relations in a Period of Transformation", *Middle East Review of International Affairs*, Vol. 5, No. 1, March 2001, p. 110, Kösebalaban, *op.cit*., p. 131, quoted in Serbos, *op.cit*., p. 11.

relaxed attitude in the domestic realm since the Helsinki Summit of 1999 presumably opening the doors of the EU to Turkey.'[742]

CONCLUSION

All the social policies are subject to change over time in line with the historical and political situation. As one of these policies, sovereignty is also evolving. In earlier times, sovereignty was first announced by European states and described as the ultimate authority to decision making. The holder of the sovereign power was changed over time, but the nature of sovereignty remained unchanged. It was inalienable or could not be shared. Kings used to exercise sovereignty until the concept underwent a transformation due to the social and political changes. Then, the people, in theory, and nations in practice, became the holder of sovereignty with the rise of nation-state system. As the people could not exercise the sovereign power directly, representative democracy emerged, so that nations enjoy their sovereign rights through representatives. Practically, after the French Revolution in 1789, the holder of sovereignty were the nations; however, this notion caused a parliamentary monarchy which perceived every action of parliamentary was regarded as true and eventually led to a clash between the expectations of the people and the functions of the parliamentary. During 19th century that parliamentary systems might have drawbacks arose the need to circumscribe the sovereign rights with human rights and the rule of law. The end of WWII required states to further circumscribe their sovereignty power. First of all constitutional courts were established to review the functions of the parliamentary; then the rise of international and supranational

[742] Tekin, *op.cit.,* p. 10.

institutions has led sovereignty to evolve itself again by letting nation-states share their sovereign powers with them. During 1990s, the rapid development of globalization has eroded conventional understanding of sovereignty to a great extent.

It goes without saying that the reverberation of the process of globalization is felt in every corner of the world, especially in the changing assessment of conventional sovereignty in the eyes of the states. 'Processes of globalization making the world hang closer together; humanitarian intervention in weak states and attempts to promote democracy and human rights on a global scale; new form of intense cooperation in Europe, and fresh attempts at regional integration elsewhere; the emergence of a large number of newly independent states; all these developments have helped spark new considerations about the possible implications for sovereignty.'[743] As an instable and changing concept, sovereignty naturally transforms itself in accordance with what is normal at the time. It is still the world of sovereign states and the essentials of the concept remain unchanged. Namely, 'the constitutive rules of sovereignty remain intact while the regulative rules of sovereignty have changed inevitably.'[744]

'The accelerated processes of globalization raise new questions about the exercise of national sovereignty, which is firmly rooted in a tradition of international relations theory in which the nation state is fundamental.'[745] The concept of national sovereignty is under challenge because of the increasing interdependence among states. 'The principle of human rights ascribes a universal status to individuals, and their rights, undermining the boundaries of the nation state whereas the principle of

[743] Georg Sorenson, "Sovereignty: Change and Continuity in a Fundamental Institution", *Political Studies*, Vol. 43, No. 3, 1999, p. 590.
[744] *Ibid*., p. 591.
[745] Hamelink, *op.cit*., pp. 374-385.

sovereignty reinforces national boundaries and invents new ones.'[746] 'This paradox manifests itself as a de-territorialized expansion of rights despite the territorialized closure of polities as human rights have expanded beyond the conventional list of civil rights to include social and economic rights such as employment, education, health care, nourishment and housing and the collective rights of nations and peoples to culture, language and development have also been re-codified as inalienable human rights.'[747]

Today, as a supranational organization with its unique formulation and composition, which affects the decision making powers of individual member states, the EU has led to a debate concerning that 'the integration via modification of regulative rules can proceed so far that constitutional independence ceases to exist in more than purely nominal terms.'[748] The EU is a remarkable configuration of post-national sovereignty, which 'exercises a strong democratizing influence upon the political cultures as well as the economic and civil society structures of countries aspiring to membership, such as Turkey'[749] at the same time when 'bringing nation-states which have realized that security is a collective goal, that the economic welfare requires cooperation, and that democracy and human rights are best realized in open societies in which the dialectic of institutions and identities, of rights and culture, can be freely enacted in public spheres.'[750] The reconfiguration of sovereignty through

[746]Yasemin Nuhoglu Soysal, "Changing Citizenship in Europe: Remarks on Postnational Membership and the National State", (Eds.) Janet Fink, Gail Lewis and John Clarke, *Rethinking European Welfare: Transformations of Europe and Social Policy*, London: Open University, 2001, p. 71.
[747] *Ibid.*
[748] Tekin, *op.cit*., p. 1.
[749] Benhabib, 2006, *op.cit*., p. 219.
[750] *Ibid*., p. 232.

the exercise of the EU provides a contemporary system to counter the weaknesses of Westphalian state system.

Turkey has undergone a series of societal and political transformation since it was granted the candidate status for EU full membership in 1999. 'In the post-Helsinki period, the EU has played a crucial role by including Turkey to transform its state-centric polity into a more democratic, economically stable and pluralist one, which has affected positively the process of consolidating Turkish democracy.'[751] 'As the "historical heritage" placed explicit restrictive limits in Turkey's modernization movement, the only way for its European aspirations to be able to keep pace with the model of EU's integration process is to accept the need of an essential and extensive revision, structural reform and redefinition of the main pillars of the old fashioned Kemalist ideology (secularism, nationalism, reform), as well as the normative models that this imposed (constitutional and political-party institutional framework).'[752] The EU undeniably transforms Turkey's pseudo democratic political base by emphasizing the democratic norms such as human rights and the rule of law at the same time while it is integrating Turkey into a supranational entity, which requires member states to share their sovereign rights. The bilateral transformation experienced by Turkey is challenging the defenders of the status quo as strengthening the rule of law in judiciary and bearing the taboo subjects such as minority rights and national independence. The mindsets of citizens are changing as taking on a new role as active participants who are highly supportive of the government's strides for democratic consolidation: the EU is no longer a

[751] Keyman and Önis, *op.cit*., p. 190.
[752] Serbos, *op.cit*., p. 10.

source of threat to national independence, the military is losing its reputation and legitimacy in domestic politics, and the recognition of cultural differences do not constitute a threat to the state integrity rather a precondition for democratic consolidation. Thus, national sovereignty has started to truly reflect the general will of the people in the eyes of Turkish citizens approving the emerging democratic system based on expansion of democratic human rights. As the Europe is transiting into a supranational body, Turkey, whose main goal is to be a part of Europe since the founding of the Republic, has to transform itself, too. 'Turkey's pursuit of EU membership in the post-Helsinki era plainly exposed the in-built contradiction of the Kemalist project seeking modernization and EU membership whilst maintaining a unitary and relatively authoritarian a organization of society and inward-looking political regime'; however, the main obstacle for their fulfilment of Kemalist dream of preserving the status quo and the tutelary democracy in Turkey is 'the clash between their agenda and the wishes of the large majority of the population.' [753]

Briefly, Turkey is facing its reality, which has been hidden for over 50 years. In spite of the trivialization policy of the defenders of the status quo, the AKP government is on its way to remove the monotypic system dominating political and societal life in line with the EU's pressure for further democratization, recognition of minority rights, expansion of human rights and freedoms and increasing the civilian oversight over the military. As a result of its efforts to comply with the Copenhagen criteria, Turkey's commitment and determination to the EU membership brought forward the willingness to sacrifice its sovereignty and autonomy on sensitive issues as well as economic and security issues. The transformation of national identity

[753] Piccoli, *op.cit.*, p. 17.

principle and the recognition of sub-identities, the changing international conditions, especially the waning of classic sovereignty concept and the rise of shared sovereignty as the main principle of the bargaining and compromise between states, the reduction in the impact of Sevres Syndrome and security concerns of national independence have been preparing Turkey to transform its sovereignty culture originally founded upon the authoritarian tenets and security concerns and to take its place in the contemporary world. Turkey has been undergoing a learning process during the era of EU accession: 'only through this cultural transition, a gradual turnaround will take place, by shifting priorities from politics of identity, to genuine models of active interaction and participation, in order to set off totalitarian trends which have been embedded in the mentality of civil society.'[754] 'Faced with the reality of social pluralism of various kinds, most notably the Kurdish issue, and coinciding with a global resurgence of democracy and a formation of a supranational European idea of multicultural democracy, the nationalist project has become unsustainable at least in its earlier terms.'[755] Though the redefinition of Turkish political culture is not an easy and a short-term project, it is inevitable to witness a further evolution in Turkey as long as the Union continues to reconfigure itself.

[754] Serbos, *op.cit*., pp. 12-13.
[755] Köker, *op.cit*., p. 67.

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