

FADING CREDIBILITY OF THE EU POLITICAL CONDITIONALITY AND ITS
DECREASING EFFECT ON DEMOCRATIC CONSOLIDATION:
THE CASE OF TURKEY

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Abstract

When Turkey started its adoption of the European Union's (EU) accession criteria for membership, an important area of the changes it adopted was in the area of freedom of speech. This thesis centres on the last ten years (2002-2011) of political reforms in Turkey respect to the freedom of speech and their relevance to the EU conditionality.

As for any other candidates of the EU, also Turkish membership depends on the fulfilment of the conditions set by the EU. The conditionality is considered one of the most important strategies of the EU in promoting rule of law, human rights and democracy.

Yet, because the dynamics of Turkey- EU relationship have been changing- it is possible to argue that the EU conditionality has been losing its credibility from the Turkish perspective. The issue of Cyprus, the role of veto players such as France and Germany hinder the willingness of Turkey to comply with the EU requirements. The disappointment of Turkey about the accession negotiations because of the ever-closing chapters caused Turkey to be less enthusiastic about the whole European project.

This thesis claims that when the credibility of the EU declines, so does the effect of the EU political conditionality on consolidating democracy. This argument is investigated through the case of Turkey.

Özet

Türkiye, Avrupa Birliğine (AB'ye) üye olmak üzere değerlendirilme kriterlerini yerine getirme sürecine girdiğinde, yaptığı en önemli değişikliklerden biri de “ifade özgürlüğü” alanında oldu. Bu tez, Türkiye’de son on yılda yapılan politik reformların, ifade özgürlüğü konusunda, AB kriterlerinin etkisini inceleyecektir. Her Avrupa Birliği (AB) üye adayının olduğu gibi, Türkiye’nin de üyeliği bu kriterlerin yerine getirilmesine bağlıdır. Kriterler, AB’nin Hukuk, İnsan Hakları ve Demokrasi alanlarındaki en önemli teşvik stratejilerini oluşturmaktadırlar. Ancak, Türkiye’deki dinamikler –AB- Türkiye ilişkilerindeki son değişiklikler- nedeniyle, AB kriterlerinin demokratikleşme açısından Türkiye üzerinde güvenilirliğini yitirdiğini söylemek mümkündür. Kıbrıs meselesi, veto etme yetkisine sahip ve bunu kullanan ülkeler olarak, Almanya ve Fransa’nın tutumu, Türkiye’nin, Avrupa Birliğinin öngördüğü kabul görme kriterlerini yerine getirme isteğine engel olmaktadır. AB’ye üye olmak için öngörülen kriterlerin yerine getirilmesi sürecinde açılan müzakere başlıklarının, Türkiye’den beklenen gereklilikleri yerine getirmesine rağmen, bir türlü tamamlanamaması, Avrupalılaştırma Projesi’nde Türkiye’nin hevesini yitirmesine sebep olmuştur.

Bu tez, Avrupa Birliği’nin (AB’nin) Türkiye üzerindeki güvenilirliğinin azalmasına paralel olarak, AB siyasi kriterlerinin de demokratikleşme sürecindeki etkisinin azaldığını öne sürmektedir.

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1. Introduction

The enlargement of the Union has political, social and legal implications on both the member states and the candidates. This thesis centers on the effects of the EU enlargement policy on the Turkish democracy.

It is claimed by many scholars that the EU's most successful foreign policy has been its enlargement (Checkel, 2000; Grabbe, 2002; Schimmelfennig, Knobel and Engert, 2003; Schimmelfennig and Sedelmeier, 2004; Schimmelfennig, 2008; Schimmelfennig and Scholtz; 2008; Lavenex and Shimmelfennig, 2011; Kubicek, 2001). After the fall of the Iron Curtain in the beginning of the 1990s, with the application of numerous countries which were recently out of a long standing communist regime, the EU has made the conditions of membership to ensure the democratic stability within the Union. This initiative by the EU constituted one of the most influential instruments of its foreign policy; the political conditionality.

Political conditionality becomes the most effective in consolidating democracy in candidate states when its credibility is high. The EU offers prizes like a full membership, material assistance, welfare of a given state, and military protection in return for compliance with the EU conditions. If the target country feels that the prize offered is credible, then they start to adopt EU criteria and harmonize their law in line with the ones made conditional by the EU (Schimmelfennig, Knobel and Engert, 2003; Schimmelfennig and Sedelmeier, 2004; Schimmelfennig, 2008; Schimmelfennig and Scholtz; 2008; Lavenex and Shimmelfennig, 2011).

These calculations were also during the membership negotiations with the CEECs countries in 1990s. To adapt to their new reality and cope with the remaining pressure of communism, they quickly applied for membership seeking for economic, political and social assistance from the EU. It is argued that the effect of EU political conditionality became very effective in democratic consolidation within CEECs (Schimmelfennig and Sedelmeier, 2004). This, of course, does not mean there were no backlashes in the Central and Eastern European countries, as currently witnessed in Hungary.

The arguments on the effectiveness of EU conditionality are also applicable for the Turkish case even though Turkey is a unique case in this respect. It has a long and complicated history within the European. The undulant relationship between Turkey and

the EU caused the credibility of the EU unstable. The change in EU's attitudes and the positions of member states on Turkish membership determined the credibility of the EU in the eye of Turkey. The hesitations of the EU over the years, especially after the Customs Agreement with Turkey in 1995, as well as the reservations of certain EU countries like Greece, France and Germany caused Turkey to question the promise of membership.

From the very beginning of the Turkish Republic, Westernization and becoming a part of Europe have been the main aspirations of the Turkish political elite (Öniş, 200: 466). The increasing strategic importance of Turkey against Soviet expansionism, Turkey gained the opportunity to become even closer to the European/Western order (Yılmaz, 2008: 1). Turkey now desired to take part in the institutions of the West like the Council of Europe and the NATO. However, the official Turkey- EU relationships started in 1959 with the first Turkish application to the EU and the Ankara Treaty in 1963. This was followed by a lot of rise and falls within the relationship of these parties. In 1995, Turkey joined the Customs Union, being the first country that became a part of it without being the member of the EU. The exclusion of Turkey from the list of candidates in Agenda 2000 and the result of Luxembourg Summit created a crisis in Turkey- EU relations (Aybey 2004: 30). However, the membership prospect was given to Turkey when it was granted with candidacy in 1999 at Helsinki Summit. This fortified the credibility of the EU political conditionality for Turkey (Müftüler Baç, 2005) Accordingly, Turkish reforms gained speed until the opening of Accession Negotiations in 2005. After the start of accession negotiations, the dynamics of the whole relationship has changed since the whole duration of opening and closing chapters necessitates inclusion of multiple actors. Thus, the membership prospect became more politicized in this process compared to the adoption of political criteria endangering the role of EU conditionality on the Turkish democracy.

The primary attention of this thesis is the concern of democratic consolidation and empowerment of human rights that Turkey has been undergoing, especially in terms of freedom of speech –freedom of expression, press and broadcasting- and the degree of influence of the EU pre- accession conditionality on the matter.

At this point it is necessary to explain the relevancy of the effects of conditionality on freedom of expression in Turkey is necessary. Even though Turkish democracy has been established approximately a century ago, because it was electoral democracy there hasn't

been a considerable emphasis on the freedom of expression. In line with this, freedom of speech – freedom of expression, press and broadcasting- has been absent. For a long time, the media was at the hands of the governments and it was used to manipulate and to guide the public in line with dominant political agenda. The military interventions of Turkey did not help the freedom of speech either. After the military coup of 1980, the Constitution of 1982 was established restricting and limiting this freedom extensively. Turkey candidacy in the EU in 1999 brought back the hopes of guaranteeing democratic rights, especially the freedom of speech (Christensen, 2010:178).

However, with previously mentioned concerns and problems in Turkey's relations with the EU, the Turkish progress on freedom of speech has not proven to be very effective even though there have been numerous legislative changes to comply with EU criteria. Currently, more than 100 journalists imprisoned, numerous books and websites are banned in Turkey because of several different political reasons. This frightening picture of press freedom in Turkey makes this research relevant.

This thesis proposes that Turkey's political reforms, specifically in the area of freedom of speech, have been largely motivated by the EU accession process. However, the analysis for Turkish transformation requires different sets of tools to be used compared to the analysis of political conditionality in the Central and Eastern European countries. In this regard it will provide information on and evidence for how and when EU political conditionality becomes credible and relevant in a complex case such as the Turkish one.

Having said all of these, the structure of the thesis should be pointed out. The first chapter constitutes the theoretical framework of the thesis. The first part gives insights on the EU political conditionality as an effective instrument to foster democracy in candidate countries followed by the conceptual framework including the hypothesis and the definitions of relevant variables along with the ways to assess those. The latter part of this chapter includes the experience of CEECs on the matter as it is crucial to see how and why EU political conditionality became a success story. The second chapter of the thesis tracks the Turkey -EU accession process from 1997 Luxembourg Summit towards present day, while also touching upon the role of Cyprus and the reception of mixed signals from the EU as hurdles for the credibility of the EU. The third chapter assesses the freedom of speech in Turkey through different indicators. To start with, the Regular Commission

Reports on the State of Freedom of Expression, Press and Broadcasting in Turkey between the years 1998 and 2011 are analyzed. Secondly, Freedom House rankings on Turkish press freedom, in the 2002- 2011 period, are examined. And lastly, the numbers of cases which are brought to the European Court of Human rights and resolved against Turkey on the violation of Article 10 of the European Convention of Human Rights between 1999 and 2010 are taken into account. Finally, the conclusion displays the positive correlation between the credibility of pre-accession conditionality and the speed and effectiveness of Turkish reforms.

2. Chapter 1: Theoretical Framework

In the early 1990s, the promotion of democracy has become one of the most influential foreign policy focuses of the EU. The rules and requirements set by the EU occurred as a result of the application of numerous countries lacking sufficient levels of democracy to become members of the Union. With the Turkish candidacy in 1999, Turkey has also become obliged to fulfil these criteria. Thus, it will be used as a case study to examine the impact of EU political conditionality on democracy in target states.

This chapter analyzes the main framework for the EU conditionality and the main theoretical approach to understand its impact on target states. Firstly, the basic indicators of EU's impact will be mentioned; the EU conditionality and the factors critical in its efficacy will be taken at hand. To serve the main aim of this thesis, a special focus will be given to the credibility of EU conditionality. Secondly, the concepts - EU conditionality, its credibility and freedom of speech as an indicator of democracy- regarding the main hypothesis will be defined. In the same part, the rationale behind choosing the sources – Annual Progress Reports, decision of European Court of Human Rights and Freedom House ratings- which will be used to assess freedom of speech as an indicator of democracy in Turkey will be touched upon. And lastly, the experience of political conditionality used in democracy promotion in Central and Eastern Europe will be mentioned. The experience in CEECs is significant in observing the effectiveness of the credibility of EU political conditionality and its potential for political reforms in countries aspiring for membership.

2.1. Basic indicators of EU's impact: EU Conditionality and its efficacy

The EU emerged in international politics as a unique organization which influences social and political change in the countries aspiring for membership. Some scholars argue that the EU has evolved as the representative of liberal democracy influencing its neighbourhood. Hence, it has become one of the major agents of promoting democracy in the region. It has attributed itself as the “community of democracies” and because of this attribution the EU desires to strengthen its own democracy (Lavenex and Shimmelfennig, 2011). However, this role had not been one of the top priorities until the 1990s when the EU has officially and explicitly highlighted its aims to promote democracy. First with the

1992 Maastricht Treaty and then by the 1993 Copenhagen Criteria, the promotion of democracy has become one of the main expected consequences of the EU's foreign policy.

Schimmelfenning and Sedelmeier (2004) explain the EU's foreign policy through the external incentive model of governance. This model is based on an understanding of rationalist bargaining in which the parties involved are the strategic-utility maximizers. The parties would like to maximize their power and welfare, specifically their perceived material benefits. This bargaining between the EU and domestic actors begins as a result of differences between the domestic status quo and the demands of the EU. The domestic equilibrium determines the status quo. Moreover, this equilibrium, which is defined as the differences between the existing distribution of preferences and the bargaining power within the given society, is distressed because of the introduced EU conditionality. The bargaining that involves exchanges of information, threats and promises and the outcome is determined through the bargaining power of the parties (Moravcsik, 1998). According to Moravcsik and Vacudova (2003) "those countries that gain the most by engaging in more intense interstate cooperation ...has the most intense preferences for agreement. They are thus willing to compromise the most."

According to this bargaining model, EU external governance follows a strategy of conditionality –sometimes referred as “leverage” - that is a top-down approach for democracy promotion through a set of EU rules. Some of these rules and norms were explicitly stated in the Copenhagen Council of 1993 (Lavenex and Schimmelfennig, 2011). They have, of course, evolved over time with the increased emphasis on the EU level norms for the protection of human rights and democratic stability. The Copenhagen criteria of 1993 have three main layers of conditionality for the countries aspiring membership. The first layer is the stability of institutions guaranteeing democracy including rule of law, human rights, and respect and protection of minorities. The second layer is a functioning market economy that will allow the states to cope with the market forces within the Union. The last one is the compatibility of the law of the prospective members with the Community law, also called the *acquis communautaire* (Grabbe, 2002).

The EU conditionality generally follows a “reinforcement by reward” approach with the rare use of punishment if the candidate fails to conform to the EU's accession criteria. In this approach, a social party uses the instrument of reinforcement to obtain a desired

change in the behaviour of another party. (Schimmelfennig, Knobel and Engert, 2003)
There is no coercion or punishment affecting the cost and benefit calculations of the target party; however, one could think of the withdrawal of accession benefits as a punishment but it is more the possibility of future benefits that mobilizes the candidate to adopt reforms. The EU rewards the target country if it complies with the requirements and withholds the rewards if it fails to comply with them. In line with these, the relationship between the EU and the target governments is asymmetrical as the trump is in the hands of the EU. This also to be expected as the candidate is aiming to join the EU which already has its own rules and norms in place.

The effectiveness of this EU guided conditionality depends on several factors. To begin with, the outcome of the cost and benefit calculations by the target states are determinant. Tangible material rewards are considered the most powerful incitement, while the non-material incentives and mechanism of social learning is less relevant (Schimmelfennig, 2008). The material rewards offered by the EU can be divided into two categories: the institutional ties and assistance. Institutional ties include all kinds of trade and cooperation agreements, association agreements and full membership plus inclusion in the European common market. In addition, because conditionality changes the domestic opportunity structure –ideologically- in favour of domestic actors, the adoption of rules depends on the decision of the target governments. These governments are in search for a new domestic equilibrium through balancing the requirements of the EU as well as the demands of international and domestic actors (Schimmelfennig and Sedelmeier, 2004).

Within the process of rule transfer, there are too many interdependent variables shaping the efficacy of EU conditionality that need clarification and organization for the aims of this thesis. Hence, a scientific equation is necessary to see this interdependence of these variables unmistakably. The next section is on the formulation of hypothesis and the definitions of all its variables.

2.2. Conceptual Framework

The need for operational definitions arises with the possibility of different interpretations of the terms and concepts that might jeopardize the empirical testability of the hypothesis. Thus, it is crucial to narrow down and clarify the definitions of all the fundamental concepts that constitute the skeleton of the thesis in advance. This thesis

questions whether when the credibility of the EU membership prospect is high, the impact of the EU's political conditionality is substantial or not on the freedom of speech as an indicator of democracy. This proposition is investigated through an analysis of the freedom of speech in Turkey. Corresponding to the purpose of this study, this section provides the hypothesis serving the main research question, definitions of the terms included in this hypothesis, and the rationale for choosing certain index to assess "democracy".

2.2.1. Exploration of Terms

In order to define and explore the terms relevant to the thesis, first, there is the need to identify the variables within the research question. So, within the thesis statement "when the credibility of the EU membership prospect is high, the impact of the EU's political conditionality is substantial or not on the freedom of speech as an indicator of democracy", the independent variable is "the EU conditionality" and "its credibility" while the dependent variable is "the freedom of speech as an indicator of democracy".

To begin with, EU conditionality, the independent variable, simply refers to the conditions set by the EU in Copenhagen in 1993. Furthermore, it is the use of EU incentives to alter a target state's behaviour or policies (Checkel, 2000 cited in Erdogan, 2006: 3). The effectiveness of conditionality has two contexts: the democratic conditionality and *acquis* conditionality. These contexts are purposefully separated because it proved that the effective rule transfer of the EU is context dependent (Schimmelfennig and Sedelmeier, 2004). The context of democratic conditionality is the political principles of the EU based on the human rights norms and liberal democracy. It requires the political change towards liberal democracy. In the same line, it demands a fertile domestic ground (Schimmelfennig, 2008:918) where reform oriented political forces can come to power. The main external incentive here is the establishment of institutional ties. The incentive of democratic conditionality loses its effect once the accession negotiations start although the Commission continues to monitor the adoption of democratic conditions. The context of *acquis* conditionality starts with the preparation for membership. Therefore, this context becomes noteworthy only after the opening of accession negotiations with a candidate country. Given these two contexts, the democratic context of conditionality is more relevant for the concerns of this thesis

Credibility has been defined as “the expectation that an announced policy will be carried out” (Drazen & Masson, 1993 cited in Bronk, 2002:6). It is about the reliability of EU’s delivery of threats and promises in the cases of target governments’ compliance with the criteria and their non-compliance with them. The interdependence between the EU and the candidates or target countries is in favour of the EU that is because generally the target countries are heavily dependent on the EU and will get more benefits than the EU from any kind of association or accession. (Moravcsik and Vachudoca, 2005: 201 cited in Schimmelfennig and Scholtz, 2008:191) Consequently, the weaker party aspires to get rewarded in return for applying certain behaviour. (Erdogan, 2006) This creates the superior bargaining power of the EU, therefore, EU has to assure that the requirements will be fulfilled from the side of the EU. There are many factors that help “credibility” to be influential on the efficacy of EU conditionality. Most importantly, the commitment of the EU is seen by the dates of possible accession.

The capability of and costs for the EU is one of the decisive factors of the worth of conditionality. The EU has to be capable enough to deliver the promises it has given. As Kubicek states (2011: 912) “why assume costs if benefits are uncertain?” Accordingly, it can be argued that if the promises falls short of its capabilities then the target countries might have second thoughts about the deals and thus, the effect of conditionality lessens. This is related to the asymmetrical relationship involved in the process because it is the EU that reinforces the candidates’ willingness to change and it has to show that the eventual payment will take place. Additionally, there are costs for the EU that is not visible to the eye – they are also called “sunk costs” by Schimmelfennig and Sedelmeier (2004: 665). As a result of long term negotiations and preparations and restructuring the EU institutions for further enlargement of the Union, the process becomes really costly for the EU. However, in the long run the EU becomes more credible in the eye of the target countries as they see that the EU is paying a price. The credibility of the EU once again increases with the opening the negotiations with other candidates which shows the level of commitment by the EU.

Another important factor that increases the credibility is the consistency of the EU delivering rewards and upholding them. The target countries have to be in no doubt that they are going to receive the benefits when they fulfil the criteria and they have to be also

sure that the EU will uphold the rewards in the case of non compliance. The internal conflicts within the EU and the reception of mixed signals from the EU might jeopardize the credibility of the EU and target countries might end up not trusting the EU and would be tempted to manipulate or confused. In the end, this might cause a loss of influence and lessening of the impact of the conditionality. For example, France and Germany, the two most important powers of the Union, are against Turkish membership. For instance, in 2007, the French President, Nicolas Sarkozy stated that “Turkey’s place is not Europe” (Muftuler- Bac, 2008). Prior to this, in 2004, Stoiber, the then CSU chairman in Germany, has mentioned a concept “privileged partnership” to Europe rather than having more members (Bürgin, 2010). The current discourse of the German government has a similar attitude, Merkel, the current chancellor of the government, pushes for privileged partnership for Turkey instead of a membership*. This position of the governments not only affects the internal dynamics of the European Union but it creates mixed signals for the target country, Turkey. As a result, it negatively affects the credibility of the EU political conditionality on Turkey.

* “Turkey should not view her offer of a "privileged partnership" - rather than full membership - negatively, she said.” BBC News, March 29, 2010

2.2.2. Assessing Democracy

As the dependent variable is “the freedom of speech as an indicator of democracy”, it is essential to define democracy and the ways to assess the state of freedom of speech in Turkey as one of the indicators of democracy.

It should be highlighted that the EU conditionality in this thesis is handled through the context of democratic/political conditionality. The main incentives that the EU offers in this context are the institutional ties. Thus, democratic conditionality becomes less relevant for the target states once the accession negotiations start. Even though democratic conditionality falls on the background of the domestic agenda after the start of accession negotiations, it remains its vital role in the agenda of the EU. Thus, it is critical for the target countries to take the annual reports of the European Commission into account to secure the membership prospect, at least to a certain degree. In 1997, the European Council asked the European Commission to prepare Progress Reports for each applicant country evaluating their ability to meet the EU’s accession criteria as set by the 1993 Copenhagen summit. The applicant countries would then see the extent to which they conform to the EU’s accession criteria. The European Commission’s evaluations are the first stages to be fulfilled on the road to membership, as an applicant country cannot be declared a candidate unless the Commission recommends this based on the political aspects of the Copenhagen criteria and negotiations for accession cannot begin unless the candidate fulfils the political criteria in its entirety.

In order to understand the Commission’s evaluations, one needs to assess the meaning of “democracy”. It is of great importance to explain and narrow down this concept. The clarification is needed to comprehend the democratic system embraced and fostered by the EU and the freedom of speech as one of the components of democracy can be understood or measured.

The democratic system that the EU fosters is the main focus in this thesis. Although the EU does not provide a definition of democracy per se, it could be argued that the EU uses a lot of democratic components to describe the democracy it relies on. It measures the democratic status of the prospective members through a number of criteria –or democratic components- in a qualitative fashion in the annual Commission Reports. The state of democracy in a target country is evaluated through the status of the parliament, government, public administration, civil- military relations, judicial system, anti-corruption policy as well as the implementation of human rights and protection of minorities. Freedom of expression and speech is evaluated under the title of “civil and political rights” within the framework of human rights. The problem is that the EU does not define any concepts that are included in the requirements for candidates. The Accession criteria set in Copenhagen Council in 1993 state that “the candidate country must have achieved the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”.¹ However, this statement could not provide any specific definitions; they are mostly vague and slippery concepts (Grabbe, 2002:251). When the Copenhagen Criteria was set, it has defined the broad and vague framework of EU political conditionality. However, by time it added up certain content like the anti-corruption measures, measures regarding rule of law and administrative capacity; it developed throughout time and thus, tried to fill the gaps in the first framework (Džihic and Wieser, 2011: 1805) These advancement became more visible for the target governments through the yearly evaluations of the Commission.

In this thesis, the status of freedom of speech including freedom of expression, press and broadcasting will be used as one of the indicators of democracy in Turkey. The evaluation will be mainly based on the annual reports of the European Commission on the freedom of expression and freedom of press in Turkey from 1998 until 2011, the reports of the Freedom of House on the ranking of freedom of expression in Turkey from 2002 until 2011 and the cases decisions of European Court of Human Rights regarding freedom of expression and press in Turkey that were covered by the Commission reports on Turkey between 1998 and 2011. These data can be found in detail in the 3rd Chapter of this thesis.

¹ http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm

2.2.2.1. Annual Progress Reports of the Commission

The EU's political criteria have evolved over time with an increasing emphasis on the importance of democratic credentials. The political criteria of the EU were set in the beginning of the 1990s. The European Commission has always evaluated the applicants to EC/EU accession on the basis of their democratic credentials in its Opinion. However, this evaluation changed format with the adoption of the 1993 Copenhagen criteria. With its Progress Reports, the Commission evaluates the extent to which the applicant countries fulfil the criteria and in which areas it needs further reforms. These reports are not just instruments of the EU to decide on the faith of the target countries. Although the reports are sent to the Council and the Parliament to see the status of candidates for the purposes of further enlargement, they are also guidelines for these countries to consolidate their democracy. It is on the basis of Commission's Report and recommendations that candidacy is granted, accession negotiations begin, chapters are opened and accession negotiations continue without suspension. The Progress Reports are the main documents upon which the Commission recommendations to the Council are made, without which no enlargement process is possible.

The Commission Reports on Turkey has been issued since the conclusions of Luxembourg European Council in 1997 showing the progress made by Turkey in preparing for membership. These reports have high significance for the aims of this paper as they are the only direct documents that are evidence for EU's perspective on the status of democracy –and freedom of speech and press- in Turkey. The first report on Turkey was published in 1998 based on the conclusions of the Luxembourg European Council and Ankara Agreement.² The evaluation of the EU on Turkey on the political side was that there were “certain anomalies in the functioning of the public authorities, persistent human rights violations and major shortcomings in the treatment of minorities... In addition, Turkey must make a constructive contribution to the settlement of all disputes with various neighbouring countries by peaceful means in accordance with international law –which is a

² http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf

reference to the Cyprus issue-” This report has also become the basis for the first Accession Partnership Document* in March 2001.

The Commission’s progress reports are sometimes based on the decision of the European Court of Human Rights. Even though, they are institutions of different organizations – the European Commission is a body of the European Union while the ECHR is the judiciary organ of Council of Europe-, the EU and the Council of Europe have been cooperating for a long time, particularly in regards to protection of human rights, democracy and rule of law. The relationship between Council of Europe and the EU, as well as the ECHR decisions and Commission Reports will be touched upon in “the Decision of the European Court of Human Rights” section of this thesis.

2.2.2.2. Resolved Turkish Cases brought to the European Court of Human Rights

The European Court of Human Rights one of the bodies of the Council of Europe (CoE) founded in 1959. CoE is an international organization promoting cooperation between countries of Europe –not only the EU states-to promote human rights, democracy, rule of law and enhance cultural interaction. CoE was founded in 1949, just after World War II, as one of the results of European efforts to prevent any kind of wars in the future between European countries. It has 47 members – with Turkey as one of the founding members-. Unlike the EU, it does not have binding laws. It draws standards, charters and conventions for the member countries to follow. The European Convention of Human Rights was one of these efforts

The purpose of the Accession Partnership is to set out in a single framework the priority areas for further work identified in the Commission’s 2002 Regular Report on the progress made by Turkey towards accession, the financial means available to help Turkey implement these priorities and the conditions which will apply to that assistance. The Accession Partnership provides the basis for a number of policy instruments which will be used to help the candidate States in their preparations for membership. It is expected that Turkey on the basis of this revised Accession Partnership adopts a revised national programme for the adoption of the *acquis*. Further information on Accession Partnership can be accessed through <http://www.foreignpolicy.org.tr/documents/140403.pdf>

adopted in 1953 and ratified by all 47 members. The Convention is an international treaty that protects human rights and fundamental freedoms. It also established the European Court of Human Rights in 1959 as the guardian of this Convention. The Court is also the judiciary organ of the CoE. It hears the cases of human rights when a contracted state violates them. This court has sanction power over the countries that signed the ECHR. The court decisions are binding. It has the power to sanction states to pay material or moral damages as well as the all the legal costs. It also gives opinions as a result of certain cases which are not binding for the members.

Even though, the Council of Europe and the EU are separate institutions; they have long ties in the history. They have been supporting each others efforts for a united Europe. “We need not waste our time in disputes about who originated this idea of United Europe”, Winston Churchill insisted in 1948, at The Hague. Thus, in what they –CoE and the EU- do, and in what they have done, they complement each other closely (Juncker, 2006: 5).³ For the same reason, the EU and CoE has signed and ratified numerous Conventions of CoE. The one convention that all member states have subscribed to is the Convention on Protection of Human Rights and Fundamental Freedoms. Following this, they have recognized the jurisdiction of European Court of Human Rights as well.⁴ This recognition and the desire of the EU to ensure the protection of human rights –also with the Copenhagen Criteria- led the EU to use the court decisions as indicators of human rights situations in target countries. Consequently, the EU included the court decisions into the Commission Progress Reports for those target countries to show them that the EU accounts for the decision of the court and that they are not just expected to fulfil the EU requirements but also the requirements of the European Human Rights Convention.⁵

³ Can be accessed through www.coe.int/t/der/docs/RapJuncker_E.pdf

⁴ http://www.uaces.org/pdf/papers/0801/2008_Bond.pdf

⁵ For further information on the cooperation of the EU and CoE on the human rights: http://spice.stanford.edu/docs/human_rights_protection_in_europe_between_strasbourg_and_luxembourg/, http://www.uaces.org/pdf/papers/0801/2008_Bond.pdf, www.coe.int/t/der/docs/RapJuncker_E.pdf, http://www.coe.int/t/der/docs/MoU_EN.pdf

For the purposes of this thesis the Article 10 of this Convention is relevant and necessary. It refers to the “freedom of expression”:

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. ⁶

It is fruitful to include the number of cases brought to ECHR by whom Turkish state was found guilty on the basis of the above mentioned article. Although, it is not possible to cover the content of the articles, observing the variation of their numbers over the years, especially in 1999-2011 period- is useful when evaluating the progress of freedom of expression in Turkey in the last decade.

2.2.2.3. Freedom House Ratings

The third main instrument used to assess the Turkish democracy –freedom of speech and media- is the Freedom House rankings. The evaluations of Freedom Hose are not based on the “European Convention of Human Rights” but based on

⁶ The ECHR can be found at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

the “Universal Declaration of Human Rights” which is adopted by the members⁷ of United Nations in 1948. As a result, it provides an outside –Western but non-European- perspective on the state of democracy in given countries -Turkey being one of them. Thus, it is advantageous to use the data provided by this index because of a possible coherence between Freedom House ratings, the ECHR decisions and the Commission Reports on the freedom of speech in Turkey. This coherence would fortify the data used for this thesis as well as the conclusion drawn from those data.

The Freedom House supports democratic change, monitors freedom, and advocates for democracy and human rights around the world (Freedom House).⁸ It conducts researches on these areas and publishes annual reports based on a rating system. There have been several methodological drawbacks of the Freedom House index detected by Gerardo L. Munck and Jay Verkuilen (2002). However, the ones that are relevant to the framework of the thesis are the ones related to the attributes of the concept of “democracy” and its measurement.

To begin with, it is being criticised of having a maximalist definition of “democracy” by scholars (Munck and Verkuilen, 2002). It means that it includes too many attributes in the meaning of the concept that overburdens the concept. Overburdening has two potential drawbacks; decrease in its usefulness in a way to destroy the concept’s empirical referents and reduction of its analytical use (Munck and Verkuilen, 2002). Furthermore, the measurement of democracy is made through an ordinal scale. This is also criticised by Schimmelfennig (2008) because of the reductionist system of measurement. It divided the countries into three categories: free, partly free and not free and thus creates a threshold problem. Moreover, it is argued (Munck and Verkuilen, 2002) that the Freedom House did not set forth any justification for the use of such measurement. Plus, there is no internal consistence of the data series that raises questions on the validity of the measures.

⁷ In 1948, 48 of the members of UN has voted in favor of the Declaration , there was no country voted against and 8 countries –USSR, Ukrainian SSR, Yugoslavia, Poland, Czechoslovakia, South Africa and Saudi Arabia- were absent.

⁸ <http://www.freedomhouse.org/about-us>

Despite all its shortcomings, the Freedom House evaluations of democracy and its ratings specifically on several issues are relevant and fruitful for the purposes of this thesis. First of all, the ratings of the political rights and civil liberties are overlapping with the norms of liberal democracy taken into account by the EU (Schimmelfennig, 2003: 96 and Schimmelfennig, 2008). Secondly, the ratings are up to date so one can see the progress of certain countries on certain issues –like freedom of expression in Turkey in the last decade.

The rankings of Freedom House, the progress reports of the Commission Reports and the decisions of the ECHR on the cases brought against the Turkish state on the status of democracy in regards to freedom of speech in Turkey will be specified and mentioned thoroughly in the 3rd Chapter.

2.3. The Experience of the Central and Eastern European countries

Central and Eastern European Countries (CEECs) have undergone a major change at the last two decades after the dissolution of the Soviet Union. Certainly, it was not only the transformation power of the EU, but also various international actors –like the Open Society Foundation, American Bar Association, NATO, etc.- and different factors –like the domestic dynamics- had a role in determining the speed and shape of these changes. As Schimmelfennig and Sedelmeier (2004:662) put it: there is no direct causal link between conditionality and successful rule transfer in particular issue- areas. However, despite the negative aspects and limitations of conditionality –e.g. it holds a top-down approach and in some issue- areas it can not ensure the applicability of certain laws- it contributed to the adoption of international human rights and minority rights standards, it supported the effectiveness and efficiency of democratic institutions, and it emphasized the need to fight corruption and organized crime (Džihic and Wieser, 2011: 1804) Thus, it can be argued that the EU has been one of the most influential actors in the region thanks to its external governance instrument “conditionality”.

There has been several factors shaping the effect of conditionality on target countries. In the case of CEECs, although all the factors - the determinacy of conditions; size and speed of rewards, the credibility of conditionality and the veto players and adoption costs (Schimmelfennig and Sedelmeier, 2004) - are involved in the whole process

of rule transfer, the one that concerns this thesis is the credibility of the conditionality shaping the faith of rule transfer which is relevant for the Turkish case as well.

The credibility of the EU political conditionality has been high in the case of CEECs with minor exceptions. For instance, Belarus and Ukraine were not given a membership perspective even though they would have fulfilled the conditions. Nonetheless, in most of the CEECs there were association agreements with the EU and they were all given the membership perspective. To evaluate how the credibility as an intervening variable had an impact on the efficacy of conditionality, it is better to see the cases of CEECs on the basis of sub-determinants of credibility: capabilities and costs of the agency employing conditionality, allocation of rewards, internal conflict within the EU and cross-conditionality.

- The condition of capabilities and costs of the EU were present in the CEECs relation with the EU. The absence of alternative ideological or systemic paradigms for the Central and East European candidate countries (CEECs), other than EU membership, has tended to reinforce the widespread perception of a power asymmetry in favour of the EU (Hughes, Sasse and Gordon, 2004: 524). Accordingly, the benefits out of membership became greater for CEECs than for the EU. This means that the cost for this enlargement was higher for the EU than the CEECs. Still, the EU was capable of providing the promises and withholding them in cases of non-compliance. Yet, once the EU enters the road to the accession negotiations, it becomes even more costly to stop them because of all the process that it has to go through. This situation does not help the credibility of exclusion in the cases of non-compliance. As in the example given by Dimitrova (in Schimmelfennig and Sedelmeier, 2005: 84), the requirement of the EU in administration reforms did not have a significant effect on the Czech government as the government believed the threat of exclusion rather considered itself as one of the candidates that would eventually become a member of the Union.
- Allocation of rewards has had both positive and negative effects on EU political conditionality in the cases of CEECs. First of all, the exclusion of Slovakia in 1997 from the list of candidates as a result of non compliance with the EU rules has been an incident showing the seriousness of the EU on the matter of conditionality. As a

result of the decision of Helsinki European Council in 1999 –which also a turning point in the Turkish case-, the rewards were allocated fostering the effect of conditionality. Slovakia, Latvia and Lithuania were given their rewards with the start of accession negotiations as a result of their progress (Schimmelfennig and Sedelmeier, 2005: 15) However, there have been several cases that the rewards were distributed not because of compliance with EU rules but out of strategic policies of the EU which jeopardized the credibility of conditionality. For instance, Russia was rewarded with aid and institutional ties although there have been severe violation of human rights in Chechnya (Smith, 2001: 39 cited in Schimmelfennig and Sedelmeier, 2005: 39). A similar incident happened in Romania and Bulgaria; they were rewarded by the EU because they were needed for the support of NATO action in Kosovo (Schimmelfennig and Sedelmeier, 2005: 15). So, allocation of rewards was not always supportive of the effect of EU conditionality.

- Internal conflict within the EU institutions –which is a very important factor for the EU- Turkey relations- sometimes created weak adoption of *acquis* in certain areas. . In the cases of CEECs, inconsistent signals were given in specific policy areas that the EU was trying to foster. For instance, the regional policy was a conflicting area within the Commission. There has been contradicting and shifting visions on the regional policy within the Commission, particularly between the DG of Enlargement and the DG of Regions whether to promote centralized or decentralized management of regional policy in CEECs (Hughes, Sasse and Gordon, 2004: 542). This led to the perception by the CEECs that there was conditionality in this area but it was inconsistent. This has contributed to the lessening of EU credibility on particular issue-areas.
- Cross-conditionality was certainly an issue of concern in CEECs because of parallel or additive conditionality imposed by other international actors like Organization for Security and Cooperation in Europe (OSCE), Council of Europe, and NATO along with UN reinforced the human rights conditions in a lot of CEECs. Their pressures overlapped and thus led to successful democratic consolidation on those areas. Plus, as stated several times in previous parts the EU was the only actor

offering a credible alternative for the CEECs because of their over-dependency to the EU budget.

As can be observed in this section, there have been variation among CEECs in a lot of issue-areas because of the difference of the effect of conditionality both in terms of cost of adoption for the target countries and the credibility of EU political conditionality in the eye of those target states. However, it is possible to see that when the EU's accession process is credible or seen as credible by the candidate country, the pace of political reforms is substantial. The analysis of the CEECs demonstrate that the EU accession process is equipped with the potential for political reforms in countries aspiring for membership, specifically when they perceive the accession process as credible.

2.3.1. How to account for the variation of the impact of conditionality among Central and Eastern European Countries

Although there have been general achievements fostered by the EU conditionality, the CEECs can not be evaluated as one monolithic entity. There have been variations among the countries of CEECs. Here, I would like to mention only three short examples just to show the variation of the influence of EU conditionality among CEECs. The variation is mostly observable through the criteria related to the democratic conditionality, human rights and minorities because those criteria made the conditionality policy more demanding and more difficult to satisfy (Pridham, 2008). They also required governments that are willing to make reforms, therefore, do not perceive the change in these specific areas as “costs”. So, the adoption costs as an intervening variable has played a major role in these issue-areas. Yet, although there were fluctuations as a result of cost-benefit analysis of different governments in given countries, EU conditionality has proven to be effective at least in terms of drawing legal frameworks on the related issues. The examples showing the variation of the efficacy of democratic conditionality –generally because of perceived costs of compliance- here, are from Latvia, Estonia and Slovakia.

After the fall of the Iron curtain, Latvia has started to give automatic citizenship to the citizens of inter-war Latvian Republic and their descendants. This policy made 30 percent of the population stateless and deprived of their political rights. The government put some more laws into force regarding to the use Latvian language, education and economic rights that discriminated the non-Latvian population. (Pabriks, 1999 cited in

Schimmelfennig, Engert and Knobel, 2003) Latvia has set a minimum of the EU requirements within approximately a decade responding to the Regular Reports of the European Commission in order to fulfil the criteria and got rewarded. A superficial and a minimum change in the Latvian legislation granted them the membership that came in May 2004. The absence of a regulatory system was also apparent in the post- membership term through the numbers of non-citizens and aliens living in Latvia. But despite these, there have been remarkable pressure from the EU on the change and implementation of relevant legislation.

A similar case is the Estonian language reforms. Again the reluctance of Estonia and non-regulation after the admission to the EU can be seen through the implementation of a new law in 2007 by extending the power of language inspectors in Latvia. This law has granted the inspectors by giving them the authority to dismiss employees by claiming insufficiency in Estonian language (Haughton, 2011).

Similar practices have happened with the judicial reforms as well as the reforms on the anti-corruption law in Slovakia. (Pridham, 2008) A very hard transformation of judicial system has taken place in Slovakia. The progress report of the Commission (2002) just before its accession to the Union states that the developments in the judicial system “are most welcome, and represent considerable progress. Due attention should now be given to ensuring their proper implementation, including by making the necessary funds available. In particular, it will be important that the newly established Judicial Council can play its role to the full.”⁹ The lack of implementation and change in behaviour is also reported in the 2002 Commission report “Surveys indicate that corruption remains cause for serious concern in Slovakia. The Commission acknowledged the anti-corruption efforts of the Slovak Government but indicated that a number of important measures had not yet been undertaken and should not be further delayed.”¹⁰

Of course, there have been numerous issues underlying the limitations of the EU’s external incentive particularly in regards to the context of democratic conditionality. However, these three small examples would at least make the shortcomings of EU political conditionality more concrete and visible. All in all, it can be argued that the EU has been

⁹ http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sk_en.pdf

¹⁰ Ibid.

the pioneer of democratization in Central and Eastern Countries but its influence could not go beyond setting up a legal framework (Vachudova, 2005). Plus, the limits of the EU conditionality, especially in regards to implementation of democratic standards, post-accession compliance, participation of citizens, and the variation of its effects are observable. In line with these observations, the main objective of the thesis is to see the effect of democratic conditionality on the Turkish democracy -especially in regards to freedom of speech that is a tough area for effective rule transfer, furthermore, to find out whether the credibility of conditionality has had a noteworthy role in that.

3. Chapter 2: Turkey – EU accession process (1997- 2012)

This chapter analyses the historical evolution of Turkey's relations with the EU and traces the main turning points in this complex relationship. Particular attention will be given to the period of 1997- 2012, the period which covers Turkey's candidacy and the start of accession negotiations.

3.1. Turkey: a part of the European Order

Turkey has long historical ties with the Western order even though there have been various debates on Turkey's place in Europe. Modernization and westernization in Turkey have roots in the Ottoman Empire starting from the 19th century, in particular with Tanzimat reforms of 1839 to 1876. The collapse of the Ottoman Empire at the beginning of the 20th century is followed by the establishment of modern day Turkey. During the foundation years, the Turkish elite gave special attention to the Western and European values. "Westernization" and "European Identity" have always been fundamental goals for the Turkish political elite from the very inception of the secular Republic in 1923 (Onis, 2000: 466). That means that Turkey wished to be a part of the West and the European order for a very long time.

With the coalescence of Turkish desire to be a part of the European order and European desire to keep Turkey close because of its strategic role in region, institutional ties between these two parties started to form. At the end of the Second World War, a new European order was created to eliminate the possibility to all-out European war. Thus, they began to sign agreements and established the institutions that would work to prevent any possible European wars in the future. Council of Europe (CoE) was one of these institutions established in 1949 and Turkey was one of its founding members. Within the structure of CoE, European Convention for the Protection of Human Rights and Fundamental Freedoms was signed by most of the members of CoE in 1954 and once more, Turkey was one of them. Moreover, during the Cold war, Turkey's importance in the region increased, especially when it became a part of the NATO alliance in 1952.

In 1957, with the signing of the Rome Treaty, the foundation of European integration process was laid out with the establishment of the European Economic Community (EEC) and the Euratom. These communities along with the European Coal and

Steel Community (ECSC) established in 1951 marked the origins of the EU. In two years time, Turkey applied for Associate Membership of EEC and five years later, in 1963, it became an associate member of the Community through the Ankara Agreement.

Ankara Agreement¹¹ was the first official steps in the long history of Turkey's relations with the European Union. It prepared the economic grounds and conditions -a customs union and labour mobility- for the integration of Turkey to the Community (Onis, 2000). The integration was envisaged at the end of three stages (Article 3 of the Agreement): a preparation stage aiming at strengthening of the Turkish economy for further economic integration (Article 2 of the Agreement); a transitional stage intending to eventually establish a customs union (Article 4 of the Agreement); a final stage aspiring for the formation of the customs union (Article 5 the Agreement). The reason behind holding on to this three stage structure was to ensure “an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people to achieve the greater objective of founding a continuous and balanced economic and trade relations between parties” (Article 2 of the Agreement).

Although these three stages eventually proved to be successful, in should be noted that the Ankara Agreement did not give a membership prospect to Turkey. It only implied a future consideration of a possible accession. The Article 28 of the Agreement states that “as soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community, the Contracting Parties shall examine the possibility of the accession of Turkey to the Community”

The first stage of the Association, the preparation, was given a go with the additional protocols included in the Ankara Agreement in 1963. Then, in 1973, the adoption of the additional protocol¹² marked the beginning of the transitional stage by laying down the conditions, arrangements and timetables (Article 1 of the Additional Protocol) for the economic progress of Turkey. However, 1970s and 1980s can not be considered as the fruitful years in advancing relations between Turkey and EEC. There

¹¹ For the text of the Ankara Agreement: <http://www.abgs.gov.tr/index.php?p=117&l=2>

¹² For the text of the 1970 Additional Protocol: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21970A1123%2801%29:EN:HTML>

have been suspensions coming from both parties in different years. In 1978, then Turkish Prime Minister Bulent Ecevit suspended the Association Agreement because he wanted a revision of the Association Agreement that contradicted with Turkey's then economic development strategy based on industrialization and import substitution. Meanwhile, the Turkish intervention of Cyprus in 1974 and the Turkish military coup that took place in 1980 hindered any advance in Turkey- EEC relations. This time, in 1982, it was the European Parliament that suspended the Association (Müftüler Baç, 2005).

In 1987, the desire of and the pressure coming from Turgut Özal -who became the president with the democratic elections in 1983- led to Turkish application for full membership (Onis, 2000) At the time, Turkey did not only wish to take part in EEC just because it wanted to be a part of the European order but as a result of several strategic calculations. In 1981, Greece became a member of the Union and gained a veto power in the Community putting Turkey in a disadvantageous position. Plus, Spain and Portugal also became members in 1986 jeopardizing the trading advantage of Turkey by offering the same kind of goods to EEC.

As a response to Turkish application, the Commission gave a recommendation¹³ in 1989. It stated that Turkey was a large country that had the potential to become the largest among the members with a very slow pace of development. Plus, the Turkish democracy found to be fluctuating and thus, the Turkish integration seemed to be unlikely as a medium term goal. Also, the gap between the economic growth of Turkey and EEC countries was found too big again hindering the adoption of Turkey to the European competition. Moreover, the political context was also evaluated negatively. The 1982 Constitution, human rights and the situation with Cyprus were the main concerns of the Commission. As a result, accession negotiations were found inappropriate for the Community although it was said that the Commission was still interested in close relations with Turkey, especially because of Turkey's strategically important geopolitical position (Article 12 of the 1989 Commission recommendation). Yet, the Customs Union and close financial, political and

¹³ For the text of Commission Recommendation on Turkey in 1989:
http://www.mfa.gov.tr/commission-opinion-on-turkey_s-request-for-accession-to-the-community_-december-20_-1989.en.mfa

social ties with Turkey were found appropriate which gave a powerful push for the realization of Association terms.

The final stage of Association took place with the inclusion of Turkey to the Customs Union in 1995. At this stage, the Council laid out rules clarifying the obligations that need to be fulfilled for both of the parties for the proper functioning of the Customs Union. With the Customs Union, Turkish hope to become a full member of the Union flourished. However, the hopes went in vain with the Turkish exclusion from the list of candidates announced in 1997 (Eralp, 2000; Müftüler Baç, 2002; Müftüler Baç, 2005; Grigoriadis, 2006; Gordon and Taspinar, 2006). The most critical period in terms of Turkey's relations with the EU and the EU's impact on Turkish political system arrived at the end of the 1990s with the EU's new enlargement process.

3.2. Agenda 2000 and Turkey in the Luxembourg summit

In 1997, the European Commission adopted its recommendation for the EU enlargement, the Agenda 2000. The Agenda 2000 was created for the development of the EU and its policies with a consideration of the future enlargement. It also set up financial strategies for the first seven years of the new millennium that also counted for the Commission opinions on the application countries of Central and Eastern Europe (Agenda 2000).¹⁴ The Agenda was focused on the all applicant countries, and proposed all the applicants to be elevated to candidacy but it left Turkey out of the enlargement process at that time.

Following the Agenda 2000, the Luxembourg European Council convened in 1997 to adopt the European Commission's recommendation in this package. It established rules and made decisions for the future of Europe and launched the enlargement process. It was a significant moment for the future of the EU since the Council decisions launched the largest enlargement wave in its history. The Council made decisions after considering the situation in eleven applicant countries at the time. It decided to give candidate status to all Central and Eastern European applicants and Cyprus. In addition, the Council also led to

¹⁴ For the text of Agenda 2000:

http://europa.eu/legislation_summaries/enlargement/2004_and_2007_enlargement/160001_en.htm

the decision of opening accession negotiations with 6 of these candidate countries based on their ability to meet the political aspects of the Copenhagen criteria. The accession negotiations with the remaining five would begin once they also satisfied the political criteria. Turkey was excluded from the list of candidates even though it had the longest standing applicant and it was the only country that had a Customs Union agreement with the Union (Eralp, 2000; Müftüler Baç, 2005), because the Commission and the Council argued that it did not meet the political aspects of the Copenhagen criteria. It can be argued that Turkey was given a special status because even though it was left out as a candidate, it was included in the enlargement process. There was a separate section for Turkey that is called “a European strategy for Turkey”. In this section Turkey’s eligibility for full membership was accepted and it was declared that Turkey was objected to the same criteria just like the other candidates. Nevertheless, Turkey’s political and economic conditions were marked unsatisfactory to open accession negotiations. It was also stated that the future of Turkey- EU relations were dependent on Turkey’s progress in alignment of human rights, respect for and protection of minorities, and in the relations with Greece and Cyprus. Some of these conditions can even be considered as additional conditions set up for Turkish candidacy. The absence of the status “candidate” and additional conditions other than the Copenhagen Criteria caused Turkey to feel disappointed and offended; and consequently, created a crisis in Turkey’s relations with the Union until December 1999 when Turkey was finally granted the candidate status (Müftüler Baç, 2005; Grigoriadis, 2006; Gordon and Taspinar, 2006).

3.3. The developments in 1998 and the Commission evaluation in 1999

Despite the Turkish resentment of 1997, Turkey and the EU kept their relations intact on the basis of the Association Agreement. In 1998, at the Cardiff Summit of the European Council, it was decided that Turkey should be monitored by the Commission every year just like any other candidate even though Turkey was not given the candidate status (Müftüler Baç, 2005) These efforts were a result of the Association Agreement because as mentioned before, article 28 of the Association Agreement states that when the progress is satisfactory enough the parties can consider the possibility of full membership for Turkey. This article acted as a safeguard for a possible future Turkish membership and

the efforts of publishing progress reports from 1998 onwards made Turkey feel like it was being treated just like the other candidate countries helping out to ease the tensions between the EU and Turkey.

In addition, in 1998 Commission drafted another European Strategy for Turkey as a result of the Council's request that is drawing a strategy to get Turkey and the EU closer in every field. The Strategy involved: development of the possibilities afforded by the Ankara Agreement; intensification of the customs union; implementation of financial co-operation; approximation of laws and adoption of the Union acquis; and participation, to be decided case by case, in certain programmes and in certain agencies (European Strategy for Turkey, Commission Initial Operational Proposals, 1998)¹⁵. These strategies show that the EU actually acts as if Turkey was a candidate, especially by stating the need to approximating the laws and adoption of the acquis.

All of these; suspensions of Association, the exclusion of Turkey from the list of candidates in 1997 but still continues monitoring and strategies for Turkey show hesitations of the EU to include Turkey. Correspondingly, these hesitations raise the questions and stimulate Euro-scepticism in the Turkish part.

The 1998 Progress Report¹⁶ on Turkey reflected the dissatisfaction of the Commission from the then Turkish status quo. It marked that there was major human rights violations along with a lack of civilian control because of the place of the army and the National Security Council in political life. It also highlighted Turkey's relationships with its neighbouring countries, implying that Turkey has to find constructive solutions to the Cyprus issue. In terms of implementing and practicing the rules of the Customs Union, Turkey was found successful, yet, the credibility and stability of macro-economic framework in Turkey found absent. As a result, the Commission concluded that it is not

¹⁵ For the text of the European Strategy for Turkey, 1998: http://www.mfa.gov.tr/european-strategy-for-turkey---the-commission_s-initial-operational-proposals-_brussels_-4-march-1998_.en.mfa

¹⁶ For the text of the Progress report on Turkey, 1998: http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1998.pdf

possible to offer any opinions on the Turkish capacity to apply the parts of the *acquis* that were not transposed (Regular Commission Report on Turkey, 1998)

However, despite the tension between the EU and Turkey, on realistic terms, there has been interdependency between these two parties (Onis, 2000; Eralp, 2000). The importance of Turkey as a strategic –especially its place in NATO- and economic power necessitated the EU to fortify the Customs Union and go beyond it. To act as a positive party in EU’s relations with NATO, Turkey wanted to assure its place as a candidate country and thus, required a confident strategy for membership from the EU (Eralp, 2000). Plus, being a part of the Customs Union meant “competition without full integration” and it also meant “loss of sovereignty with limited participation” for Turkey (Onis, 2000: 475) From the Turkish side as well, the EU was still the benefactor that Turkey looked up to for economic, social and political reasons. So, the realization of this interdependency led to a positive break through in EU- Turkey relation with the Helsinki European Council Summit in 1999.

Before the Helsinki Summit held in December 1999, the Commission Report on Turkey was published in October 1999 leading to breakthrough in the Turkey EU relations. The Commission stated that there were still major concerns on the fulfilment of Copenhagen Criteria, especially in terms of human rights violation and lack of protection of minorities; still, it acknowledged the efforts of the Turkish government and parliament in regulating political life, the justice system and protection of human rights. In terms of economic requirements and the ones dictated by the Customs Union, Turkey was found progressive despite the fact that it needs improvements in certain areas like copy right law, distribution of income and regional disparities. Nonetheless, overall Turkish administrative capacity to apply the *acquis* in the framework of the Custom Union was found very satisfactory (Regular Commission Report on Turkey, 1999)¹⁷ The Commission recommended lifting Turkey into candidate status and as a result of this recommendation,

¹⁷ For the text of Regular Commission report on Turkey, 1999:
http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1999.pdf

the European Council in its Helsinki Summit of 1999 elevated Turkey's status to candidacy.

3.4. The Candidacy: Helsinki summit and beyond

On December 10- 11 1999, European Council had made certain points and decisions to prepare the Union for the future enlargement. Within this enlargement framework, Turkey was also granted with the candidate status. The Presidency Conclusion says:

“The European Council welcomes recent positive developments in Turkey as noted in the Commission's progress report, as well as its intention to continue its reforms towards complying with the Copenhagen criteria. Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States.”

In line with this, the Council also included Turkey to the pre-accession strategy comprising of enhanced political dialogue with the emphasis on the fulfilment of political criteria, especially in the field of human rights. The Commission was once more asked to evaluate the state of Turkey on the adoption of EU acquis and fulfilling the political criteria. ,

The development in Helsinki Summit can be marked as a U-turn from the part of the EU. The reason is that the EU was subjecting Turkey to the criteria set for the candidate countries without giving the status, although in the Association Agreement a possible membership was implicitly mentioned. With this turn, the EU provided a membership prospect to Turkey in return for compliance with EU rules. This prospect has improved the credibility of the EU political conditionality on the eyes of Turkey giving a push for Turkish dedication for reforms to comply with the political criteria.

Although, the Helsinki Summit has been the turning point in Turkey- EU relations, the EU hesitations on Turkish membership did not vanish. This was observed during the Nice Summit and the decisions taken regarding institutional reforms. During the Nice European Council in 2000¹⁸, there have been several reforms envisaged to obtain stabilization of institutions after the big enlargement wave. For instance, the weight of votes in the Council that will be implemented after 2005 was redistributed to ensure a fair

¹⁸ For the text of Presidency Conclusions of the Nice Summit, 2000:
http://www.europarl.europa.eu/summits/nice1_en.htm

share for all countries including the prospective members. During this distribution, the all of the candidates were accounted for and given their share of votes but Turkey was once again left out. The Council might have several reasons of reaching this decision. The most probable reason in this particular case might be the worries of EU member states on the impact of Turkey because of its size because the weigh of votes is determined by the size of the country which is more than 70 million inhabitant in the case of Turkey (Müftüler Baç, 2005) With that number Turkey ranks the second largest country in the EU after Germany. Thus, on one hand, it is very reasonable for the EU to have concerns on the matter. On the other hand, after giving the candidate status to Turkey, leaving Turkey out in certain areas is not helping the credibility of membership prospect given to Turkey.

3.5. 1999-2002 the slow progress in Turkish reforms

After the unpleasant development of exclusion of Turkey from the institutional reforms in 2000 which undermined the Helsinki Decision's positive effect on Turkey- EU relations, another satisfying development for Turkey occurred with the preparation of the Accession Document by the Commission in 2000 and its adoption by the Council in 2001. This document was prepared as a consequence of the Helsinki decisions on Turkish candidacy and established timetables, goals and objectives for Accession Partnership. It also made the preparation of a Turkish national programme mandatory in order for Turkey to adopt the Union *acquis*. The objectives set in this document were based on the Commission Report on Turkey in 2000.¹⁹ This document gave Turkey the motivation to take action because it was a factor showing the commitment of the EU to its promise of membership. Accordingly, the credibility of membership prospect increased. With this motivation, in 2000, the Turkish Parliament adopted a constitutional reform, three reform packages and a National Programme for the adoption of the *acquis* –NPAA- (Christensen, 2009). In its National Program, Turkish government stated that “Turkey will accede to all relevant international conventions and take the necessary measures for their effective implementation in order to ensure alignment with the universal norms manifest in the EU

¹⁹ For the text of Council Decision on Accession Partnership with Turkey, 2001: http://www.avrupa.info.tr/Files/File/EU&TURKEY/1_08520010324en00130023.pdf

acquis and with practices in EU Member States, particularly in the areas of democracy and human rights”.²⁰

With the immense constitutional package of 2001, Turkey has touched upon the issues of freedom of expression and revised the death penalty with 34 amendments to the Constitution (Müftüler Baç, 2005). In addition, it adopted a new civil code aiming at enhancing the gender quality. These efforts of Turkey were also observed and appreciated by the European Commission. In the Regular Commission Report on Turkey 2001²¹, the Commission marked the Turkish NPAA as a step forward. It also highlighted the attention given by the Turkish government to the freedom of thought and expression, the prevention of torture, the strengthening of civilian authority, freedom of association, and gender equality when amending the 1982 Turkish Constitution –it was established after the 1980 military intervention and had severe democratic problems-. However, the improvements were also found unsatisfactory in terms of their implementation. For instance, the banning of the Fazilet Party by the Constitutional Court was considered a serious obstacle in the way of obtaining freedom of expression.

In the last term of the coalition government, Turkey has undergone big changes regarding human rights. With the 3rd Constitutional Package, the coalition government abolished the death penalty, revised anti terror law and allowed broadcasting in languages other than Turkish (Müftüler Baç, 2005: 22, table 1). These were the last constitutional package and the reforms that the AKP-MHP-ANAP coalition has adopted.

Although there had been several important reform packages put forward during 1999-2002 because of several reasons these processes were interrupted and they could not been as effective as the packages adopted after 2002. One reason for the failure of fast movement in this period was that the presence of a coalition government at the time. Concerning political parties, Euro-scepticism is mostly seen as an opposition party phenomenon in order to gain ground against governments (Sitter 2001; Taggart and Szczerbiak 2004; Gifford 2006 cited in Gülmez, 2008). Accordingly, the existence of the

²⁰ For the text of the Turkish National Program on the Adoption of the Acquis:
<http://www.abgs.gov.tr/index.php?p=195&l=2>

²¹ For the text of Regular Commission Report on Turkey, 2001:
http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf

right wing party Nationalist Movement Party (MHP) as one of the coalition parties had negative effects on the compliance with certain EU conditions. For instance, MHP opposed to the draft of the new civil code during the negotiations, although it the changes were adopted at the end. Of course, MHP regarded the EU imposed rules and conditions as attempts hindering the sovereignty (Gülmez, 2008). Plus, there were three parties in the coalition government at the time it was MHP, CHP and ANAP- Motherland Party-. The existence of these three parties caused conflicts during the decision making process because of their different preferences. Moreover, the emergence of economic crises in Turkey in 2001 acted as another impeding factor to keep up with the European conditions. Not only because of the lack of economic capacity to cope with all the changes but also because of different positions held by these three coalition parties when managing the economic crises.

Still, the reforms done and the NPAA adopted between the years of 1999 and 2001 were found impressive by the Commission in 2001. Still, Commission proposed²² alterations and gave strategies for the incoming Turkish NPAA. This period can be seen as a positive development in Turkey- EU relations, although the Turkish transformation was rather slow and less effective in comparison with the next wave of reforms conducted by the governing party, namely Justice and Development Party- AKP- elected in 2002.

The 2002 Regular Progress Report on Turkey²³ was the last report evaluating the process of Turkish reforms done by the coalition government since AKP was elected at the end of the year, its efforts could not be evaluated in that year. This last report stated that there was still an active role played by the military officers especially in respect to education, cultural rights and broadcasting in languages other than Turkish. It was also highlighted the progress done by the 1st, 2nd and 3rd constitutional packages adopted by the coalition government formed by CHP-MHP-ANAP, particularly in respect to the human rights. Commission reported that “Overall, Turkey has made noticeable progress towards meeting the Copenhagen political criteria since the Commission issued its report in 1998¹², and in particular in the course of the last year. The reforms adopted in August 2002 are particularly far-reaching”. Yet, Commission underlined that further progress was needed in

²² Ibid.

²³ For the text of the Regular Commission Report on Turkey, 2002:
<http://ekutup.dpt.gov.tr/ab/uyelik/progre02.pdf>

regards to political conditionality in order to open accession negotiations. It was the turn of the AKP government that should take these Commission opinions into account in its following governing years.

3.6. 2002-2005 Reforms gain momentum, accession negotiations began

The period of 2002-2005 has been really fruitful for Turkey's compliance with the EU conditions. In the year of 2002, a new election has taken place and it can be argued that because of the outbreak of the economic crisis and because of internal disagreements in the coalition government, Justice and Development Party –AKP- the leader of which is Recep Tayyip Erdoğan won the elections in November 03 by getting the 34, 39% of the national vote. This victory enabled AKP to govern the by its own eliminating the possible of any inner conflicts that occurred during the governance of the previous coalition government.

Meanwhile 2002 marked a historical milestone in the EU's enlargement process. The Presidency Conclusions of the Copenhagen Council Summit that took place in 12-13 December 2002 declared that from 2002 onwards the accession negotiations were completed for Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. Thus, they would become members from 01 May 2004 onwards.²⁴ Nonetheless, Turkey was left out from the countries because of several reasons put forward by the Council. First of all, the progress made by Turkey was acknowledged, yet, those were found unsatisfactory because of the lack of their implementation. So, the Council not only wished to see the legislations on paper but it requires their full implementation. It also made it clear that the determination of the new Turkish government to take further steps on the path of reform and of eliminating the shortcomings in the field of political criteria and hopes that with the fulfilment and progress that would be made by this new government can lead to the opening of accession negotiations in the European Council Summit of 2004 without delay.

This implied promise of start of accession negotiations in Copenhagen Council in the case of compliance increased the credibility of membership prospect because the declaration of possible dates of the accession showed once again the commitment of the EU

²⁴ For the text of Presidency Conclusions of the Copenhagen Council 2002:
<http://ec.europa.eu/research/era/docs/en/council-eu-27.pdf>

to the Turkish membership even though Turkey was not declared as one of the countries that were granted with the initiation of accession negotiations. In line with this, the newly established government has initiated a fast and effective reform process.

In the first month of its governance, AKP adopted the fourth and fifth constitutional reform packages. In the 4th one, it functionalized previous reforms adopted by the coalition government and revised penal code. With the 5th package, in order to refer to EU's consideration of State Security Courts as the obstacles in the way of democracy, it initiated retrials of the cases that were decided by these Courts. Until the year of 2004, AKP has taken enormous and impressive steps in way of complying with EU conditions: abolishment of death sentence through adoption of Protocol 6 of ECHR; revision of the National Security Council; amendments of the constitutions in regard to freedom of press; abolishment of State Security Courts; revised the Higher Education Board and the Censure Board; revised laws on violence against women and children (Müftüler Baç, 2005: 22, table).

All these changes were evaluated in a positive way by the EU as well. In the Regular Commission Report 2003²⁵, the packages of political reform taken in that year were found significant because of their implications on the freedom of expression, freedom of demonstration, cultural rights and civilian control of the military. In spite of these positive evaluations, Commission highlighted the importance of the implementation phase of all the adopted legislations. Commission also observed the efforts and determination of AKP to fulfil the criteria to open accession negotiations in the year of 2004. In the next Commission Report in 2004²⁶, civilian control of the military has been found strengthened. Political reforms adopted through all of the constitutional reforms and reform packages have been acknowledged and found effective by the Commission. A remarkable evaluation on this report was the positive evaluation of the Commission of the steps taken for the implementation of reforms by the government. And the relation with Cyprus was also found positive thanks to the support of the government for the efforts on

²⁵ For the text of the Regular Commission Report on Turkey, 2003:
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf

²⁶ For the text of the Regular Commission Report on Turkey, 2004:
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf

UN Secretary General to find solution to the Cyprus dispute. Yet, in certain areas like some legislations are found limited like the new penal code regarding the freedom of expression, freedom of religious belief, child labour and honours killings, broadcasting and education in minority languages. All in all, it was stated that “the Commission expects a positive reply to the draft protocol on the necessary adaptations transmitted to Turkey in July 2004” which means that the Commission gave a positive opinion to the Council on Turkey’s status and its compliance with EU conditions. This raised hopes of Turkey to open accession negotiations in the Council Summit later on in 2004.

The Presidency Conclusions of December 14- 15, 2004 announced that Turkey sufficiently fulfils the Copenhagen political criteria to open accession negotiations provided that it brings into force these specific pieces of legislation²⁷. In line with this decision, in October 2005, Turkey’s longing for membership was very close to satisfaction with the official initiation of accession negotiation with the EU. The accession was still based on the Copenhagen Criteria but this time more attention was given to the full and effective implementation of pre- accession strategy and reforms, especially particular efforts should be made on the issue like the independent functioning of judiciary, cultural rights, civil-military relations, and active participation of Turkey for the peace and stability of the region. Furthermore, the Council also emphasized the significant of the adoption and compliance with the *acquis*. Although, the process had already begun, Council recommended that it should be accelerated and intensified.

²⁷ For the text of the Presidency Conclusion on Turkey, December 16-17 2004: http://www.avrupa.info.tr/Files//presidency_conclusions16_17_12_04_en.pdf

With the opening of accession negotiations, Turkey- EU relations has reached the highest point in their history that starts with the Association Agreement in 1963 followed by the Turkish application for full membership in 1987. Even so, at this point there are several remarks that should be done in the effect of EU conditionality on Turkish reform process. First of all, as highlighted in the first chapter of this thesis the incentive of democratic conditionality loses effect once the accession negotiation starts although the Commission continues to monitor the adoption of democratic conditions through its annual regular reports. Secondly, even though the CEECs and Cyprus were granted with membership only two years after the start of accession negotiation, this turned out to be a very long process for the Turkish case. It is the year 2012 and Turkey still waits for its membership. From the start of accession negotiations on, the Turkey- EU relations once again started to go downhill because of the stalled process arising out of political concerns. Hence, the credibility of political conditionality has been decreasing because of numerous factors that will be mentioned in the next section.

3.7. 2006-2012 Stalled process and lessening of the EU credibility

After Turkey was officially declared a candidate state in 1999, a marathon of accession procedures has started as seen in the previous sections. The process included the development of stable institutions that ensure the goodwill of democracy, a big leap towards a “certain” level in protecting and fostering human rights as well as minority rights. It also required Turkey to expand its market economy and to be able to cope with the one within the Union. Total transference of EU *acquis* to the Turkish legal system was the last and the broadest step to be taken towards membership that officially initiated after the opening of accession negotiations in 2005. Though, transference of the *acquis* is a painful and time-consuming route that includes several steps. First of all, there is an analytical approach of the Union called the “screening process”. During this phase, both sides –the candidate country and the EU- get to know each others’ legislative framework which is called “explanatory session”. So, the Commission and the member states decide whether a country is ready for all the changes on a certain topic. As the legal framework of the EU is rather a complicated one that covers Treaties, cases of law, resolutions, recommendations, declarations, common actions, decisions, conventions, International Treaties that the EU has signed for, and so much more, first of all it is crucial for the Commission to sit on the

same table with the candidate country –in this case Turkey- and explain the system of their legal system. Secondly, to be able to organize and follow up the changes in a given country, the EU has divided the *acquis* into thematic chapters. As a result, during the explanatory sessions the EU decides on preparedness of the candidate to make changes on a certain chapter. After this, bilateral meetings take place. During these meetings, the candidate explains their status and future plans on a certain chapter. However, the final say is on the hands of the member states making the decision of opening and closing a chapter. This analytical and objective approach becomes a tool of political games when member states become the decision makers. The whole matter of transference of *acquis* and the evaluation of this transfer becomes an intergovernmental decision rather than a supranational one.

The challenge here is that assessing whether a candidate country fulfils the criteria to become a member should be based on objective criteria. However, it can be argued that as the decision about the *acquis* chapters are at the hands of different governments, the governments act according to their political interests. It is also at the hand of the member states deciding to block a chapter. As a result, the whole nature of relationship changes its course from the EU- Turkey relationship towards relationships of Turkey and several member states. Since all member states have an equal say for the opening of chapters, in every round Turkey encounters possible vetoes from those members who have material conflicts of interests with Turkey like Greece and Cyprus or just plain objection to Turkey's accession such as France and occasionally Germany and Austria. These internal conflicts within the EU delivers Turkey mixed signals. Consequently, the EU becomes inconsistent in delivering rewards even though Turkey complies with EU rules resulting in the decrease in the credibility of EU political conditionality and thus, the slow down of Turkish political reforms.

3.7.1. Cyprus Issue

Turkey and Greece have a problematic relationship that has very long roots in their history. There have been several attempts to solve these problems by bilateral meetings, agreements and initiatives -like Brussels Declaration of 1975, Bern Agreement 1976, bilateral negotiations developed in Montreux in 1978...- but so far no effective solution could be found. Particularly, as a result of the fading British control on Cyprus in the

1950s, there have been disagreements on the status of this island that fractured the already complicated relationship between Turkey and Greece (Aksu, 2010).

This complicated relationship between Turkey and Greece was challenged even more with the Turkish intervention of Cyprus in 1974 only 14 years of the independence of Cyprus. Cyprus gained its total independence from Britain in 1960 through signing the Treaty of Guarantee with Britain, Turkey and Greece as the guarantor powers over Cyprus. In 1974, as a response to Greek military junta's presence on the island, Turkey sent troops to Cyprus claiming its right to use force to main the stability on the island given to it through the Treaty of Guarantee. This intervention caused the "de facto" partition of Cyprus into two parts: the Turkish and Greek parts of Cyprus. The northern part declared independence in 1983 which has only been recognized by the Turkish Republic. What's more is that this political division of the island caused social and identity breakdowns between Turkish Cypriots and Greek Cypriots leading to the transfer of motherland nationalisms in both countries to the territory of the island (Tannam, 2012: 52).

The accession of Greece to EEC in 1981 turned Cyprus issue into an internal matter of the Community (Eralp, 2009). Moreover, in 1990 Greek administration in Cyprus applied for EC membership. Three years later, in 1993, the Commission declared that Cyprus was eligible for membership and it would eventually become a member of the Union.²⁸ It should be noted that all EU external decisions are made unanimously and unanimity rule and this rule in the EU decision making process provided Greece with leverage in influencing Turkey's relations with the EU (Grigoriadis, 2005: 2). Greece used this leverage and vetoed Turkey's inclusion to the Customs Union first in 1993 and then in 1995 (Müftüler-Baç and Güney, 2005: 287). The motivation behind this veto was to ensure the accession of Cyprus to the EU. Accordingly, once the EU agreed to open accession negotiations with Cyprus, Greece lifted its veto and Turkey could become a member of the Customs Union on 31 December 1995. These vetoes showed how Greece used its advantageous position in the EU against Turkey over Cyprus dispute and how it acted as a supporter and facilitator in the accession process of Cyprus. Not surprisingly, these were

²⁸ For the text of Commission Opinion on the Application by the Republic of Cyprus for Membership: http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/cyprus/com93-313_en.pdf

not welcomed by the Turkish part. In addition, Turkey's expectation of being in the list of candidates in 1997 failed while the same year Cyprus was in the list of candidates.

The sombre atmosphere started to change in 1999 because of the catastrophic earthquakes in Greece and Turkey. The extent of loss and suffering stirred emotions in both countries (Rumelili, 2004: 17) created a positive atmosphere to cooperate. As indicators of mutual good will, Georgios A Papandreu –then Prime Minister of Greece- and Ismail Cem –then Turkish foreign minister- initiated a dialogue on low profile issues like tourism promotion, removal of landmines along the border, illegal migration (Betül Çelik and Rumelili, 2006; Grigoriadis, 2003). Thanks to this positive atmosphere, without any opposition from the Greek side Turkey was given the candidate status at the Helsinki Summit in 1999.

It can be argued that Helsinki decisions had an important role in Cyprus-Greece-Turkey triangle because it stipulated the resolution of conflicts with Greece as a pre-condition for Turkish accession (Eralp, 2009). Given the membership prospect, the EU political conditionality became very effective for the Turkish part. The linkage between the solution of Cyprus dispute and the start of accession negotiations were clear and Turkey did not want to risk its membership to the EU. Hence, it changed its stand on the issue. Conversely, the resolution of this conflict was not a pre-condition for the accession of Cyprus. In 2003, EU welcomed Cyprus to the Union without a solution to the problem. Meanwhile, the UN Secretary General made a plan, the Annan Plan, for the settlement of the problem in the emerging EU framework. On one hand, the desire of Turkish Cypriote leaders to create a more constructive environment for the process of accession of Turkey resulted in the 64, 90% (Chadjipadelis and Andreadis, 2007:5) support rate in the Northern part. On the other hand, the absence of any condition regarding the settlement of the issue caused Greek Cypriots to reject the plan with a 75, 83% (Chadjipadelis and Andreadis, 2007:5) vote rate. The collapse of the Annan Plan and the failure of UN Secretary General's mediation efforts caused new problem between Turkey and the EU (Aksu, 2010: 214).

After the accession of Cyprus to the Union in 2004 both Turkey and the EU shifted their position on the matter because both of their credibility has declined in each other's eyes. The EU started to display a rigid attitude claiming that Turkey was not willing to

apply necessary reforms while Turkey felt that EU was unwilling to welcome Turkey by continuously delaying the membership and providing double standards for other applicants (Eralp, 2009) –like Cyprus-. As a result, the EU used its “Additional Protocol” card as a trump against Turkey. According to the Additional Protocol signed in 1970, Turkey had to open all its airports and seaports to all the members of the Union which now included Cyprus. During the negotiations on these terms, Turkey asked for a simultaneous lifting of all restrictions on Cyprus including the ones applied to the Turkish Cypriot part. Yet, neither Turkey nor the EU compromised leading to a more tangled relationship between Greece, Cyprus, Turkey and the EU. Thereto, in 2006, under the Finnish Presidency the Council decided in particular to suspend negotiations on eight chapters²⁹ relevant to Turkey’s restrictions with regard to Cyprus, and will not close the other chapters until Turkey fulfils its commitments under the Additional Protocol to the Turkey-EU association agreement, which extended the EU- Turkey customs union to ten member states, including Cyprus, in May 2004.³⁰ This meant that even though Turkey had progress in those eight areas and even though it fulfils the political criteria, it can not become a member of the Union unless it solves out the Cyprus problem. As a result, the membership prospect become vague and the credibility of EU political conditionality declined for Turkey.

The perceived application of double standards of political conditionality which is experienced through the Cyprus case, the Greek vetoes over Turkish inclusion to the Customs Union for national benefits and the suspension of eight chapters caused the accession process to lose its attractiveness for Turkey.

²⁹ The eight chapters are Chapter 1 Free movement of goods; Chapter 3 Right of establishment and freedom to provide services; Chapter 9 Financial services; Chapter 11 Agriculture and rural development; Chapter 13 Fisheries; Chapter 14 Transport policy; Chapter 29 Customs union; Chapter 30 External relations accessed through http://www.avrupa.info.tr/AB_ve_Turkiye/Muzakereler,Muzakereler_Sayfalar.html?pageindex=3

³⁰ For the text of the press release of 2770th Council Meeting: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/92122.pdf

3.7.2. Privileged Partnership and Mixed Signals from the EU

With a long history dating back to 1963, Turkey's submission to the EU membership has been controversial. Although, the Helsinki Summit granted Turkey the candidate status, it did not ease the disagreements between Turkey and the members of the EU. The election of Justice and Development Party –AKP- in 2002 changed the course of Turkey's relations with the EU thanks to the quick reform process that AKP adopted. Turkey soon adopted numerous reforms and constitutional packages to comply with the EU rules. Even though there have been rises and falls, Turkey showed enormous progress towards membership and was finally given the membership perspective with the start of the accession negotiations in 2005. Nonetheless, discussions on EU's enlargement fatigue and its absorption capacity did not help the doubts on Turkish accession to disappear. There have been several debates about Turkey's status in the EU; while some countries, like Britain, were in favour of the Turkish accession, some others opposed to it. More recently, oppositions to the prospect of Turkey's full membership have been translated into support for alternative mode of advanced EU-Turkey relations called "privileged partnership" (Grigoriadis, 2006: 153).

The "privileged partnership" alternative was first offered by German Christian Democratic parties (Bürgin, 2010: 420) as an answer to the absorption problem of the Union. Angela Merkel, the leader of Christian Democratic Union and the leader of the Bavarian Christian Socialist Union (CSU) Edmund Stoiber became the primary advocates of "privileged partnership" option to gain support of the German public that was not in favour of Turkish accession to the Union. A similar case was observed in France too. First in 2004, by Valéry Giscard d'Estaing and then by Nicolas Sarkozy in 2005 (Grigoriadis, 2006:154) mentioned the alternative for Turkish membership. In the elections of 2009, both Sarkozy and Merkel once more highlighted their stands in favour of privileged partnership for Turkey and won the public. It was not only Germany and France but also Austria seeks for alternatives to Turkey's inclusion to the EU. Chancellor Wolfgang Schuessel said in October 2005 that he acknowledges popular concerns over the expansion of the Union and thus pushed for alternatives for Turkey.³¹

³¹ <http://news.bbc.co.uk/2/hi/europe/4299626.stm>

Not only, the alternatives offered but also the European public's opposition and scepticism about welcoming Turkey caused the European politicians to resist Turkish membership as well. On September 26, 2007, Sarkozy stated, "I do not think that Turkey has a place in Europe" claiming instead that Turkey's place was in "Asia Minor".³²

In addition to all of these doubts and proposals, Turkey also faces another hurdle on its path to EU membership. Both France and Austria signalled referendum on Turkish membership. On 24 June 2008, the French Senate voted to drop a constitutional requirement to hold a popular vote before a new country can enter the EU, removing a key irritant in its relations with Turkey.³³ Shortly after this, on 23 August 2008, Austria's Foreign Minister Ursula Plassnik told the German daily *Frankfurter Allgemeine Zeitung* "Coalition parties have agreed to go for a referendum if Turkey's accession talks are concluded in favour of a decision to prepare a membership agreement".³⁴ Besides, Sarkozy's efforts to disable the progress in accession talks paid off with his prevention of opening of the chapter on economic and monetary policy in June 2007 (Bürgin, 2010: 421).

Considering the 1999 Helsinki decisions and 2005 start of accession negotiations, these developments puts the EU's credibility at stake. Both the alternatives like the privileged partnership and the referenda offered by France and Austria weakens the EU conditionality for Turkey. The risk of decrease in EU's credibility was also observed by the former President of Finland, Ahtisaari in September 2009. He stated that "In 1999... we said that Turkey is a candidate state destined to join the union on the basis of the same criteria as apply to other candidate states. So it's the credibility of the EU at stake".³⁵

On the whole, this section argued that the Turkish-EU relations have been affected by the member state specific reservations such as the French reluctance and the Greek position to advance its own interests. Further complications arose when Cyprus became a member in 2004, as a divided island complicating Turkey's already not so smooth accession process to the EU. The mixed signals, the suspension of chapters and the

³² <http://www.jewishpolicycenter.org/96/sarkozys-policy-on-turkeys-eu-accession-bad-for>

³³ <http://www.euractiv.com/enlargement/france-scraps-referendum-turkey-eu-bid/article-173616>

³⁴ <http://www.euractiv.com/enlargement/austria-signals-referendum-turkey-eu-accession/article-174868>

³⁵ <http://news.bbc.co.uk/2/hi/europe/8241543.stm>

continuing blockage by Cyprus lessened the EU's credibility in the Turkish eyes and made the accession more distant. This meant that the EU's impact and conditionality similarly dwindled in the Turkish case; an EU that is no longer credible can not exercise conditionality effectively.

4. Chapter 3: Freedom of Speech in Turkey

The process of democratic consolidation in Turkey has begun in the foundation years of the Republic. However, for long years the Turkish democracy could not go beyond electoral democracy and took several blows in the head with military interventions -1960, 1971, 1980-. The limits of electoral democracy and Turkish desire to take part in the European Union forced Turkey to adopt more liberal values and consolidate its democracy. Especially the Copenhagen Criteria set up by the EU in 1993 pushed Turkey to adopt the values of liberal democracy like separation of powers, justice, equality and human rights. In line with these values, Turkey has been going through a huge reform process –even though there have been ups and downs in this process- in which these EU fostered norms and rules are transferred to structural, legal and political practices.

This chapter will focus on the reforms that Turkey has been undergoing since its acceptance as a candidate country by the EU in 1999 with a special attention to the reforms regarding freedom of speech as one of the most important indicators of a functioning democracy.

It is of great importance to highlight the fact that although Turkey was not in the list of candidate countries in 1997, the European Council asked the Commission to monitor the progress of Turkey from the 1998 just like it would do to other candidate countries. Though, it should be also reminded that the Turkish reforms gained momentum with the election of Justice and Development Party in 2002 and began to decelerate after the start of accession negotiations in 2005. In light of these, the state, progress and/or regression of freedom of speech in Turkey will be first observed through the Regular Commission reports on Turkey between 1998 and 2011. Secondly, the Freedom House Ratings between 2002 and 2011 will be presented regarding Freedom of Press. Thirdly, Turkish cases that are brought to European Court of Human Rights between 1998- 2011 will be mentioned. The last part of this chapter will include an overview of the obstacles in Turkey's freedom of speech from 1998 to 2011.

4.1. Regular Commission Reports on the State of Freedom of Expression, Press and Broadcasting in Turkey (1998- 2011)

After 1997 Luxembourg Summit, the Council decided that the Commission should monitor Turkey's compliance with the EU standards, even though Turkish candidacy came with the Helsinki Summit in 1999, just like it would do to the candidate states. Accordingly, Turkey started to adopt EU rules and norms and make reforms in the area of speech. These adaptations and reforms gained momentum only after Turkey was granted with the candidate status in 1999 and started to slow down after the beginning of the accession negotiations in 2005. This section deals with the Turkish reforms to comply with the EU rules in the area of freedom of speech. It is crucial to emphasize that the reports of the Commission assesses freedom of speech in Turkey under the headings of "freedom expression", "freedom of press" and "freedom of broadcasting" all of which will be taken into account.

4.1.1. Turkish Reforms in Freedom of Speech 1998- 2011

In the Cardiff European Council of June 1998, the Council asked the Commission to prepare Turkey for membership. Within these preparations, the Commission was also asked to report to an early Association Council on progress made³⁶.

Turkish progress on freedom of speech was quite slow between the years 1998 and 2001 (see Table 1). There are no reforms neither in the area of freedom of expression nor of press nor of broadcasting until 2001. The only change that was mentioned in 1998 was the amendment of the 1982 Constitution in 1993. While in 2001, there are only minor changes in this respect. Keeping these in mind, it can be argued that there is either no process or very little progress in the area of freedom of speech between the years of 1998 and 2001.

³⁶ Regular Report from the Commission on Turkey's Progress towards Accession

Table. 1 Reforms on Freedom of Expression, Speech and Broadcasting in Turkey reported by Regular Commission Reports (1998-2001)

Area	Type	Change
1998 -	-	Amendment of Constitution in 1993
1999 -	-	-
2000 -	-	-
Freedom of Press	-	Amendment to Article 28 of the Constitution
Freedom of Broadcasting	-	Amendment to the status of High Audio-Visual Board (RTÜK)
		The provision that "publication shall not be made in any language prohibited by law" has been removed
		Legalized retransmission, established ethnical standards that could have further limited the freedom of expression and plurality of ownership

Although the membership prospect was given to Turkey in 1999 with the candidacy, Turkish reforms could not begin until 2001 because of the reasons mentioned in the previously in Chapter 2. On October 2001, Turkey adopted its first Constitutional Package under the National Program for the Adoption of the Acquis and it made several amendments to the 1982 Constitution by also referring to the Articles of the freedom of expression. However, a more accelerated reform process begun only in 2002.

“2002-2005” period can be marked as the peek point in the reform process of Turkey. Several reform packages and a lot of constitutional amendments were adopted during those years. A big step forward was taken between Turkey and the EU when Justice and Development Party (AKP) could get the majority of the seats in the elections at the end of 2002. AKP immediately accelerated the harmonization process. All of the reforms done and assessed by the Commission can be found in Table 2.

In 2002, with the first reforms packages introduced amendments to the most controversial articles of the Turkish Penal Code and Anti-Terror Law. The articles 159-312 of the Turkish Penal Code and 7 and 8 of the Anti-Terror law were strictly restricting the freedom of thought, expression, press and broadcasting. Article 159 of the Penal Code was prohibiting “insulting” state institutions; including the military while Article 312 imposed three-year prison sentences for incitement to commit an offence and incitement to religious or racial hatred. Both of these articles were amended in 2002. In addition, the same reform

Table 3. Reforms on Freedom of Expression, Speech and Broadcasting in Turkey reported by Regular Commission Reports (2002-2005)

Area	Type	Change
Freedom of Expression	1st reform package	Amendments to Article 159 of the Turkish Penal Code Maximum penalty was reduced from 6 years to 3 years Fines imposed for criticizing Turkish laws was abolished
	3rd reform package	Additional amendments to Article 159 of the Turkish Penal Code Expressions of criticism of institutions are no longer subject to penalties unless they are intended to "insult" or "deride" those institutions Notion of "incitement" was added: "in a way that may be dangerous for public order"
		Amendments to Article 312 of the Turkish Penal Code Introduction of new type of criminal offence: "insulting part of people degradingly and in a way that hurts human dignity"
		Introduction of notion of "propaganda in connection with the terrorist organization in a way that encourages the use of terrorist methods" Sentences were increased
Freedom of Expression	1st reform package	Amendments to Article 7-8 of Anti-Terror Law Bans on television and radio broadcasting were shortened but fines were increased Notion of "visual" propaganda was introduced
	1st reform package	Amended Article 8 of the Anti-Terror Law Fines increased from a min. 100 million TL to min. 3 billion TL Did very little to ease restrictions on freedom of press: introduced the possibility to confiscate the printing equipment of publications found acting against "integrity of the nation, republican order, or the country's national security"
Freedom of Press	2nd reform package	Modification of Press Law Maximum suspension was shortened
	3rd reform package	Modified Press Law Replacement of prison sentences with heavy fines
Freedom of Broadcasting	1st reform package	Amended Article 8 of the Anti-Terror Law Maximum closure period for radio and TV channels was reduced from 15 to 7 days
	3rd reform package	Modified High Audio-Visual Board (RTÜK) Allowance of broadcasts in different languages and dialects used traditionally by Turkish citizens in their daily lives Censorship to Internet content: web pages are subjected to get the approval of authorities before being published
	-	Adoption of RTÜK law Prohibition of broadcasts which violate "the existence and independence of Turkish Republic, the territorial and national integrity of the State, reforms and principles of Atatürk" or "instigate the community to violence, terror or ethnic discrimination"
Freedom of Expression	6th reform package	Repeal of Article 8 of the Anti-Terror Law "Propaganda against the indivisible unity of the state" was repealed Amendment to Article 159 of the Penal Code Minimum sentence was reduced from one year to six months Amendment to 169 of the Penal Code Removed the provision sanctioning "actions which facilitated the operation of terrorist organizations in any manner whatsoever" Introduced the notion of "propaganda in connection with the terrorist organizations a way encourages the use of terrorist methods" by replacing "terrorist methods" with "resorting to violence or other terrorist means"
	7th reform package	Additional Amendments to Article 7 of the Anti-Terror Law Fines increased ten-fold while length of prison sentences remains at one to five years The scope for suspensions were narrowed to cover only offences considered to undermine the fundamental characteristics of Republic and the indivisible integrity of the state
	6th reform package	Amendments to the Cinema, Video and Music Works Law Any administrative decision to suspend a work in these fields must be confirmed by a judge within 24 hours
	4th reform package	Amendment of Article 15 of Press Law Now contains provisions that protect the owners of periodicals editors and writers from being forced to reveal sources
2003 Freedom of Press	7th reform package	Amendment of Article 426 of Law 765 Article has been added to exempt scientific artistic works and "works of literary value" from the scope of the article which bans publication on the grounds of moral principles

		Amendment of Article 427 of Law 765	Confiscated publications can no longer be destroyed or burned on the grounds of "hurting people's" feelings or "exploiting people's sexual desires"
Freedom of Broadcasting	-	Regulation was issued	It permits the state broadcasting corporation, TRT, to broadcast in languages and dialects traditionally used by Turkish citizens
	6th reform package	Legislative Amendment	Extending the possibility of broadcasting in languages and dialects used by Turkish citizens in their daily lives to private stations, in addition to TRT
Freedom of Expression	-	Adoption of New Penal Code	Narrows the scope of some articles that have been used to convict those expressing non-violent opinion. Minimum sentence for defamation was reduced Article 159 -named as Article 301 in the new penal code- and a provision criminalizing religious personnel for criticizing the state is unaltered. Article 305 was limited by Article 127 in the new penal code Article 216_ Individuals can be convicted under this article only if their "incitement to enmity and hatred" constitutes "a clear and close danger" Penalty for discouraging people from performing military service has been increased.
Freedom of Press	-	Adoption of New Press Law	Confiscation or seizure of printing equipment of a publishing house is no longer allowed in any circumstances Right of journalists not to disclose their sources is strengthened; the right to reply and correction is reinforced; prison sentences are mostly replaced by fines; sanctions such as closure of publications; halting distribution and confiscating printing machines are removed; and the possibility to confiscate printed materials has been reduced. Article 19 states that those who publish information concerning ongoing court proceedings will be punished by heavy fines.
2004 Freedom of Broadcasting	-	New Regulation	Established the possibility for private national television and radio channels, in addition to the state broadcaster TRT, to broadcast in languages other than Turkish Sets strict time limits for broadcasts in other languages
Freedom of Expression	-	Amendments to New Penal Code	Aggravated sentences were removed in many cases Acts of expression with the purpose of providing information/aim at criticism should not be criminalized. Reasoning associated with Article 305 was deleted Scope of Article 125 on defamation was narrowed A number of articles that were used to restrict freedom of expression remained.
2005 Freedom of Press	-	Establishment of a New Legal Assistance and Support Service	To provide a lawyer free of charge of journalists facing charges brought against them under provisions of the new Code

package also included amendments to Article 7 and 8 of the Anti-terror law. However, the Commission found those amendments insufficient of securing the right to freedoms. The second reform package included modification on the press law even though it did very little to ease restrictions on freedom of press. Same year, the third reform package was adopted and it modified the High-Audio Visual Board (RTÜK) by allowing broadcasts in different languages and dialects used traditionally by Turkish citizens in their daily lives. In line with this, a brand new RTÜK law was adopted censoring the Internet content and prohibiting the broadcasts which violate “the existence and independence of Turkish Republic, the territorial and national integrity of the State, reforms and principles of Atatürk” or “instigate the community to violence, terror or ethnic discrimination”. In short, the 2002 was an efficient year to adopt new legislations to guarantee the right to freedom of speech.

At the end of 2002 but mostly in 2003, AKP government continued the reform process started by the previous coalition government. It adopted additional reform packages in line with NPAA. In regards to freedom of expression, it repealed the Article 8 of the Anti-terror law within the context of the 6th reform package. Plus, the Cinema, video, Music works law was also amended by narrowing down its scope to cover only offences considered to undermine the fundamental characteristics of Republic and the indivisible integrity of the state. In the next reform package, the Article 159 of the Penal Code and Article 7 of the Anti-Terror law were amended once more. Meanwhile Article 169 of the Criminal Code which stated as follows, “Any person who, knowing that such an armed gang or organisation is illegal, assists it, harbours its members, provides it with food, weapons and ammunition or clothes or facilitates its operations in any manner whatsoever shall be sentenced to not less than three and not more than five years' imprisonment.”, was also amended. The same year, there have been some legal changes regarding the freedom of press as well. In the 4th reform package, the Article 15 of the Press law was revised to protect the owners of periodicals editors and writers from being forced to reveal sources. While the 7th package has altered and narrowed down the scope of Article 426 of the Law 765 on banning the publication on the grounds of moral principles, it prohibited the destruction or burning of the confiscated publications on the grounds of “hurting people's feelings” or “exploiting people's sexual desires” by amending the Article 427 of the same Law. On the

press freedom it issued a regulation that permits TRT to broadcast in languages and dialects traditionally used by Turkish citizens.

The following year, 2004, constitute an inventive period for reforms. The highlight reform of that year in regards to freedom of expression was the introduction of the new penal code which narrows the scope of some articles that had been used to convict those expressing non-violent opinions. One of the most attention grabbing changes was the replacement of Article 159 of the Penal Code with the New Article 301. Although, the introduction of this new penal code seemed like a big improvement it caused several significant debates on the restriction of freedom of expression in the following years. Another big change was the adoption of the New Press Law through which the Right of journalists not to disclose their sources is strengthened; the right to reply and correction is reinforced; prison sentences are mostly replaced by fines; sanctions such as closure of publications; halting distribution and confiscating printing machines are removed; and the possibility to confiscate printed materials has been reduced. All in all, 2004 was the landmark of changes regarding freedom of speech in Turkey.

2005 can be considered as the last year of accelerated reform period in Turkey. It amended the New Penal Code that was introduced a year ago by removing aggravated sentences and allowing the acts of expression with the purpose of providing information/aim at criticism. In addition, a New Legal Assistance and Support Service was established providing free legal consultant to journalists facing charges under the new penal code.

After the accelerated compliance efforts of Turkey between the years of 2002-2005, speed of adoption of EU rules started to diminish (See table 3) As reported by the Commission report, only new legal initiative in regards to freedom of expression was the circular issued by Ministry of Justice which mainly instructs prosecutors to take into consideration both Turkish legislation and the ECHR. The Commission did not report any reform taken under freedom of expression, press and broadcasting in the years of 2007, 2009 and 2010. The only alterations recorded by the progress reports in the “2006-2010” period were the amendment to the new Article 301 of the Penal Code in 2008 and the Invalidation of Article 216 of the Press Act as well as the Law on Establishment and broadcasting Principles that only provide partial improvements as regards to the

interpretation of certain rules on broadcasting bans and sanctions imposed on broadcasters in 2011.

Table 2. Reforms on Freedom of Expression, Speech and Broadcasting in Turkey reported by Regular Commission Reports (2006-2011)

Area	Type	Change
Freedom of Expression (Including the Media)	-	To instruct prosecutors to take into consideration both Turkish legislation and the ECHR along with a monthly monitoring mechanism of criminal investigations and court cases against press and media
2006	-	A circular issued by Ministry of Justice
2007	-	-
Freedom of Expression	-	Wording of the article had changed and lowered the upper limit of the penalty and abolished the higher penalty for insults in a foreign country.
Freedom of Expression	-	Amendments to Article 301 of the Turkish Criminal Code
2008	-	Introduced a requirement for permission to be obtained from the Justice Minister to launch a criminal investigation.
2009	-	-
2010	-	-
Freedom of Press	-	Prosecutors will no longer be bound to certain time restraints if they want to file a case following a publication in a periodical.
Freedom of Broadcasting	-	Partial improvements as regards to the interpretation of certain rules on broadcasting bans and sanctions imposed on broadcasters.
Freedom of Broadcasting	-	Law on Establishment and broadcasting Principles
2011	-	Potential fines have been substantially increased.

In the last 5 years of the Progress Reports, rather than reforms or amendments that secure the freedom of expression, press and broadcasting the Commission mostly criticize the status of these freedoms especially in regards to the applications of the Article 301 of the New Penal Code as well as the bans on the several books, periodicals and Web pages. As these does not fall under the reforms, they will be mentioned in the last section of this Chapter.

4.2. Freedom House rankings on Turkey

Freedom House supports democratic change, monitors freedom, and advocates for democracy and human rights around the world.³⁷ As it is a total independent organization from the EU, it is also fruitful to take the Freedom House rankings on freedom of speech in Turkey into account. However, the span of these rankings is slightly different than of the EU. Thus, the most relevant heading that the Freedom of House has to the scope of this thesis is the annual reports on the “Freedom of Press”. The special report on the “freedom on the net” which was published in 2009 and on “Turkey in Transit” published in 2008 does not rank Turkey but includes parts that assess the situation in regards to freedom of speech in Turkey. This part will include solely the ranking of Turkey between 2002 and 2011 but the other assessments will be mentioned in the last section of this chapter.

4.2.1. Freedom of Press in Turkey

Freedom House has divided the countries into three main categories in relation to the status of freedoms in those countries. The scale to determine these categories go from 0 to 100; 0 represents the highest level of freedom while 100 the lowest. The countries that get from 0 to 30 in the scale are considered as “free”; the ones graded from 31 to 60 are “partly free”; and finally the ones that fall between 61 and 100 are identified as “not free” countries. Taken these into account, from 2002 to 2011 Turkey was characterized as “partly free” with a minimum score of 48 in 2005 and in 2006 and a maximum of 58 in 2002. This range makes Turkey closer to “not free” countries rather than “free” ones.

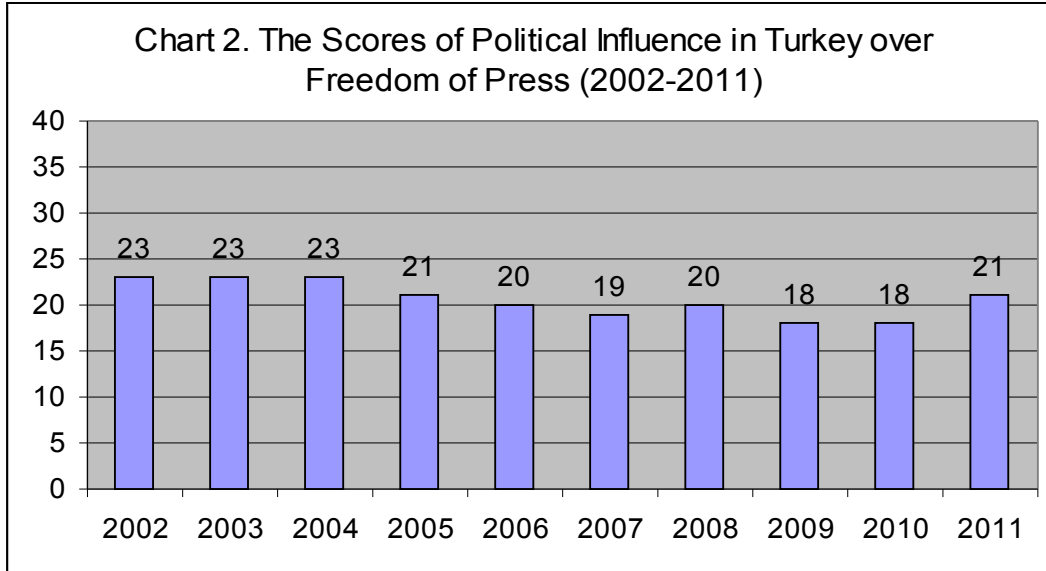
The total score of freedom of press is 100, which is the sum of three sub-categories determined by Freedom House. The first category is the “legal environment” that is relevant to freedom of press; it has a 30% role in the total score. The second category is the “political influences” over press freedom which has 40% effect on the overall score. And the last determinant is the “economic pressures” that impact the freedom of press constituting the other 30% of the total rating. Considering these, the ranking of Turkish press freedom from 2002 to 2011 can be seen in the following charts.

³⁷ <http://www.freedomhouse.org/about-us>

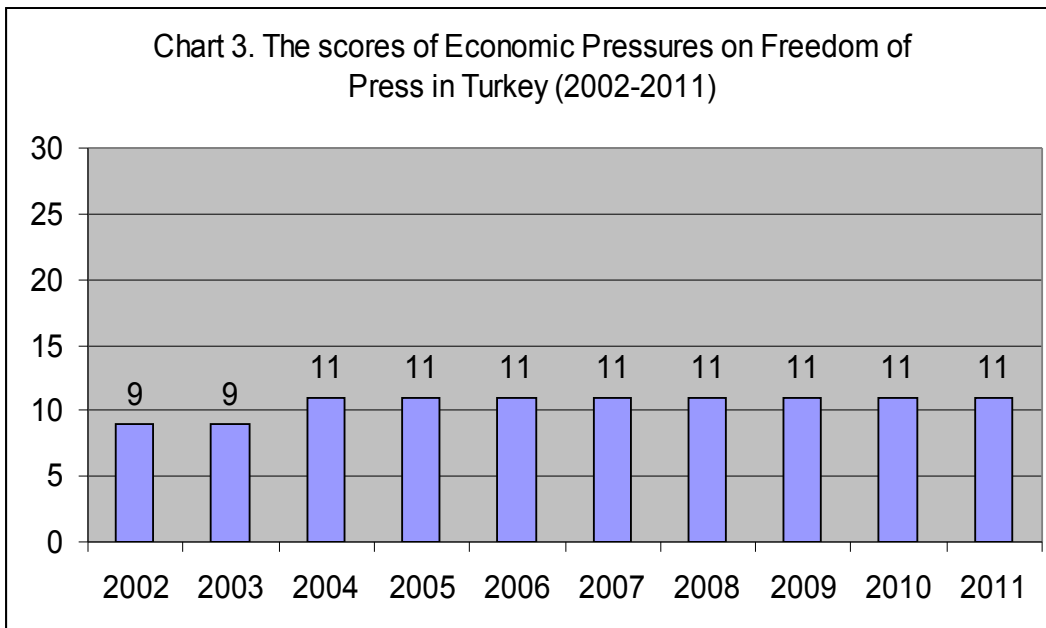


The first graph shows the state of legal environment in Turkey from 2002 to 2011 that intervenes with the freedom of press. It can be clearly seen that the rate of legal environment in 2002 is the least convenient environment for the freedom of press in the country. Over three years, it gradually goes down to 16, the least, in 2005 representing the best legal environment for press freedom. Starting from the year 2006, it steadily goes up to 22 in six years to make up the score for 2011. This means that the reforms that two Turkish governments (the coalition government until December 2002 and AKP government until present day) designed became most effective for freedom of press until 2005 while they once more started to regress and became almost as ineffective as the reforms made in the year 2002.

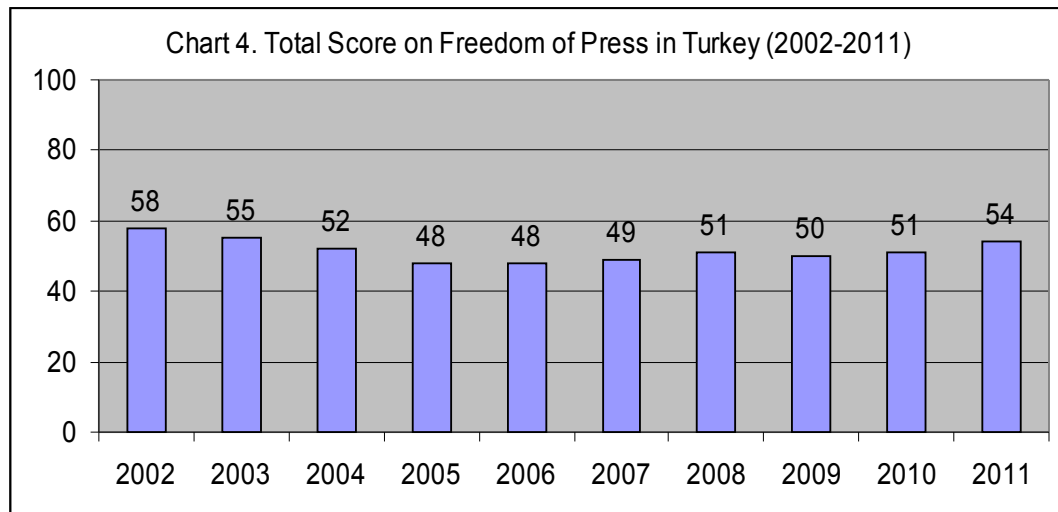
The second chart indicates the scores of political influence over press freedom in Turkey between the years 2002-2011. The score for political influence stagnates at 23 between the years 2002 and 2004. Starting from the year 2005, it gradually falls down to 19 in 2007. It suddenly goes up to 20 in 2008 and again drops down to 18 and levels there for two years until the end of 2010. In 2011, the score of political influence rises to 21 getting even with the score of 2005.



The third graph represents the scores of economic pressures on the freedom of press in Turkey between 2002- 2011. It starts with a score of 9 out of 30 in the year 2002 and levels there for two years, till the end of 2003. In 2004, it rises up to 11 and stagnates there for the remaining seven years until 2011. This shows that the economic pressures did not change its level of influence over freedom of press in Turkey in the last decade.



The last chart (Chart 4) displays the total score of press freedom in Turkey in the last ten years (2002-2011). The score for the year 2002 starts as 58 and declines as much as 48 in the year 2005 and 2006. It slowly increases to 49 in 2007 and 51 in 2008. In 2009, it drops to 50, whereas it starts going up again with 51 in the year 2010 and 54 in 2011.



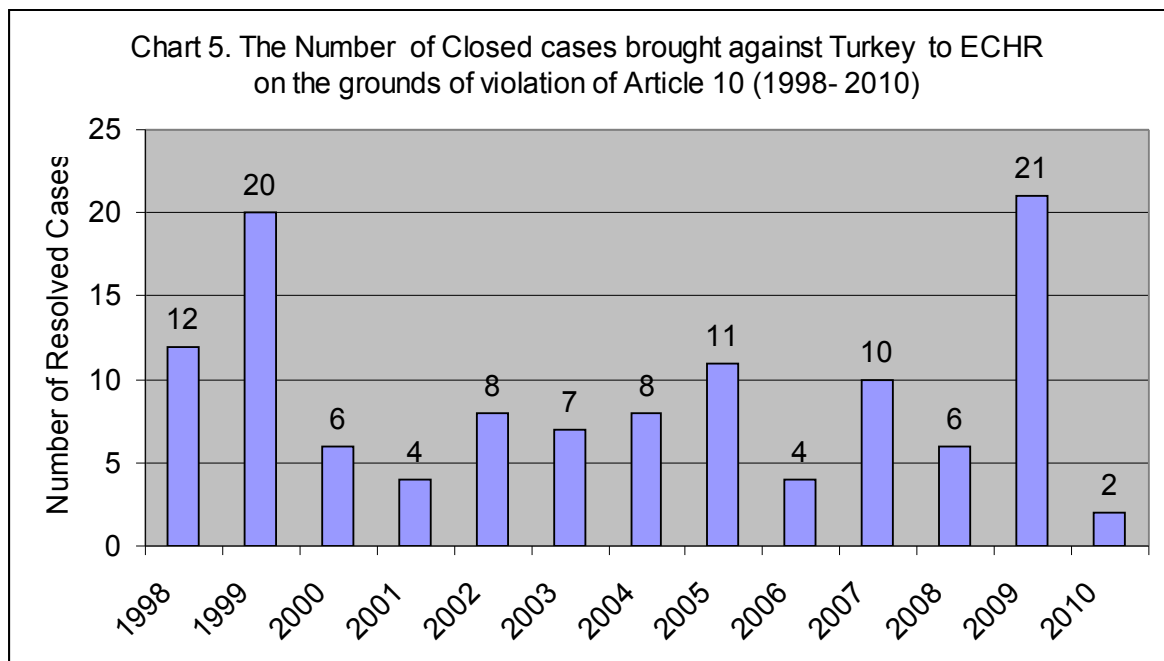
When Chart 4 is compared to Chart 1, the score of legal environment enabling or disabling freedom of press in Turkey, the trends in both charts overlap. Moreover, the scores of political influences in Chart 2 and the economic pressures in Chart 3 do not follow the trends in the Chart of the total score. This indicates that the most influential score on the rate of the freedom of press in Turkey is the score of legal environment which constitutes the reforms made between 2002 and 2011 in Turkey regarding freedom of speech.

4.3. Turkish Cases in the European Court of Human Rights (1998- 2011)

There have been a vast number of cases³⁸ brought against Turkey to the European Court of Human Rights (ECHR) with respect to the Article 10 of the European Convention of Human Rights. For the purposes of this thesis, it is important to see the number of above mentioned cases between 1998 and 2011. Since not all of these cases are evaluated as a

³⁸ All of the court cases brought to ECHR against Turkey on the grounds of violation of Article 10 of EcoHR can be found at HUDOC database www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/

violation of Article 10 by ECHR. Thereto, in this section, only the ones that are found to violate this Article are taken into account. Chart 5³⁹, below, includes the number of resolved cases that were brought to ECHR on grounds of the most controversial Articles (159 –later on became 301- and 312) of the Turkish Criminal Code or the Articles (7 and 8 – repealed in 2003-) of the Prevention of Terrorism Acts. This section will not include any content of these cases since there are too many of them. However, the most controversial of these will be touched upon in the last section of this Chapter.



This chart shows the number of resolved cases brought to the European Court of Human Rights by individuals against Turkey on the grounds of violation of Article 10 between the years 1998 and 2010. The number of cases increases 12 to 20 from 1998 to 1999. In 2000, the number of these cases dramatically drops to 6 and continues to drop slightly to 4 in 2001. In 2002, the number goes up to 8 followed by a drop to 7 in 2003 and goes back to 8 once more in 2004. This number suddenly goes up to 11 in 2005 but

³⁹ The number of cases are calculated from the list provided by ECHR Document Collections at <http://cmiskp.echr.coe.int/tkp197/search.asp?sessionid=87616191&skin=hudoc-en>

decreases to 4 in 2006. In 2007, the number climbs up to 11 again. In the last three years, the fluctuation in the numbers is significant with a drop to 6 in 2008 and a sharp increase to 21 in 2009 followed by a rock-bottom of 2 in 2010. This inconsistency in the number of resolved cases strongly overlaps with the number of reforms made in Turkey to conform to the EU conditions with respect to freedom of speech between the years 1999 and 2005. However, the variation of number of cases after 2006 does not coincide with the reform process.

4.4. The obstacles in Turkey's freedom of speech from 1998 to 2011

Till this section, this Chapter covered the reforms that Turkey has gone through, the Freedom House ratings of Press Freedom in Turkey, and the number of resolved cases which were violations of Article 10 of the ECHR in the last decade. In addition to all these, this section will give insights on the state of freedom of speech –freedom of expression and press- in Turkey for the same period.

Starting with the first progress report on Turkey published by the main concerns and obstacles in the way of freedom of speech were the two articles of the Turkish Penal Code - Article 159 concerning insults to parliament, army, republic and judiciary and Article 312 concerning incitement to racial, ethnic or religious enmity- and the two articles of the anti-terrorist law, namely Article 7 and 8 disseminating separatists propaganda. These were the common concerns that were mentioned both in the Regular Commission Reports on Turkey and the annual reports on the Freedom of Press of Freedom House. The 1999 Commission Report⁴⁰ on turkey states that 347 individuals under Article 159 and 312 of the Penal Code and 1317 of them under Anti-Terrorist Law were sentenced.

In the year 2000, the Commission reported⁴¹ that the courts continue to restrict the freedom of expression notably when the issue is relevant to the population of Kurdish

⁴⁰ For the text of Regular Commission report on Turkey, 1999:
http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1999.pdf

⁴¹ For the text of Regular Commission report on Turkey, 2000:
http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2000.pdf

origin. The case brought against Akin Birdal, the chairman of Human Rights Association under Article 312 the Penal Code.

Commission reports in 2001⁴² and Freedom House (2002)⁴³ ratings stated a total number of 80 journalists are reported to have been imprisoned for political activities or for alleged infringements of various laws. The case of Mehmet Uzun, on the grounds of insulting the judiciary and the republic; case of Fikret Başkaya for dissemination of separatist propaganda; and the confiscation of the book Mehmet Uzun are among some of the examples. It is also reported that, 9000 prisoners were convicted for crimes connected to freedom of expression. The same year marked 261 people under Articles 159 and 312 and 324 people under the Anti terror law convicted. Moreover, 10 radio and TV stations received penalties for closure for unacceptable comments on current events in August 2001. Freedom House (2002) also highlighted that despite the efforts allowing broadcasting in Kurdish, in November 2001 several media outlets were suspended.

The Commission Report of 2002⁴⁴ included the report of Association of Turkish editors on Ma 2002. It indicated that 40 books by 39 writers were banned in a very short period of time. While Ministry of Interior accounted 1309 books and periodicals that were confiscated in 2000. The same year in March, RTÜK banned a large number of TV and radio stations including CNN Türk. Freedom House (2003) covered the imprisonment of Sinan Kara, a journalist, as a result of alleged threatening of the son of Prime Minister Erdoğan. Plus, Turkish generals filed a lawsuit against the daily newspaper Zaman on the grounds for describing generals as pretentious and incompetent.

In 2003, The Commission⁴⁵ criticised RTÜK on heavy penalties given to private TV and radio station and accusations of violation of certain principles of the state. The closure of Çınar TV for a month constituted an example.

⁴² For the text of Regular Commission Report on Turkey, 2001:

http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf

⁴³ All Freedom House ratings regarding Freedom of Press can be found at

<http://old.freedomhouse.org/template.cfm?page=16>

⁴⁴ For the text of the Regular Commission Report on Turkey, 2002:

<http://ekutup.dpt.gov.tr/ab/uyelik/progre02.pdf>

⁴⁵ For the text of the Regular Commission Report on Turkey, 2003:

http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf

The following year, 2004, Commission⁴⁶ highlighted numerous cases of journalists, writers; publishers sentenced for reasons that contravenes with the standards of ECHR. For instance, in May, a journalist was sent to prison on the basis of 1951 law on the “Crimes against Atatürk”. The same year denoted 43 books of 37 writers, 17 publishers in trial and 18 books banned, only in the first half of the year. Meanwhile, RTÜK banned ART TV, based in Diyarbakır, for 30 days in violation of the principle of the “indivisible unity of the state”.

It can be argued that the year 2005 is the peek of the restrictions on freedom of expression because of a variety of cases brought in the court as a result of the Article 301 New Turkish Penal Code which is the replacement of the previous Article 159. The Commission⁴⁷ emphasized the case against Orhan Pamuk opened in August in regards to one of his remarks he made in an interview for a Swiss paper on the killings of Armenians and Kurds in Turkey. In October, Hrant Dink was convicted under Article 301 and given a suspended six month prison sentence in relation to the article he has written on the Armenian Diaspora. He also faced another trial because of the speech he gave in a conference in 2002. A moth later, in September, Emin Karaca had to pay a fine because of his critics on the past actions of Turkish military. It is of great importance to also mention the legal actions initiated by Prime Minister Erdoğan, against a cartoonist and satirists in June. The same month, a journalist got three months of imprisonment. Moreover, International PEN recoded 60 journalists, writers and publishers under judicial process.

Compared to 2005, 2006 was a calmer period. However, the court confirmed a six month suspended prison sentence for Hrant Dink on the basis of Article 301. Commission also denoted its concerns on the weakening of the independence of regulatory body by the actions of RTÜK in its 2006 report.⁴⁸

⁴⁶ For the text of the Regular Commission Report on Turkey, 2004:
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf

⁴⁷ For the text of the Regular Commission Report on Turkey, 2005:
www.mfa.gov.tr/data/AB/2005_progress.PDF

⁴⁸ For the text of the Regular Commission Report on Turkey, 2006:
http://ec.europa.eu/enlargement/pdf/key_documents/2006/Nov/tr_sec_1390_en.pdf

The Progress Report in 2007⁴⁹ indicates that the number of people prosecuted and convicted under the Penal Code almost doubled in 2006 compared to 2005 but it further increased in 2007 and half of these cases are taken under Article 301 –the number was indicated as 55 by Freedom House (2008)-. Freedom House (2008) highlighted that although the assassination of Hrant Dink charges were subsequently dropped, his son and the owner of Agos were convicted on the same charges.

Following year, 2008, Commission⁵⁰ states that the implications of Article 301 remain the same. Meanwhile, frequent website bans with disproportionate scopes and durations are observed; the ban on YouTube is the most significant case. According to Turkish Press Freedom organization refereed by BiaNet, the number of prosecuted journalists, publishers, activists increased from 254 in 2007 to 435 in 2008. Additionally, Alper Turgut, journalist, was fined with 20.000 TL on the grounds for reporting a torture case was thrown out because too much time has passed (Freedom House, 2009). What's more is that Cihan Hayırsever, editor of Gğney Marmara Yaşam, was killed in December after a number of threats he got as a result of his focus on local corruption. The same year, Prime Minister Erdoğan filed his fifth law suit against satirist magazines for unflattering cover image and Hürriyet announced that Prime Minister's office had revoked the accreditation of seven senior reporters without explanation in November 2008 (Freedom House, 2009).

The year, 2009 marked the revisions on the controversial Article 301, thus, it was no longer used systematically. Accordingly, Commission⁵¹ observed a decline in the number of prosecutions under this article. Though, the tax related procedures against Doğan Media Holding and infliction of high fines remained as concerns to restrict freedom of press. Moreover, civil procedures are filed by politicians in respect to violation of their rights by

⁴⁹ For the text of the Regular Commission Report on Turkey, 2007:
http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf

⁵⁰ For the text of the Regular Commission Report on Turkey, 2008:
http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf

⁵¹ For the text of the Regular Commission Report on Turkey, 2009:
http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf

publishers, journalists, writers and politicians. Plus, the website bans continue to limit the freedom of Internet; YouTube ban continues to take place since May 2008.

Freedom House (2011) reports that 104 journalists were tried in 2010 on alleged offenses and 30 of them end up in prison at the end of the year. For instance, Editor in chief of Kurdish Azadiya Welat, Vedat Kurşun, was sentenced to 166 years in prison on the grounds for disseminating PKK propaganda and the editor manager, Emine Demir, was given 138 years of sentence because of the same reason. The Ergenekon Case and the number of cases opened against journalists raises concerns of the Commission in 2010.⁵² Freedom House also reports that at the end of 2010 at least 47 journalists remained in detention pending trial related to Ergenekon Case.

The latest Commission Report on the Progress on Turkey was published in 2011. Commission indicates serious concerns regarding the imprisonment of journalists and the number of journalists who are in detention. Meanwhile, RTÜK still continued to warn and fine several TV channels failing to respect the privacy of historical characters –the case of TV series “Magnificent Century”-; discussion on homosexuality –the case of Haber Türk and Digitürk’s screening of Sex and the City 2-; and inclusion of homosexual scenes – ATV’s display of two men in the same bed in TV programme-.

All in all, it can be stated that from although there have been numerous reforms adopted, especially in the 2002- 2005 period, the restrictions on freedom of speech remained the same and even got more frequent and stricter in certain cases –like the case of Article 301- between the years of 1999- 2011. It can be argued that freedom of speech in Turkey has never reached the level required by the EU. One can even state that when the murders, convictions and detention periods of journalists, publishers and writers are considered, the state of freedom of expression in Turkey did not even get close to reach the standards endorsed by the EU for accession.

The next chapter of the thesis will connect the situation described in this chapter with the second chapter of the thesis trying to support the main hypothesis of the thesis which is “when the credibility of the EU membership prospect is high, the impact of the EU’s political conditionality is substantial on the freedom of speech as an indicator of democracy” through the case of Turkey.

⁵² For the text of the Regular Commission Report on Turkey, 2009:
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf

5. Conclusion

Turkey's relationship with the EU has been a long and complicated because of the changing dynamics between parties. After the establishment of the Copenhagen Criteria in 1993, Turkey, just as other countries aspiring for EU membership, was bound to fulfil the Criteria. The real marathon of Turkish harmonization process has started after the 1998 Council Summit in Cardiff as even though Turkey was left out from the list of candidates declared in 1997 Luxembourg Summit, the Council demanded Commission to monitor Turkey and to publish Progress Reports on the state of Turkish progress. This meant that the EU still wanted to have close relations with Turkey.

The real promise for membership came with the 1999 Helsinki Summit when EU granted Turkey with the candidate status and developed a pre-accession strategy which Turkey was a part of. However, because of EU'S hesitations over Turkish membership observed first in 1997 through the exclusion of Turkey both from Agenda 2000 and Luxembourg and then, in 2000 in Nice Summit –Turkey was not considered during the planning of institutional reforms which will operationalize after the next enlargement-. Thus, the credibility of EU was not high for Turkey. As a result, the EU political conditionality was relatively weak on the process of democratic consolidation, particularly in the area of freedom of speech in Turkey until the year of 2002. A very slow process was observed by the Commission Reports in regards to freedom of expression, press and broadcasting between 1998- 2001. A slow improvement was observed with the minor changes in relative legislations only in 2001 (see Table 1)

The things started to shift radically in the year 2002. First of all, the government has changed in Turkey. In general elections of 2002, AKP won the elections by getting the necessary number of seats in the parliament and became the governing party with the leadership of Tayyip Erdoğan. The decision making process of the government became a lot easier and less complicated compare the one of the previous coalition government -DSP-MHP-ANAP coalition-. Secondly, during the Copenhagen Summit in 2002, the Council declared that the accession negotiations were completed with Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia and that they would become full members of the Union in May 2004. This gave hopes for Turkey that once a country comply with the EU criteria, it is possible to become members

and thus, increased the credibility of the EU. Furthermore, during the same Summit in 2002, the EU promised Turkey that in the case of compliance, the accession negotiations would start with Turkey in 2004. Both of these incidents contributed to the credibility of EU by explicitly giving the carrot of membership prospect to Turkey. From this point onwards, Turkey has undergone a major reform process. Between the years 2002- 2005 Commission reported a total of 7 reform packages including amendments to contradictory article of the penal code and anti-terrorist law restricting freedom of speech; adaption of a New Turkish Penal Code; and various new regulations in the areas of press and broadcasting freedoms (see Table 2). Number of court cases brought to ECHR on the basis of Article 10 of the Convention regarding freedom of expression has decreased from 20 in 1999 to 8 in 2004 (see Chart 5). Freedom House also reported a remarkable change in the state of legal environment (see chart 1); the scores go dramatically down between 2002 and 2005 pointing to a significant progress on legal terms fostering press freedom. While Freedom House ratings regarding political influence (see Chart 2) and economic pressures (see chart 3) on press freedom were not noteworthy because of their stability, the total score of freedom of press in Turkey reached its highest levels in 2005 and 2006 (see Chart 4).

The Commission Progress Report in 2003 was assuring; it stated that the packages political reforms were found significant and the Council acknowledged the efforts and determination of AKP to the EU project. This report, followed by the report in 2004 pointing out the progress in civil control over military and the developments regarding political reforms as well as the efforts made in Cyprus issue –the “yes” vote for ANNAN Plan-, resulted in the beginning of accession negotiations. This became another landmark in Turkey’s relations with Europe. After the start of accession negotiations in 2005, the dynamic of fulfilling the criteria change because now, it is not only the adoption of political criteria but also the harmonization of the national law with the EU acquis. The process of opening and closing acquis chapters involves not only the EU actors but also the member states. As each member has an equal say for opening the chapter, it can be argued that this process becomes more politicised than the process of evaluating the political progress in a candidate country. Plus, the trend of offering Turkey alternatives than membership –by Germany, France and Austria- along with the possibility of holding referendum for Turkish membership in France and Austria caused Turkey to get mixed signals from the EU. All of

these factors caused a dramatic decline in the credibility of the EU political conditionality thus, its effect on Turkish democracy started to fade. This can be seen through the Commission Reports between 2006- 2011; minor or no reforms on the area of freedom of expression, press or broadcasting are recorded (see table 3). In addition, Freedom of House also shows that the legal environment for press freedom (see chart 1) as well as press freedom (see chart 4) in Turkey started to regress from 2006 onwards. The score of 2011 is nearly the same with the one of 2003.

In addition to all of these, the numbers of cases, indictments, detentions, the murders and the bans are strictly restricting and pressuring the freedom of speech in Turkey from 2005 onwards. Although, a new penal code has been introduced in 2005 in order to remove all the limitation on freedom of speech, the new penal code, namely the Article 301, raises serious concerns on the matter. What's more is that the number of journalists, publishers, writers who face numerous law cases and who are in prison or in detention for long periods of time increased from 2005 onwards, not only on the basis of Article 301, but in the framework of Ergenekon case and in regards to subjects including Kurdish minorities. The daily newspaper, one of the mainstream newspapers, reported the total number of journalist in prison as 105 on 30 January 2012.⁵³

On one hand, there are still serious concerns on the freedom of speech in Turkey. On the other hand, the EU started to loose its charm for Turkey. Considering the fact that even though the relations between Turkey and the EU has altered enormously over the last decade, Turkey still need an anchor to consolidate its democracy and EU still constitutes a relevant role model. Yet, it is for sure that EU's main foreign policy instrument, conditionality, has been loosing its influence over Turkey as a result of its fading credibility.

All of these show that the factors that are determining the credibility of the EU have been varying over the years. Firstly, the reliability of EU's delivery of threats and promises has been shifting like in the cases of Agenda 2000, Luxembourg Summit and 2000 Nice Summit. In most of the cases, EU's capability to deliver its promises were valid even though its consistency of delivering rewards have been hindering because of the mixed

⁵³ <http://blog.milliyet.com.tr/bir-gazeteci-daha-tutuklandi---tutuklu-gazetecilerin-sayisi-105-e-yukseldi---/Blog/?BlogNo=346063>

signals sent by the member states –mostly by France, Germany -. The data provided in this thesis show that these variations have impact on the Turkish reform process. This thesis showed that there is a positive correlation between the credibility of EU's conditionality and its effect on promoting democracy in the case of Turkey. Between the years 1998 and 2011, whenever the credibility of the EU was high for Turkey, the reform process gained speed; and whenever it declined, the democratic consolidation regressed.

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