A CRITICAL ANALYSIS OF POLITICAL CONDITIONALITY: POLITICAL TRANSFORMATION IN TURKEY FROM 1999 TO 2016

by

ÖZGE SARI

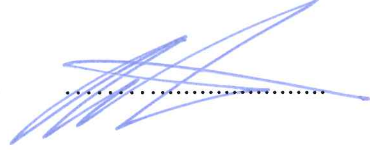
Submitted to the Institute of Social Sciences
in partial fulfilment of
the requirements for the degree of
Master of Arts

Sabancı University
July 2017

A CRITICAL ANALYSIS OF POLITICAL CONDITIONALITY: POLITICAL TRANSFORMATION IN TURKEY FROM 1999 TO 2016

APPROVED BY:

Prof. Dr. Meltem Müftüler-Baç ....
(Thesis supervisor)



Yrd. Doç. Dr. Kerim Can Kavaklı ....

Yrd. Doç. Dr. Selin Türkeş Kılıç ....

DATE OF APPROVAL ..28.07.2017..

© ÖZGE SARI 2017

All Rights Reserved

ABSTRACT

A CRITICAL ANALYSIS OF POLITICAL CONDITIONALITY: POLITICAL TRANSFORMATION IN TURKEY FROM 1999 TO 2016

ÖZGE SARI

M.A. Thesis, July 2017

Supervisor: Prof. Dr. Meltem Müftüler-Baç

Keywords: Turkey, European Union, Political Conditionality, External Incentives Model, Democratization

The thesis applies the external incentives model to the Turkish transformation, by analysing the effectiveness and credibility of political conditionality. The main empirical data used is drawn from the Regular Progress Reports that the European Commission prepared for the period of 1999 when Turkey was granted the status of candidate at the Helsinki Summit until 2016 when the most recent Progress Report was released. The thesis examines that to which extent and under which conditions political conditionality is highly effective in the case of Turkey and how the incumbent Turkish governments- the coalition and the AKP governments- stayed on course to fulfil some of these conditions irrespective of the external and domestic obstacles put on the way to Turkey's membership after 2005. The findings demonstrate despite the existence of main four variables of the model, it was the high domestic costs of compliance combined with the domestic veto players that notably determine the degree of reforms made by the government. This might also partly explain why the Turkish government gradually stopped complying with conditions after 2007 when the priorities of the AKP and the European Union began to diverge. The thesis further argues that domestic veto players, discussions on enlargement fatigue/ absorption capacity, alternative opportunities to EU membership- high privileged partnership-, lack of clear membership incentive and concern over the Cyprus dispute decreased the credibility of conditions in Turkey. These factors combined together to lessen the effectiveness of the EIM on Turkey.

ÖZET

SİYASİ ŞARTLILIĞIN ELEŞTİREL İNCELEMESİ: 1999'DAN 2016'YA TÜRKİYE'DE SİYASAL DÖNÜŞÜM

ÖZGE SARI

Yüksek Lisans Tezi, Temmuz 2017

Tez Danışmanı: Prof. Dr. Meltem Müftüler-Baç

Anahtar Sözcükler: Türkiye, Avrupa Birliği, Siyasi Şartlılık, Dış Teşvik Modeli Demokratikleştirme

Bu tez; dış teşvik modelini Türkiye örneğinde uygulayarak siyasi şartlılığın etkinliğini ve güvenilirliğini analiz etmektedir. Tezde kullanılan ampirik data, Türkiye'nin adaylığının ilan edildiği 1999 yılından son ilerleme raporunun yayınlandığı 2016 yılına kadar Avrupa Komisyonu tarafından hazırlanan ilerleme raporlarına dayanmaktadır. Bu tez, siyasi şartlılığın ne ölçüde ve hangi bağlamda etkin olabileceğini Türkiye örneğinde incelemekte ve hükümetlerin- koalisyon hükümeti ve AK Parti hükümeti- 2005'den sonra Türkiye'nin AB üyeliğinin önüne konulan dış ve iç engellere rağmen, şartlılıkları nasıl yerine getirdiğini incelemektedir. Bulgular, modelin şartlılığın etkinliğini üzerine öne sürdüğü dört temel unsurdan farklı olarak, yüksek domestik bedelin-veto oyuncuları ile birlikte- hükümet tarafından gerçekleştirilen reformlar üzerinde daha fazla etkili olduğunu göstermektedir. Bu, aynı zamanda AK Parti ve Avrupa Birliği'nin önceliklerinin farklılaşmaya başladığı 2007 yılından itibaren, Türk hükümetinin şartlılıkları yerine getirmede neden yavaşladığını da kısmen açıklamaktadır. Bu tez dahası domestik veto aktörlerinin, genişleme yorgunluğunun/iltihak kapasitesinin, AB üyeliğine alternatiflerin- yüksek imtiyazlı ortaklık-, adaylık teşvikinin eksikliğinin ve Kıbrıs sorununun; şartlılığın Türkiye örneğinde güvenilirliğini düşürdüğünü tartışmaktadır. Bütün koşullar dikkate alındığında, dış teşvik modelinin etkinliği Türkiye örneğinde azalmaktadır.

ACKNOWLEDGEMENTS

First of all, I would like to express my gratitude to my thesis supervisor Prof. Dr. Meltem Müftüler-Baç for her endless contribution and guidance in all phases of the thesis that it would not be possible without her to write the thesis in such a limited time period. I feel very lucky for having a chance to meet her. I am deeply grateful to her.

I would like to thank my jurors, Selin Türkeş Kılıç and Kerim Can Kavaklı for their time and valuable comments.

I would like to thank my parents and my brother for their patience. They have consistently supported and encouraged me without any question. I would also like to thank all my friends for their sincere friendship. Without them, doing a master degree would be unbearable.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION……………………………………………………………..1

CHAPTER 2: METHODOLOGY…………………………………………………………. ...6

2.1 Case Selection…………………………………………………………………………6

2.2 External Incentives Model……………………………………………………………8

2.2.1 Determinacy of Conditions…………………………………………………...9

2.2.2 Size and Speed of Rewards.…………………………………………………10

2.2.3 Credibility of Conditionality…………………………………………………...11

2.2.4 Domestic Cost of Compliance………………………………………………12

2.3 Regular Progress Reports of the European Commission…………………………13

CHAPTER 3: LITERATURE REVIEW………………………………………………16

CHAPTER 4: EFFECTIVENESS OF EU CONDITIONALITY………………………23

4.1 The Period of Golden Era in EU Conditionality: 1999-2006………………………23

4.2 The Slowdown of EU Conditionality: 2007-2011…………………………………42

4.3 The Reverse of EU Conditionality: 2012- present…………………………………63

CHAPTER 5: CONCLUSION………………………………………………………....68

BIBLIOGRAPHY…………………………………………………………………...71

APPENDICES……………………………………………………………………79

LIST OF ABBREVIATIONS

AKP	Justice and Development Party
ANAP	Motherland Party
CEEC	Central and Eastern European Countries
CHP	Republican People's Party
DSP	Democratic Left Party
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
EIM	External Incentives Model
EU	European Union
HSYK	Council of Judges and Prosecutors
MHP	Nationalist Action Party
NSC	National Security Council
PKK	Kurdistan Workers' Party
SSC	State Security Courts

LIST OF TABLES

Table 1: Presence of the four variables of the EIM in the case of Turkey 1999-2016.......25

Table 2: Turkish Political Reforms 2001-2007……………………………………...30

CHAPTER 1

INTRODUCTION

The breakdown of the Berlin Wall as the end of the bipolar international system marked the beginning of a new era in 1990 within the presence fabric of the European Union (EU) as the EU notably started to concentrate on the wide range of tools to prepare itself for the unpredictable outcomes of the new world. It has long been argued that the EU as a global actor constructed itself on the promotion of democracy, the rule of law, human rights, and respect for minorities in particular for the Central and Eastern European Countries (CEECs).[1] In addition, many scholars argue that the strategy of political conditionality has been the most effective enlargement instrument of the EU to induce the target governments to meet EU conditions for the achievement of their democratization.[2]

The rationale behind the strategy of conditionality is based on the '*reinforcement by reward'* that the target governments would comply with EU rules in exchange of a certain set of rewards offered by the EU mainly ranging from association agreements to a full membership as in the case of Turkey.[3] The question, here, under which conditions the target governments are willing to fulfil the conditions or is it EU incentives or other mechanisms that enforce them to comply with. To address this question, the thesis is based on the external incentives model, which emerged in the literature as a dominant model in its attempt to explain the enlargement and democratization strategy of the EU in the target/applicant states. Schimmelfennig and Sedelmeier argue that besides the

[1] Frank Schimmelfennig, (2004), 'The International promotion of Political Norms in Eastern Europe: A Qualitative Comparative Analysis', *Center for European Studies*, Working paper No:61, p. 2

[2] Frank Schimmelfennig, Stefan Engert, and Heiko Knobel (2003), 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality in Latvia, Slovakia and Turkey', *Journal of Common Market Studies* 41, 3, p. 495-518; Heather Grabbe, (2002), "European Union Conditionality and the Acquis Communautaire", *International Political Science Review*, 23:3, p. 249- 268.; Paul Kubicek (2011), 'Political conditionality and European Union's cultivation of democracy in Turkey', *Democratization*, Volume 18, Issue 4, p. 912; Milada Anna Vachudova, (2005), 'Europe Undivided. Democracy, Leverage, and Integration Since 1989', Oxford: Oxford University Press.

[3] Schimmelfennig et al., (2003), Ibid., p. 496-97

External Incentives Model (EIM) to explain the rule adoption of the CEECs in line with the EU, there are two other alternative models: the social learning and lesson-drawing. They have also been used by scholars to analyse the political conditionality in the context of the EU. Social learning model particularly focuses on the 'logic of appropriateness' where apart from the rational choice model, actors involved in the process are encouraged from a set of norms, ideas and values rather than national interests and priorities.[4] Lesson-drawing model, on the other hand, argues that rule adoption achieved by the target governments is not based on the rewards, incentives or persuasion that the EU offers but is based on the necessity of 'domestic dissatisfaction' where the actors involved aim to resolve the internal problems by complying with EU rules.[5]

Schimmelfennig and Sedelmeier, by analysing rule adoption in cross-issue areas through a comparative study in the CEECs, conclude that even though these models are not 'necessarily mutually exclusive', they may be partly interconnected or separated and the EIM, however, has been the major explanatory power to investigate how political conditionality works and more importantly under which conditions it is effective and credible[6] depending on the combination of four major factors, namely, (i) determinacy of conditions, (ii) size and speed of the reward, (iii) credibility of the incentives and (iv) size of the domestic cost combined with veto players.[7] To analyse the effectiveness of conditionality in the case of Turkey, the thesis aims to test the hypotheses on the basis of the 'judiciary section' of each Progress Report published by the Commission for the period of 1999 when Turkey was granted the status of candidate until 2016, the most recent report released by the Commission.

Kubicek emphasizes that Turkey presents a unique case for scholars interested in the EU's democracy promotion, since Turkey is a good illustrator of both opportunities and obstacles for the democratic conditionality.[8] Given the fact that Turkey was not

---

[4] Frank Schimmelfennig and Ulrich Sedelmeier, (2004a), 'Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe', *Journal of European Public Policy*, Vol. 11, Issue 4, p. 667

[5] Ibid., p. 668

[6] Ibid., p. 663

[7] Ibid., p. 664

[8] Kubicek, Ibid., p. 911

included into the candidate states of the European Commission's Agenda 2000 at the Luxemburg Summit, this constituted disappointment for Turkey as the country waiting longest at the EU door. This resulted in a serious crisis in Turkey-EU relations,[9] which was resolved in a matter of two years when the EU gave Turkey the status of candidate.[10] The change in the nature of Turkey-EU relations just in two years and the immediate increase in the rule adoption that Turkey found itself after 1999 make it worth analysing the effectiveness of EU conditionality through the EIM.

Based on the arguments derived from literature, this thesis further argues that the strategy of political conditionality for the democratization of Turkey had been highly effective for the period of 1999 to 2007. Turkey had undergone a process of rule adoption not only in technically low-cost issues but also politically high concern issues, including the demilitarization of Turkish politics, changing in the structure of National Security Council (NSC), or the abolishment of State Security Courts (SSCs). Therefore, EU's political conditionality has impacted rule adoption in Turkey, specifically in the early years of the Justice and Development (AKP) government (2002-2007) but this impact gradually slowed down as it encountered a certain set of obstacles after the opening of accession negotiations in 2005, and increasingly after 2007. In this respect, the thesis focuses on these major factors to understand why political reforms stalled post-2007 apart from the AKP's first term in office. The key factor isolated in the thesis to explain the decline is the AKP government's perceptions of the increased domestic costs of compliance in certain issue-areas.

The main finding of the thesis, therefore, is that as shown by the model, four major variables have an important explanatory power on the analysis of the effectiveness of conditionality but it is the domestic costs of compliance combined with the domestic veto players that mostly shaped and determined the effectiveness of the level of conditionality in Turkey. One of the important concerns with regards to conditionality has been the issue of credibility.

---

[9] Ali Aybey, (2004), "Turkey and the European Union Relations: A Historical Assessment", Ankara *Review of European Studies*, 4:1, p. 19-38.

[10] Meltem Müftüler-Baç, (2005), "Turkey's Political Reforms and the Impact of the European Union", *South European Society and Politics*, 10: 01, p. 16-30.

Schimmelfennig et al. state that: "EU conditionality finally became credible when the EU granted Turkey 'candidacy status' at Helsinki in December 1999." [11] There is no doubt that a clear EU membership prospective would encourage the target states to comply with EU rules as much as possible in order to ultimately become an EU member.[12] Since the conditions of the EU are not open to negotiations, the applicant countries must meet the requirements to receive the reward.[13] However, the EU promised that accession negotiations will be opened with Turkey by the end of 2005. Therefore, the clear membership incentive came after 2004 that most of the reforms were realized by the AKP government in the absence of a clear membership. Two years matter because it has been the times when there is high effectiveness of EU conditionality. By arguing that the reforms were not the outcome of a clear membership, does not falsify that the declaration of Turkey's candidacy or good neighbourly relations between the EU and Turkey does not have an impact on the rule adoption. In addition to this, I further argue that as the priorities of the AKP government perfectly match with the demands of the EU such as non-intervention of military into Turkish politics; the government, therefore, strategically used and justified EU conditions to base its political power and not to have a same fate with its successors-Welfare Party and Virtue Party, which were all banned from politics by the Turkish military as the guardian of the secular-Kemalist character of the Turkish state. Based on the analysis, conditionality is most effective when the government has low degree of domestic cost of compliance.

Turkey as the candidate waiting longest for EU membership-as it has an Association Agreement dating to 1963, and an application for full membership in 1987-has never been ensured that the door of the EU will be finally open even if and when the country fulfils the conditions. While the domestic veto players within the EU had the capability to put many obstacles on the road of Turkish entry, Turkey's own internal

[11] Frank Schimmelfennig, Stefan Engert, and Heiko Knobel, (2006), 'International Socialization in Europe, Palgrave Macmillan UK, p. 105 Quoted in Beken Saatcioglu, (2007), Compliance or Non-Compliance? The Causal Pathways of the European Union's Political Accession Conditionality in Poland, Romania and Turkey, paper presented at the annual meeting of the International Studies Association 48th Annual Convention, Hilton Chicago, CHICAGO, IL, USA, Access 25 April 2017, Available at http://www.allacademic.com/meta/p180217_index.html

[12] Bernard Steunenberg and Antoaneta Dimitrova (2007), Compliance in the EU Enlargement Process: The Limits of Conditionality, *European Integration Online Papers (EIoP),* Vol.11 No.5, p.3, Access 5 April 2017 Available at http://eiop.or.at/eiop/pdf/2007-005.pdf; Frank Schimmelfennig and Ulrich Sedelmeier, (2005), 'Conclusions: The Impact of the EU on the Accession Countries' in: Frank Schimmelfennig and Ulrich Sedelmeier (eds.) The Europeanization of Central and Eastern Europe, Ithaca and London: Cornell University Press, p. 215

[13] Ibid., p. 53

problems also played important roles. As argued by many scholars, Turkey's compliance with EU rules started to face with a clear disruption after the opening of accession negotiations.[14] The studies have admitted EU conditionality as the most successful foreign policy but the findings of the thesis argue that apart from the literature, conditionality framework in the case of Turkey does not work as it was expected to be. This only works when domestic environment is favourable.[15] While this is already shown explicitly by various studies[16] a comprehensive analysis of the Progress reports and how Turkey exactly complied with the EU demands is missing. This thesis adds to this body of knowledge with its systematic analysis of the Progress Reports on multiple issue areas.

The thesis is organized in the following manner: Chapter two is designed to specify the hypotheses and methodological framework. Chapter three discusses the current literature on political conditionality in relation with the external incentives model. Chapter four testes the hypotheses based on the empirical data drawn from the judiciary section of the Progress Reports between the years of 1999 and 2016, and examines the impact of the domestic veto players within the EU and Turkey on the effectiveness and credibility of EU conditionality in particular post-2007 period. In the last chapter, I will conclude the thesis.

---

[14] Beken Saatcioglu, (2007), 'Compliance or Non-Compliance? The Causal Pathways of the European Union's Political Accession Conditionality in Poland, Romania and Turkey', paper presented at the annual meeting of the International Studies Association 48th Annual Convention, Hilton Chicago, CHICAGO, IL, USA, Access 25 April 2017, Available at http://www.allacademic.com/meta/p180217_index.html

[15] Frank Schimmelfennig and Hanno Scholtz, (2007), 'EU Democracy Promotion in the European Neighbourhood: Conditionality, Economic Development, and Linkage', Paper for EUSA Biennial Conference, Montreal, May 2007, p.3

[16] Schimmelfennig and Scholtz, Ibid.; Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 661-679

CHAPTER 2

METHODOLOGY

Aftermath of the Cold War Era, the number of studies analysing the effectiveness and credibility of political conditionality has been numerous since the strategy of political conditionality has been salient on EU agenda.[17] The membership of European Free Trade Association (EFTA) countries in 1995, the signing of European treaties with the CEECs and the announcement of their candidacy first in 1997 Luxemburg summit, and then in 1999 Helsinki Summit; the issue has been particularly analysed on the basis of the CEECs in the early years of the 2000s. The studies predominantly focus on the democratization of those countries through a comparative study.[18]This is also why, the thesis takes upon political conditionality as the most effective instrument for the EU, and uses the external incentives model to assess its salience.

Case selection

The case study of Turkey is based on the theoretical assessment of the hypotheses provided by the external incentives model on political conditionality. The selection of Turkey as a case study is derived from the fact that the country presents a unique case for the analysis of political conditionality.

Turkey's long complicated EU adventure started with its first application to the EU 16 days after the Greek application in 1959.[19] The Commission at the time granted the status of 'association' to both parties in order to keep them in the sphere of Western part against the Communist threat.

---

[17] Grabbe (2002); Schimmelfennig et al. (2003); Vachudova (2005); Kubicek (2011)

[18] Schimmelfennig 2004; Schimmelfennig and Sedelmeier 2004a; Schimmelfennig and Scholtz 2007; Burç Yıldız 2014

[19] Meltem Müftüler-Baç, (1997), 'Europe in Change: Turkey's Relations with a Changing Europe', Manchester University Press

What makes interesting and worth studying Turkey with regards to political conditionality is that the country was not announced among the candidate states in the Luxemburg Summit of the EU in 1997 by stating that:

‘The Council confirms Turkey's eligibility for accession to the European Union. Turkey will be judged on the basis of the same criteria as the other applicant States. While the political and economic conditions allowing accession negotiations to be envisaged are not satisfied, the European Council considers that it is nevertheless important for a strategy to be drawn up to prepare Turkey for accession by bringing it closer to the European Union in every field.’[20]

However, only two years later, Turkey was granted the status of candidate in the Helsinki Summit in 1999. The Council stated that:

‘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.’[21]

The year, 1999, therefore can be considered as one of the turning points in Turkey-EU relations due to the fact that the EU explicitly acknowledged that Turkey is a European country, which desires to join the EU. Turkey’s Europeanness, therefore, was confirmed by the EU.

Given the fact that Turkey rapidly started to adopt a wide range of reform packages, this does not change the notion that there has always been continuous tension between the EU and Turkey. These tensions mostly concentrate on the Turkish fulfilment of EU conditions on the so-called sensitive issues such as the removal of death penalty, retrial of Abdullah Öcalan- the leader of the Kurdistan Workers’ Party (PKK)- or the abolishment of the SSCs which were heavily criticized by the EU. However, my aim is to show that Turkey took the issue seriously and tried to comply with EU rules in the initial times of the AKP government by adopting a wide range of harmonization packages, amending the Turkish Constitution in line with EU rules and making further reforms for the democratization of the country with regards to the Penal and Civil Code. However, the efforts of Turkey to comply with EU rules turned into a direct opposition after 2007

[20] Luxemburg Summit, Presidency Conclusions, 12 and 13 December 1997, Access 3 March 2017, Available at http://www.europarl.europa.eu/summits/lux1_en.htm#enlarge

[21] Helsinki Summit, Presidency Conclusions, 10 and 11 December 1999, Access 15 March 2017 Available at http://www.europarl.europa.eu/summits/hel1_en.htm

when the tension between the EU and Turkey on the fulfilment of conditions become obvious. As argued by Schimmelfennig et al., it would be better to select controversial cases in order to indicate both effectiveness and backslidings of the conditionality.[22] As the golden age of conditionality in Turkey between the years of 2002-2007 was reversed particularly after 2012, it is important to analyse the major factors, which brought ineffectiveness of political conditionality. Therefore, the research question of the thesis is as follows: *to what extent and under which conditions political conditionality has been effective during the period of 1999 and 2007, and which factors can be used to explain the main engines behind the changing strategy of the AKP government after 2012 based on the analysis of the external incentives model?*

External Incentives Model

The external incentives model was introduced by Schimmelfennig and Sedelmeier to analyse the main motive behind the political conditionality.[23] The EIM highly used in the literature of political conditionality is founded on the method of rational choice where actors involved in the process are assumed to act for the maximization of their own benefits at the bargaining table.[24] Actors take their decisions based on the cost-benefit assessment that if the expected utility of the reward is higher than the expected cost of compliance, then the target government fulfils the conditions.[25] In other words, the reward offered by the EU must be worth complying with conditions for the target country.[26] Even though, the target government has to fulfil the conditions and the EU must pay the reward as exchange of the compliance, political conditionality in the context of the EU, is based on mutual but asymmetrical bargaining process due to the fact that the EU stands as the only decision-maker, which has the ultimate say.[27] Given the fact that the EU has right to

[22] Schimmelfennig et al., (2003), Ibid., p. 503

[23] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 662-63

[24] Schimmelfennig, (2004), Ibid., p. 3

[25] Schimmelfennig et al., (2003), Ibid., p. 496-97

[26] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 662

[27] Schimmelfennig, (2004), Ibid., p. 4

decide on the payment or withdrawal of the reward, does not mean that the target state has no bargaining power.

The model predominantly argues that the target states would comply with conditions set by the international organization in exchange of a certain reward. The rewards in the context of the EU has been ranging from trade and association agreements to full EU membership. However, as emphasized by Schimmelfennig, membership incentive in comparison with other rewards, has been the dominant engine to induce the target states to fulfil the conditions.[28] As pointed out by Börzel and Risse, the strategy of political conditionality as a foreign policy instrument directly or indirectly brings about certain changes on the structure of the target countries through interstate bargaining or role of domestic actors.[29] However, the model further argues that there are additional factors that have to be taken into account for the effectiveness of political conditionality: the determinacy of conditions, the size and pace of rewards, the credibility of threats and promises, and the size of domestic costs of compliance.[30]

Determinacy of conditions

The concept of determinacy of conditions refers to a situation where the EU clearly sets the compulsory conditions and rules, which require the target governments to fulfil in exchange of the reward. The model in the context of the EU argues that as long as the EU clearly sets the conditions without any question, this strategy would enable the target governments to easily fulfil the conditions.[31] EIM argues that effectiveness of conditionality increases when the conditions are clear that the target government will be ensured what to comply with.[32] In the early years of political conditionality, particularly when the EU announced its famous Copenhagen criteria, it had been highly criticized on

---

[28] Frank Schimmelfennig and Ulrich Sedelmeier, (2005a), 'Conceptualizing the Europeanization of Central and Eastern Europe' in: Frank Schimmelfennig and Ulrich Sedelmeier (eds.), The Europeanization of Central and Eastern Europe, Ithaca and London: Cornell University Press, p. 10-17

[29] Tanja Börzel and Thomas Risse, (2000), 'When Europe hits home: Europeanization and domestic change', *European Integration Online Papers,* 4(15), p. 6-7

[30] Schimmelfennig and Sedelmeier, (2004a), Ibid. p. 664

[31] Ibid.

[32] Ibid.

the point that since democracy has been debatable issue over time and there is no universal, well-accepted definition on it, what does the EU mean by arguing that the applicant country must have functioning democracy.[33] On the one hand, determinacy of conditions not only would draw a clear roadmap for the target governments that they would know what to do for the achievement of the reward, but also would strengthen the credibility of conditions by treating the candidate governments on equal footings.[34] As emphasized by Schimmelfennig and Sedelmeier, the clear set of conditions also prevents the manipulation of EU requirements by the target governments. On the other hand, if conditions were not clearly set, this would raise the question of how the EU fairly decides whether the conditions are fulfilled by the target government.[35] The unclarity of conditions would weaken the legitimacy and credibility of conditions in the eyes of the target states.[36] Therefore, the hypothesis with regards to determinacy of conditions as follows:

Hypothesis 1: The effectiveness of political conditionality increases when the rules are clearly set and more determinate to the target states.

Size and speed of rewards

One of the important concerns over the effectiveness of conditionality is the size and speed of rewards. As argued by Smith, rewards offered by the EU have an impact on the degree of compliance.[37] Despite the fact that the EU has a wide range of rewards to encourage the target governments such as financial aid, trade or association agreements, it has been the membership prospective that enforces them to fulfil the conditions at most so that the size and credibility of the reward have to be sufficient.[38] Size of the reward

---

[33] Uğur Burç Yıldız, (2012), 'The European Union and Democratic Consolidation in Turkey: The Impacts and Limits', in Müge Aknur (Ed.), Democratic Consolidation in Turkey, Universal Publishers, Florida, p. 285

[34] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 664

[35] Ibid.

[36] Ibid.

[37] Karen Smith, (2001), 'Western actors and the promotion of democracy', in J. Zielonka and A. Pravda (eds), Democratic Consolidation in Eastern Europe, Volume 2: International and Transnational Factors, Oxford: Oxford University Press, p. 37-8

[38] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 665

plays a critical role in the effectiveness of conditionality as they would not try to fulfil the conditions in the absence of feasible accession negotiations. In this respect, once the target government fulfils the conditions, the EU should immediately pay the reward that duration of payment should not be longer, which would decrease the credibility of conditionality.[39] Schimmelfennig and Sedelmeier argue that credibility of EU rewards will be higher once the accession negotiations will be started with the target state, which indicates the goodwill and serious of the EU to pursue the process further. Even though the EU attached a particular importance to the integration of the CEECs in the early years of the 1990s, one of the turning points of the process has been the signing of association agreement with those countries, which indicates the consistency of the payment of EU rewards.[40] The EU apparently demonstrated its willing to admit the CEECs by taking immediate measures and setting certain mechanism, which would accelerate the process at the end. Therefore, the hypotheses with regards to size and pace of conditionality as follows:

Hypothesis 2: The higher size of rewards, the more effectiveness of political conditionality.

Hypothesis 3: Opening of accession negotiations with the target state would accelerate the fulfilment of conditions.

Credibility of Conditionality

Credibility of conditionality constructs one of the important pillars of conditionality referring to a situation where the EU either pays the reward in the case of compliance or withholds the reward in the case of non-compliance.[41] The announcement of the candidacy of the CEECs can be a good illustrator of the demonstration of the credibility of conditions when the first group so-called ‘Luxemburg Group’ was granted the status of candidacy, which further encouraged the Helsinki Group to comply with EU rules that as long as the target governments fulfil the conditions, the EU would deliver the reward.[42]

[39] Ibid.

[40] Ibid.

[41] Steunenberg and Dimitrova, (2007), Ibid., p. 3

[42] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 665-66

Therefore, the target governments would be ensured that once they fulfil the conditions required to attain the reward, there would be no further justification not to deliver the reward by the EU, which has not been the case in Turkey.

Domestic Cost of Compliance

Schimmelfennig and Sedelmeier argue that in the case of clear conditions and membership incentive offered to target governments, the size of domestic costs of compliance predominantly determines the decision of the target governments to comply with conditions or not.[43] They stress the point that domestic compliance with EU rules always puts certain costs on the target governments because otherwise the target governments would not make further reforms without any rewards.[44] According to Schimmelfennig and Sedelmeier, there may be a set of costs ranging from opportunity costs to adoption costs that when the rewards are not worth for complying with EU conditions, target governments may prefer adopting alternative rules rather than EU rules or compliance with EU conditions may empower the costs of private and public actors.[45]

As stressed by Schimmelfennig and Sedelmeier, as the target government is the major authority to comply with EU rules by calculating the expected costs and benefits, the degree of effectiveness of political conditionality therefore depends on the governmental interests and preferences and at the same time other domestic veto players, who hold the power to give the 'necessary permission for a change in the status quo'.[46] One can assume that the number of veto players and their bargaining power play a key role in the outcome of the fulfilment. As put by the Schimmelfennig and Sedelmeier, 'the scarcity of veto players increases the influence of the government as the main target of EU conditionality and the causal relevance of its cost-benefit assessment.'[47] Therefore, the hypothesis regarding the adoption costs is as follows:

---

[43] Schimmelfennig and Scholtz, (2007), Ibid., p.6-7

[44] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 666

[45] Ibid.

[46] Ibid.

[47] Ibid., p. 667

Hypothesis 4: The higher level of domestic costs of compliance and veto players in the target state, the lower degree of effectiveness of political conditionality.

As the thesis aims to investigate the effectiveness of political conditionality in the case of Turkey by using the external incentives model, it will be utilizing the data from the Regular Progress Reports per each year published by the European Commission assessing Turkey's ability to meet the EU's accession criteria. These are done on three different levels in line with the 1993 Copenhagen criteria- the political, economic conditions as well as the ability to adopt the EU's *acquis communautaire.*

The *dependent variable* of the thesis in the context of EU conditionality is the rule adoption achieved by the target state, Turkey, and assessed by the Progress Reports annually. A series of reform packages adopted by the Turkish government will be used as an illustrator of how Turkey domestically harmonizes its legal system in line with Continental Europe. In turn, the issues, which have been highly criticized by the EU and the government demonstrates resistance to make further reforms will indicate the issue-areas, in which the government has high level of domestic compliance. Certain differences between compliance and non-compliance of EU demands will construct the basis of the thesis to test the hypotheses. In this respect, the *independent* variables of the external incentives model will be 'effectiveness and credibility' of EU conditionality in the case of Turkey. As long as Turkey fulfils the conditions required by the EU by adopting further reforms and legal changes into domestic law, conditionality will be considered as effective. Payment of the reward to the target state in exchange of compliance then will be considered as 'credible'.

Regular Progress Reports of the European Commission

The EU frequently emphasized the point that other additional mechanisms were needed to provide successful integration of the CEECs into the EU. The introduction of famous Copenhagen criteria at the Copenhagen Summit of the EU in 1993 plays an important role to increase this control mechanism.[48] Even though the Commission has always been responsible for giving the recommendation with regards to membership of the candidate country, the Commission with the introduction of the Copenhagen criteria,

[48] European Council, Conclusions of the Presidency, Copenhagen 1993, p.13, Access 17 April 2017, Available at http://www.europarl.europa.eu/summits/copenhagen/default_en.htm

now has the authorisation to assess whether the candidate state complies with the conditions or in which areas further progress and reforms are needed. To achieve this, the Commission annually prepares progress reports, which evaluates the general process of the candidate countries for the membership.[49]

The Commission through Progress Reports gives 'recommendations' to the Council and Parliament about the progress of the country. Even though the Commission's recommendation is not legally binding, it is important to indicate the eligibility status of the target country. It is worth mentioning that the Commission's famous report on the eligibility of Turkey's membership given in 1989 states that 'The political and economic situation in Turkey leads the Commission to believe that it would not be useful to open accession negotiations with Turkey straight away.'[50] As shown in the report, Turkey was described as a country where she suffered from poor economic conditions, lack of democracy, political pluralism and the rule of law. Commission particularly emphasized the point that as long as Cyprus dispute remains unresolved and there will be a dispute between Turkey and one-member state, namely, Greece; then Turkey cannot become a member of the EU.[51] Therefore, the Commission's recommendation about the country, irrespective of its unbinding status, gives certain insights to the Council and Parliament, which are the major decision mechanisms within the EU for opening of accession negotiation, opening and closing of chapters and finally granting the status of membership.

Progress reports for the analysis of progress of the candidate states prepared by the Commission will construct the base of the thesis. The Commission's Progress Reports as the main data in this study for the effectiveness of conditionality, have been on EU agenda when Turkey's candidacy was given at the Helsinki Summit. The first Progress Report, thus, was published in that year on the basis of Luxemburg Summit and Ankara Agreement. The reports have been composed of different chapters ranging from political criteria to economic conditions. I will in particular analyse the judiciary part, which assesses the domestic rule adoption that Turkey has undertaken. As shown in the Progress

---

[49] European Neighbour Policy and Enlargement Negotiations, Access 25 May 2017, Available at https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

[50] Commission of the European Communities, Commission Opinion on Tukey's request for Accession to the Community, 1989, p. 4, Access 21 March 2017, Available at http://aei.pitt.edu/4475/1/4475.pdf

[51] Ibid.

Reports, the Commission sometimes refers to the European Court of Human Rights as Turkey is member of the Council of Europe, which demonstrates us the importance of their critiques about the democracy level of Turkey.

CHAPTER 3

LITERATURE REVIEW

Aftermath of the Cold War Era when the Central and Eastern European Countries gained their independence from the Soviet Union, the EU as a sui-generis organization based on the peaceful development of the continent through mutual co-operation introduced a new strategy so-called 'conditionality' and immediately increased its tools to cope with possible threats that the EU may face stemming from the new world order. The EU founded on the basis of promoting core principles, including liberal democracy, the rule of law, human rights and respect for minority groups in particular in the case of eastern enlargement, concentrated on the integration of the other part of the continent where they were not familiar with these concepts under the Communist regime.[52] Instead of directly making them an EU member, the EU introduced a new complex framework 'conditionality' in order to gradually integrate them into the membership and to hinder the possible drawbacks that the EU would face.[53] Political conditionality, therefore, emerged as a new enlargement strategy of the EU to democratize and integrate those countries in line with EU rules, norms and principles.[54]

In a simple logic, conditionality means that if the player A wants the player B to do something, player A puts certain conditions or rules in exchange of the reward that the player B would like to obtain. In the context of the EU, the EU as the player A aimed to integrate the CEECs into the EU due to a number of political and economic reasons. Since they were not fully ready to become an EU member, the EU holding a superior position in this mutual but asymmetrical relationship sets a series of conditions for the player B to be complied with. Therefore, conditionality based on the idea of asymmetrical

---

[52] Schimmelfennig, (2004), Ibid., p. 2

[53] Schimmelfennig et al., (2003), Ibid., p. 495; Milada Vachudova (2005), *Europe Undivided: Democracy, Leverage and Integration after Communism*, Cambridge University Press.

[54] Olav Stokke, (1995), Aid and Political Conditionality: Core Issues and State of the Art, Aid and Political Conditionality, Frank Cass, London, p.3

interdependence to receive a certain set of rewards depends on the fulfilment of conditions, unilaterally set by the EU.

The fourth enlargement of the EU on May 1, 2004, had been realized with the membership of ten countries, namely, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, and the Czech Republic.[55] In order to eliminate possible drawbacks that the eastward enlargement may put on the presence architect of the EU, the Union introduced the conditionality principle for the sake of political and economic stability within and around the EU. In the Copenhagen Summit of the EU in 1993, all applicant countries were required to fulfil the conditions for the purpose of becoming an EU member based on the 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.[56] EU enlargement achieved in 1995, including Austria, Finland and Sweden were not obliged to fulfil the conditions related to human rights but they were required accepting the common foreign and security policy.[57] After the Copenhagen criteria, conditionality therefore, applied on the CEECs for the first time with a special attention on Turkey. Even though major conditions for the membership of Turkey were already set in the Treaty of Ankara in 1963, Turkey was also obliged to fulfil the conditions, which had been designed for the CEECs.[58] The EU through conditionality aimed to ensure that the CEECs are fully ready to become an EU member. The EU clearly expressed its willing to support political transition and rule adoption of the CEECs into the EU by granting them first financial and then ultimately membership in the case of full compliance with EU conditions. The new duty of the EU after the breakdown of the Soviet Union through conditionality, therefore, was to provide technical expertise, offer financial assistance, and control the political transformation of domestic institutions.[59]

---

[55] European Commission, 'European Neighbourhood Policy and Enlargement Negotiations', Access 18 March 2017, Available at https://ec.europa.eu/neighbourhood-enlargement/policy/from-6-to-28-members_en

[56] European Council, 'Conclusions of the Presidency', 1993, p.13 Available at file:///C:/Users/asus/Downloads/72921.pdf on March 20, 2017

[57] Anna Michalski and Helen Wallace, (1992), *The European Community: The Challenge of Enlargement*. London: Royal Institute of International Affairs.

[58] Schimmelfennig et al., (2003), Ibid., p. 506

[59] Schimmelfennig, (2004), Ibid., p. 2

The EU first informally and then formally developed new strategies for the integration of the CEECs based on the fulfilment of democratic and human rights conditions as a pre-condition, which would induce the target governments to comply with EU rules.[60] As Saatcioglu argues that use of EU conditionality after the early years of 1990s has been evolved and increased over time into a more dynamic structure with a particular aim that the target governments are fully ready for EU membership.[61]

Political conditionality as a foreign policy instrument used by the EU, sets certain rules and procedures that the target governments must fulfil as exchange of the reward such as financial assistance, association or full EU membership.[62] The enlargement policy has been considered as the most effective foreign policy of the EU,[63] which started its way with 6 members and extended to 28 with the participation of Denmark, Ireland and the UK in 1973, Greece in 1981, Spain and Portugal in 1986, and Austria, Finland and Sweden in 1995.[64] They argue that taking consideration of the EU strategies for the democratization of the CEECs, it has been the democratic conditionality that became the most effective. The main driving engine behind the fulfilment of conditions in the strategy of the EU has been the idea of 'reinforcement by reward' rather than punishment. Schimmelfennig et al. argue that the strategy of EU political conditionality policy is developed in such a way that the EU is the major authority either paying the reward in the case of compliance or withdrawing the reward in the case of non-compliance rather than imposing extra costs or using coercive instruments to force the target government to comply with the conditions.[65]

The main motivation behind the reinforcement strategy lies on the argument that applicant countries would be in favour of complying with EU conditions in order to be

[60] Smith, (2001), Ibid., p. 31-57.

[61] Beken Saatcioglu, (2007), Ibid.

[62] Schimmelfennig and Scholtz, (2007), Ibid., p. 6

[63] Ibid., p. 2

[64] European Commission, 'European Neighbourhood Policy and Enlargement Negotiations', Access 18 March 2017, Available at https://ec.europa.eu/neighbourhood-enlargement/policy/from-6-to-28-members_en

[65] Ibid., p. 497

rewarded rather than be punished in the case of non-compliance. In the context of the EU, there are two major ways of reinforcement offered to non-members, namely, financial assistance and institutional ties including trade and cooperation agreements, association agreements, and full membership.[66] Grabbe points out that despite the fact that the EU offers a wide range of rewards to the target governments in return of the fulfilment of conditions, it has been the membership prospective that forces the government to comply with conditions at most due to its tangible material outcomes.[67] Material incentives are assumed to be more effective to make the target governments to change their domestic policies.[68] They would comply with all the conditions once the reward is higher than the domestic cost of compliance on the basis of bargaining framework. Thus, EU membership as the ultimate highest reward that the EU offers to the target governments can be regarded as the most effective incentive for the purpose of rule adoption of the target state.[69]

Lavenex and Schimmelfennig emphasize the point that effectiveness of the conditionality highly depends on the cost-benefit assessment of the target governments that the expected utility of the reward has to be greater than the expected cost of domestic compliance.[70] If the benefits of the reward are relatively higher than the costs of domestic compliance, the government would be more enthusiastic to fulfil the conditions.[71]

As argued by Kubicek, if the expected benefits of the reward will not exceed the domestic cost of compliance or further endanger the national priorities of the states such as territorial integrity or identity, then the target government may be reluctant to comply with EU conditionality. The effectiveness of the conditionality may be weakened as the target government has other political or economic alternatives or public is not very sure

---

[66] Ibid., p. 496

[67] Grabbe (2002), Ibid., p. 249-68

[68] Schimmelfennig, (2004), Ibid., p.5

[69] Frank Schimmelfennig, (2004a), 'EU Political Accession Conditionality after the 2004 enlargement: Consistency and Effectiveness', *Journal of European Public Policy,* 15:6, p. 918-20

[70] Sandra Lavenex and Frank Schimmelfennig (2009), 'EU rules beyond EU borders: theorizing external governance in European politics', *Journal of European Public Policy*, 16:6, 791-812; Kubicek, (2011), Ibid., p. 912

[71] Schimmelfennig et al., Ibid, p. 497-98

about the payment of the reward in the case of compliance resulting in an opposite way that the EU expected.[72]

To enhance the effectiveness and credibility of the conditionality in the target states, the rewards offered by the EU plays a significant role through either material incentives such as financial assistance/trade agreement or institutional ties- membership. In this respect, it is unsurprisingly supposed that the more rewards the EU offers, the more domestic compliance of the target states. Schimmelfennig underlines the point that possible domestic costs within the target state play a critical role for the success of conditionality since the government is the higher authority to make cost-benefit calculation and therefore to decide on the fulfilment of the conditions. The lower cost of domestic political compliance means more expected effectiveness of the conditionality.[73]

To reach a credible conditionality, Schimmelfennig argues that there are two ways. First of all, the target government must know that as long as they will comply with all conditions, the reward will be paid by the EU. In the absence of the reward, the target state may be reluctant to fulfil the conditions. Secondly, rules and procedures have to be set in a clear way without any question between the target state and the EU. Both parties have to be ensured that they know what they expect from each other.[74] Some scholars underline the point that the political aspect of the Copenhagen criteria encompasses a particular problem of unclarity that to which extent the EU means a functioning democracy since there is no universal consensus on the definition of 'democracy'.[75] The effectiveness of the conditionality is highly related to clarity of conditions that how they are clearly set and equally applied to the target states without any further question on the legitimacy of them, which also prevents possible manipulation of the conditions by the target governments.[76] Saatçioglu argues that if the conditionality imposed by the EU on a candidate country is not related to what is expected from the Copenhagen criteria with

[72] Kubicek, (2011), Ibid., p. 913

[73] Schimmelfennig et al., (2003), Ibid. p. 495-518

[74] Schimmelfennig, (2004a), Ibid., p.920

[75] Burç Yıldız, (2012), Ibid., p. 285

[76] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 664

regard to enforcement of democratic, economic and administrative structure of the country, then this would raise the question of credibility of the conditionality.[77]

The EU has been the dominant authority holding a superior bargaining power in the process of the fulfilment of conditions over the target states since the EU is the primary mechanism to set conditions, elaborate the development of each country based on 'differentiation' and decide on paying/withdrawing the reward offered to the target state. The structure of political conditionality set on the basis of non-negotiable rules, which strictly forces the target states to harmonize its policies in line with the EU does not mean that non-member states are totally dependent on the EU and must do what the EU demanded from.[78] Even though EU rules are set by the member states alone, non-member states still have the capacity to manipulate or change it in the direction of its advantageous. The most important thing, here, is the bargaining power of the non-member states and how they prefer using their 'ultimate' trump card. In this respect, to eliminate possible problem regarding the assessment of the progress of applicant countries, the EU particularly underlines the point that each candidate will be equally treated on the basis of their individual efforts so-called 'differentiation'. As stated by the European Commission:

> 'Aspirant countries can only proceed from one stage of the accession process to the next once they have met the conditions for that stage. Moreover, the Commission is prepared to recommend the suspension of progress in case of a serious and persistent breach of the EU's fundamental principles, or if a country fails to meet essential requirements at any stage.'[79]

It is important to remember that even though the Commission's basic role in this process is based on 'facilitator' between the target government and the EU, the recommendation given by the Commission on the development status of the target state plays an important role for the declaration of its candidacy in the eyes of the Council where all member states unanimously must agree on it.[80]

---

[77] Beken Saatcioglu, Ibid.

[78] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 675

[79] Commission of the European Communities, '2005 Enlargement Strategy Paper', Brussels 2005, Access 10 April 2017, Available at http://www.abgm.adalet.gov.tr/avrupabirligi/temelbelgeler/genisleme/GenislemeStratejiBelgesi2005.pdf

[80] Beken Saatcioglu, Ibid.

Thus, aftermath of the Cold War Era, the introduction of EU conditionality policy through the strategy of reinforcement by reward has gradually become the key strategy of EU enlargement in order to force applicant states to fulfil the conditions in exchange of rewards. Apart from the other carrots that the EU offers, the reward of membership in the case of the eastern enlargement proved to be the most influential mechanism, which notably determines the degree of compliance with the conditions. On the one hand, eastern enlargement particularly demonstrates that low domestic political costs for the ruling elites combined with clear EU incentive strongly bring about the efficiency of conditions. Cost-benefit assessment of the target government plays a key role for domestic compliance. On the other hand, even though Turkey and other candidate countries have been obliged to meet the requirements, the process has been more complicated and Turkey in particular represents a mixed picture for the analysis of political conditionality.

Therefore, in the next chapter, I will test the effectiveness and credibility of EU conditionality policy in the case of Turkey through Progress Reports from 1999 to 2016 based on the hypotheses provided by the external incentives model.

CHAPTER 4

EFFECTIVENESS OF EU CONDITIONALITY

The Period of Golden Era in EU Conditionality: 1999-2006

The External Incentives Model introduced by Schimmelfennig and Sedelmeier to investigate the effectiveness and credibility of political conditionality has been an important reference point as in the case of Turkey. Schimmelfennig states that 'EU conditionality finally became credible when the EU granted Turkey 'candidacy status' at Helsinki Summit in December 1999'.[81] The year, 1999, marked the beginning of a new era in Turkey-EU Relations. Turkey as the official candidate, which desires to join the EU has undergone a new process of reform adoption in order to meet the EU requirements in exchange of the reward, which is the opening of accession negotiations. As the effectiveness of conditionality depends on the combination of four variables, (i) determinacy of conditions, (ii) size and speed of the reward, (iii) credibility of the incentives and (iv) size of the domestic cost,[82] I will particularly discuss the effectiveness of conditionality in the case of Turkey by analysing the Progress Reforms on the basis of rule adoption.

The EU's anchor for the democratization of Turkey has been most effective between the years of 1999 and 2007. The timeframe of 1999- 2007 should also be divided into two sub-periods. The first period begins with 1999 when the Commission granted Turkey a candidate state at the Helsinki Summit and when the tripartite coalition government was formed by DSP, ANAP and MHP, ended with the 2002 general elections that the incumbent AKP government came into power as being the first single-party government since 1987.

[81] Schimmelfennig et al., (2006), Ibid., p. 105

[82] Schimmelfennig and Sedelmeier, (2004a), Ibid., p. 664

Since 1999, Turkey has undergone a process of rule adoption regarding its judicial system in line with the EU. The reforms taken during the period of 1999 and 2007 were mostly based on the issues, largely criticized by the EU, such as the abolishment of the SSCs, the composition of the NSC, and fundamental rights and freedoms. Despite the size of the material costs of the rule adoption, Turkey demonstrated a high degree of commitment for the fulfilment of the conditions during the time period of 1999 and 2007 when the EU first declared Turkey as an official candidate state and then clearly stated that accession negotiations with Turkey will be open once Turkey fulfils the Copenhagen political criteria, which increased the credibility of conditionality and therefore induced the incumbent government to pursue political reforms in various areas. As put by Noutcheva and Aydın-Düzgit, over the half of the judicial reforms made in the 1982 Turkish Constitution had been achieved between the years of 1999 and 2005.[83]

The declaration of Turkey's candidacy in 1999 marked the beginning of a 'reform process'. The coalition government formed by the Democratic Left Party (DSP), the Motherland Party (ANAP), and the Nationalist Action Party (MHP) from 1999 until 2002, demonstrated an important level of fulfilment of the conditions in line with the EU. Progress Reports between the years of 1999 and 2002 state that Turkey as an official candidate of the EU started to comply with EU conditions. However, as argued by Öniş, given that there had been progress for the fulfilment of conditions, the government still remained reluctant not to comply with high concern political issues such as minority rights, judicial reforms or fight against corruption.[84]

As proposed by External Incentives Model, the number of domestic veto players notably determines the effectiveness of political conditionality. If the number of veto players is low, the government most likely shows high degree of compliance with conditions. Given the fact that Turkey had always witnessed the failure of coalition governments, which are generally composed of ideologically extreme parties, one can

---

[83] Gergana Noutcheva, and Senem Aydın-Düzgit, (2012), "Lost in Europeanisation: The Western Balkans and Turkey", in *West European Politics,* Vol. 35, No. 1 (January), p. 67, Available at http://eu.bilgi.edu.tr/images/pictures/wep_article.pdf.

[84] Ziya Öniş, (2003), 'Domestic Politics, International Norms and Challenges to the State: Turkey-EU Relations in the post-Helsinki Era', *Turkish Studies*, 4:1, p. 14-15

therefore argue that the possible resonance and tensions among the coalition parties towards the fulfilment of conditions led to a decrease in the level of compliance.

As the political parties have been the main actors behind the rule adoption, the stance of the political parties in the parliament towards Turkey's EU membership plays a key role whether they would support for or oppose to the compliance with the requirements. Even though the EU's demands have always remained constant requiring mainly the functioning liberal democracy and the rule of law, the pace of the rule adoption in line with the EU has varied across the material costs of the ruling elites, the presence of the veto players and the EU's credibility, weakening the commitment and compliance of the conditions.

Table 1: Presence of the four variables of the EIM in the case of Turkey from 1999 to 2016

	1999-2001	**2002-2006**	**2007-2011**	**2012-2016**
Cost	High	High	High	High
Commitment	Relatively high	High	Relatively high	Low
Compliance	Relatively high	High	Relatively high	Low
Credibility	High	High	Low	Low
Domestic veto players	High • MHP • DSP in the initial years	Low *No visible veto player	High • Turkish military • Constitutional Court • Opposition parties • Societal resistance (Republic Meetings)	High • Opposition parties • Societal resistance (Gezi event) • Corruption scandal combined with Gulen movement

DSP as the main coalition partner gradually supported the compliance with the EU conditions for the purpose of the accession and took the necessary steps, culminating the political reforms in line with the EU.[85] The second coalition partner, MHP known as the far-right nationalist party was reluctant to comply with the EU conditions. Despite the fact that all parties agreed on the prospective EU membership, MHP demonstrated a

[85] Seçkin Barış Gülmez, 'A Comparative Analysis on Turko-scepticism in the EU vs. Euro-scepticism in Turkey', Dokuz Eylül University, Access 2 August 2017, Available at https://www.google.com.tr/search?q=1999+coalition+government+eu+attitude&oq=1999+coalition+government+eu+attitude&aqs=chrome..69i57.7994j0j7&sourceid=chrome&ie=UTF-8

strong resistance not to comply with the EU requirement concerning the minority rights as the Kurdish issue puts a significant problem for the territorial indivisibility and national unity of the Turkish state. ANAP, the third coalition party, was the major party that supported the EU membership, and therefore, to comply with the conditions.[86] The main engine behind the political reforms taken by the coalition government was the efforts of the ANAP to encourage the DSP and the ultimate EU membership.[87] Despite the amendments, the ideological differences and divergent preferences of the coalition parties regarding the role of the military, slowed down the rule adoption. During the process of tripartite coalition government, only two reform packages had been adopted in October 2001 and August 2002 just before the breakdown of the coalition government.[88] The reform packages taken by the coalition government was actually outcome of the ad hock coalition of the DSP and ANAP.[89] Therefore, divergent priorities of the coalition partners and the lack of a common view regarding the fulfilment of the EU conditions increased the size of internal adoption costs, which decreased the compliance of the ruling elites and effectiveness of the EU conditionality. The high number of domestic veto players between the years of 1999 and 2002 decreased the degree of compliance with EU conditions as MHP remained resistant to make further reforms.

During this time, another important issue, which negatively affected the progress of rule adoption had been the capture of Abdullah Öcalan-leader of the PKK. MHP had always attached a particular issue area to indivisibility of Turkish nation and territorial integrity as its primary party policies. Schimmelfennig et al. argue that the capture of Öcalan decreased the level of domestic compliance with regards to Kurdish issue and freedom of expression as Öcalan stated that the problem should be solved in a political manner.[90] As stated in the Progress Reports and shown by the model, despite the fact that

[86] Ibid.

[87] Ibid.

[88] European Commission, (2001), Regular Report on Turkey's Progress Towards Accession, Access 10 June 2017, available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf

[89] Schimmelfennig et al., (2006), Ibid., p. 105-108

[90] Ibid.

there had been progress to meet EU conditions by the coalition government, it remained limited particularly in high concern political issues.

The progress Reports stressed the point that the reforms made by the coalition government regarding the demilitarisation of the politics at the end of the 1990s were not sufficient. Further efforts had to be taken not only in the SSCs but also other state institutions, including the Council of Higher Education, the Higher Education Advisory Body.[91]

Therefore, the main element, which characterizes the period of 1999 -2002 had been the presence of the domestic veto players that put important obstacles on the path to fulfilling the conditions. However, this does not change the fact that relatively small but important steps had been taken by the coalition government that brings us to the conclusion that in spite of the unfavourable domestic conditions, the credibility and size of the reward-EU accession- triggered the political reforms. Rather than the material costs, the EU's high credibility notably determines the process of EU conditionality by inciting the coalition partners to achieve further rule adoption.

After the breakdown of the coalition government in 2002, the early elections were held in November 2002 that the DSP, ANAP, and MHP which formed the coalition government and run the country in the 1990s could not pass the ten percent threshold. The social democrat Republican People's Party (CHP) received 19.4 percent of the votes and gained 178 seats. The pro-Islamic Justice and Development Party (AKP) took 34.2 % of the votes, winning 363 of the 550 seats in the parliament, which enabled the party to hold a parliamentary majority and allowed it to make constitutional amendments without the necessity of referendum.[92] Therefore, the Justice and Development Party emerged as the sole winner of the general elections and the only opposition party had been the Republican People's Party. Apart from the previous coalition government, since the AKP gained enough seats to established the government and to make constitutional amendments, and the CHP remained as the only opposition party supported the reforms, the number of domestic veto players diminished, which immediately accelerated the rule

[91] Fatma Zeynep Özkurt, (2016), 'The Impact of the EU Conditionality on Democratisation in Turkey: The Case of Civil-Military Relations in the Period of 1999-2008', *International Journal of Social Inquiry,* Vol.9, Issue.1, p. 92

[92] Turkish Daily Newspaper Habertürk, (2002), 'Genel Seçim 2002', Access 15 June 2016, available at http://www.haberturk.com/secim2002

adoption process by taking a wide range of harmonization packages.[93] What distinguished the AKP from its successor conservative parties, particularly Welfare Party, is that the incumbent AKP government had always expressed its enthusiastic about making Turkey an EU member. Even though previous conservative parties, which were banned from the Turkish politics by the military, clearly expressed their opposition to close Turkey-EU Relations,[94] no resonance had been shown by the AKP government regarding the Turkey-EU Relations.[95] As shown in the progress Reports of 2003 and 2004, Turkey has undergone a series of reform process by harmonizing reform packages for the improvement of democratic structure to comply with EU conditions. The reforms made by the AKP government vary on cross-issue areas. Since the government introduced a wide range of reforms and harmonized the Turkish domestic legal system in line with the EU, as supposed by the EIM, the degree of domestic compliance had been notably high.

The AKP government starting from 2002 always attached a significant importance to the EU as an important anchor for democratic consolidation in Turkey. The ruling elites starting from 2002 until 2007 seriously addressed the demands of the EU by taking encouraging political reforms in line with the EU. As the material benefits of the EU conditionality in this period exceeded the domestic cost of compliance of the ruling elites, culminating the fulfilment of the conditions, nine harmonization packages ranging from different issue areas were adopted by the parliament to comply with the EU conditions, which apparently demonstrate the high commitment of the government. In this time period, there are multiple external and internal factors, which constituted favourable conditions for the adoption of these political reforms.

First, the incumbent AKP government faced with low degree of domestic veto players as the ruling elites gained the parliamentary majority and the CHP stand as the only opposition party, securing the two third requirement of the parliament to pass the amendments. The high commitment of the AKP together with the low domestic veto players enabled itself to meet the EU conditions. At that point, it is reasonable to argue

[93] Schimmelfennig et. al (2006), Ibid., p. 108

[94] Nergis Canefe and Mehmet Uğur, (2004), 'Turkey and European Integration: Accession prospects and Issues', Routledge, p. 149

[95] Sevim Gözdem Doğangil, (2013), 'Analysing Turkish Foreign Policy under the AKP governments between 2002 and 2013: Is Turkey moving away from the European Union?', Master Thesis, p. 7-8

that if the government is a rational actor aiming to maximize its own benefits, then what are the potential benefits of the AKP government that induced itself to fulfil the conditions besides the accession promise of the EU. While looking at the rule adoption and issue-areas, one can argue that even though the government passed comprehensive harmonization packages ranging from the Penal Code to Labour Law, the dominant issue where the government particularly tried to fulfil the conditions in line with the EU had been the civilian control of the military, as the rule adoption was insufficient in the first sub-period.

Since the preference of the EU and Turkey over the role and power of the Turkish military perfectly matches, we see a high degree of compliance with the conditions until 2007. However, it is worth mentioning that the compliance with the EU conditions regarding the military issues is costly as Turkey has always been a militaristic state and the military had been regarded as the most trusted institution among the Turkish people. However, despite of the size of the cost of compliance, the AKP government successfully fulfilled the conditions required by the EU. The main rationale lies on the fact that the military combined with the judiciary had been two major institutions, which traditionally define themselves as the 'protector of the secular-Kemalist nature of the Turkish state' against the potential threats stemming from the 'territorial integrity' and 'national unity'.[96] The historical examples clearly show that if the military finds itself in a situation where a certain group of people or political party was posing threats on the security of the Turkish state, then the ultimate result would possibly be the military take-over for the sake of the continuation of the main principles of the state. As the Kurdish and religious parties mostly faced with the military take-over, the AKP strategically focused on the demand of the EU with regards to demilitarisation of the military in order not to have same fate with its successors, the Welfare Party or the Virtue Party. Thus, the utilisation of the EU conditions by the AKP government for the governmental interests resulted in a high degree of commitment, compliance and credibility.

Second, the EU's credibility to the Turkey's membership was notably high as Turkey was first declared a candidate state at the Helsinki Summit and then accession negotiations were opened in 2005 despite of the fact that the EU never set a clear

[96] Meltem Müftüler-Baç, (2016), 'Judicial Reform in Turkey and the EU's Political Conditionality: (Mis)fit between Domestic Preferences and EU Demands', MAXCAP Working Paper Series, No: 18, p. 16

membership date for Turkey. The roadmap for Turkey after 1999 was therefore clear. As long as Turkey meets the conditions, then there is nothing left for the EU to exclude the country from the accession process, which was proved in 2004 when the European Commission stated that considering the recent reforms undertaken by Turkey, accession negotiations will be opened at the latest 2005. While looking at the Progress Reports until 2007, one can easily argue that the Commission apparently stressed the importance of the all harmonization packages by emphasizing the efforts of the government to fulfil the conditions in order to open the accession negotiations. Therefore, one of the important leverages or anchors behind the fulfilment of the conditions was the 'European Union' and its promise of opening the accession negotiations.[97] The possibility of the accession of negotiations as the ultimate reward or 'carrot' constituted the main engine for Turkey to undertake domestically high costs of political and legal reforms. Thus, the rule adoption or reform process taken by the first coalition and then the incumbent government from 1999 to 2007 perfectly illustrates the EU's anchor for the democratization of the country based on the external incentives model of reinforcement by reward. As the reward-accession- was clearly presented by the EU by arguing that once the conditions were met, accession negotiations will be realized, this incited the ruling elites to comply with even high costly issues**.** In 2004, the Commission ultimately announced the opening of the accession negotiations with Turkey by the end of 2005. The EU's credibility was considerably high from 2002 to 2007, and reached its peak point when the accession negotiations opened with Turkey in 2005.The high commitment of the AKP government strengthened with the high credibility of the EU, absence of veto players and favourable domestic atmosphere, they all paved the path for the political reforms, resulting in a high degree of Turkey's domestic compliance with EU conditions.

Table 2: Turkish Political Reforms 2001-2007

Date	Type	Amendments	EU's response
3 October 2001	1st Constitutional Package	34 amendments to the 1982 Constitution	Initiatives had been taken to reform the judicial system and improve the efficiency as reported in the previous Regular Reports. The report welcomed the initial steps of Turkey to fulfil the conditions by

[97] Senem Aydın-Düzgit and E. Fuat Keyman, (2012), 'EU-Turkey Relations and the Stagnation of Turkish Democracy', Global Turkey in Europe, Working Paper 02, p. 4

			emphasizing the need of further reforms.
1 January 2002	New Civil Code	Gender equality in marriage Protection of the child and vulnerable persons	The Report briefly mentioned the changes introduced in the field of gender equality and child protection.
19 February 2002	1st Harmonization Package	The amendments of Article 7 and 8 of the Anti-Terror Law diminishing the restrictions on the freedom of expression Expanded detention rights of the detainees.	The Commission extensively emphasized the point that untouched provisions of the Penal Code had been used by prosecutors to limit the freedom of expressions in spite of the amendments. The Commission underlined that prosecutors have tendency to use these articles to open a trial in particular issue areas. (Kurdish issue, freedom of press) In the reports, the issue regarding the right of detainees' concerning the SSCs had been considered as an important development.
9 April 2002	2nd Harmonization Package	Strengthened the rights of the freedom of Association, Meetings and Demonstrations	Not mentioned
9 August 2002	3rd Harmonization Package	Abolished the death penalty, except in times of war Introduced provisions for re-trial Adopted Protocol 6 to the ECHR converting death sentences to life imprisonment, Amended the Civil and Penal Code	The Commission assessed the step concerning the retrial of cases as a 'positive development' but underlined that direct effect of the ECtHR still remains a concern. No emphasis on the death penalty in the section of the Judiciary was found but in other parts of the Reports, it had been highly emphasized.
11 January 2003	4th Harmonization Package	Revise the Penal Code for the freedom of speech Extended detainee rights Strengthened the safeguards against the ill treatment and torture	The Commission attached a significant importance to the amendments made in the Penal Code regarding the 'retrial'

			that had been found contrary to the ECtHR. The Report underlined the point that in spite of the improvement in the detainees' rights, the functions and responsibilities of the SSCs had to be further brought in line with the EU.
4 February 2003	5th Harmonization Package	Expanded amendments for the retrial Lifted the criterion 'the violation… is seen to have had consequences that cannot be compensated' from Law.	The Commission clearly expressed the need for the re-trial concerning the SSCs by referring to the ECtHR as a reference point in almost all Progress Reports.
19 July 2003	6th Harmonization Package	Article 1 on the definition of terrorism amended replacing the prerequisite of the use of violence with 'constituting a crime' Lifted the provision that 'inappropriate names to the national culture and customs cannot be given'	No mention was found.
7 August 2003	7th Harmonization Package	Regarded torture and ill treatment as urgent Revised the duties and functions of the NSC in a civilian manner Revised the jurisdiction of the military courts over the civilians	The Commission particularly assessed the developments regarding the NSC in a special chapter, which shows the importance of the issue for the democratization and demilitarisation of Turkey in line with the EU. The end of the military jurisdiction over the civilians has been considerably addressed by the Commission as a serious concern over the independence and democratic judicial system of Turkey. The Commission underlined necessity to make further reforms in this particular issue.
14 July 2004	8th Harmonization Package	The Law lifting the death penalty was adopted Charges converted to life sentence	The Commission stressed that the abolishment of the SSCs and replaced by

		Revise the Higher Education Council and NSC	the Heavy Penal Courts would improve the efficiency of the judicial system, that has been frequently criticized by the EU.
12 April 2006	9th Harmonization Package	The Law on Foundations was approved. Draft Law on the Ratification of the UN Convention against corruption The Law on Ombudsman approved by the Parliament	The Commission greatly stressed the importance of the harmonization of the judicial system in line with the international law and the EU. Therefore, changes taken for the international law had been regarded as important development to democratize the judicial system and enhance the independence, impartiality and efficiency.

Source: Ministry of Foreign Affairs Secretariat General for EU Affairs, Political Reforms in Turkey, Ankara 2007 Available at http://www.ab.gov.tr/files/pub/prt.pdf

First of all, one of the key concerns of the EU over the democratization of Turkey had been the presence and functions of the SSCs, which involved a military judge responsible for reviewing the political crimes.[98] The existence of a military judge in the SSCs was highly criticized by the Commission by arguing that this violated the 'independent and impartial tribunal' of the individuals, as Turkey is a part of the Council of Europe and desires to join the EU.[99] In this respect, the Commission underlined that further reforms were particularly needed. In 1999, as a first step, the structure of the SSCs removing the military judge, was amended by the constitutional changes, which requires the re-trial of the defendants, including Abdullah Öcalan- the leader of the PKK. The Commission clearly emphasized that:

[98] European Commission, (1999), 'Regular Report on Turkey's Progress Towards Accession', p. 9-10, Access 15 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1999.pdf

[99] Ibid.

'Such a reform should clearly improve the functioning of the SSCs, even if there are still some doubts about the full rights offered to the defendants in these courts. According to Justice Ministry sources, more than 7000 cases are awaiting trial by SSCs.'[100]

In spite of the removal of the military judge, there had been no further progress in 2000 for the improvement of functioning and responsibilities of the courts that they have to be harmonized with the European standards.[101] In 2001, however, the constitutional amendments made in 1999, became operational that civilian judges now will be appointed that was not sufficient enough. The Commission still kept underlying the point that the concern over the fair trial in the SSCs has remained.[102] As a response to 2001 Progress Report of the Commission, the detainee's rights covered by the SSCs had been improved with the removal of the last provision of the Article 16, which restricted the rights of detainees' including, access to a lawyer and the requirement of the third person in the meetings between the detainee and his/her lawyer.[103] Even though there had been further amendments, which constrained the functioning of the SSCs by the 'Law on the Establishment and Prosecution Methods of State Security Courts' and the 'Law on the Fight Against Criminal organization', they still kept serving its functions, which demonstrates that the amendments made in the structure of the SSCs remained limited to technical issues.[104] Despite the fact that the EU systematically criticizes the existence of courts, which requires further drastic changes, the government remained reluctant to comply with as the immediate removal of the courts would be too costly. As stated in the 2002 and 2003 Progress Reports, 'Despite these limitations to the jurisdiction of State Security Courts,

---

[100] Ibid.

[101] European Commission, (2000), 'Regular Report on Turkey's Progress Towards Accession', p. 12-13, Access 5 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2000.pdf

[102] European Commission, (2001), 'Regular Report on Turkey's Progress Towards Accession', p. 16-18, Access 5 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf

[103] European Commission, (2002), 'Regular Report on Turkey's Progress Towards Accession', p. 20-23, Access 10 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2002.pdf

[104] Ibid.

'The powers, responsibilities and functioning of the State Security Courts still need to be brought in line with European standards in terms of protection of human rights and fundamental freedoms, in particular the rights of defence.'[105]

After the adoption and operational of the first harmonization package in February 2003, as also underlined in the 2003 Progress Report, further development was the re-trial of the all cases where the ruling of the SSCs had been found contrary to the European Convention on Human Rights, including the re-trial of four deputies of Democracy Party- Leyla Zana, Hatip Dicle, Selim Sadak and Orhan Dogan, who were accused of supporting Kurdish separatism.[106] After the re-trial process begun in March 2003, four formal deputies were released in 2004.[107] As the Kurdish issue or separatism has always been an important issue for Turkey by claiming that this would endanger the territorial integrity and invisibility of the state as one of the most important national interests, the attempts taken by the AKP government for the democratization of the country demonstrate its willing to comply with the conditions, increasing its credibility for the implementation of reforms. The year, 2004, further increased the credibility and effectiveness of conditionality in the eyes of the EU as shown in the 2004 Progress Report that the existing of the SSCs, which had been frequently criticized by the EU starting from 1999, had been finally abolished with the harmonization package adopted in May 2004.[108] Jurisdiction covered by the SSCs had been transferred to newly established Heavy Penal Courts including, such issues as organised crime, drug dealings and terrorist offences.[109] The decision of removal the SSCs by the newly established AKP government, which draw a particular attention by the Kemalist-Secular cleavage in Turkey, demonstrates its willing

[105] European Commission, (2003), 'Regular Report on Turkey's Progress Towards Accession', p. 19-22, Access 11 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2003.pdf

[106] Amnesty International UK, (2004), 'Turkey: Prolonged imprisonment of Leyla Zana and others allows injustice to continue', Access 15 June 2017, Available at https://www.amnesty.org.uk/press-releases/turkey-prolonged-imprisonment-leyla-zana-and-others-allows-injustice-continue

[107] Bianet, 15 Yıl Önce DEP'lilerin Tutuklanması, Access 25 June 2017, Available at https://bianet.org/bianet/ifade-ozgurlugu/117355-15-yil-once-dep-lilerin-tutuklanmasi

[108] European Commission, (2004), 'Regular Report on Turkey's Progress Towards Accession', p. 23-28 Access 17 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2004.pdf

[109] Ibid.

to fulfil the EU conditions, which not only increased the effectiveness but also credibility of the both parties during the process.

Another key concern frequently emphasized by the Commission starting from 1999, had been the efficiency of the Turkish judicial system. A large of number of case load and long duration of trial proceedings decreased the efficiency of the system, which therefore requires further attempts as particularly stated by the Commission. In 2001 Progress Report demonstrates that a wide range of tools and programmes was introduced by the coalition government for the training of judges and prosecutors on the basis of human rights, alternative measures for imprisonment and effectiveness of judiciary.[110] The Commission in particular raised the necessity of close cooperation with the Council of Europe in the field of human rights. During this time, training courses on human rights, language education and forensic medicine were given mostly by the Centre for Education and Training of Judges and Prosecutors.[111] The establishment of 'National Judicial Network' project in 2002 aimed to increase the efficiency of the judicial system by providing information technology within the all units of the Ministry of Justice, which also contributed to the uniformity of the trial proceedings.[112]

2002 and 2003 Progress Reports attached a significant importance to the establishment of Regional Courts of Appeal by arguing that even though there had been no progress reported by the government, the establishment of the courts would decrease the excessive caseload since the Supreme Courts have dealt with almost 500 000 cases in a year. This would also enable the judges and prosecutors to carry out a fair trial as their workload would be decreased.[113] In 2004, the Law on the establishment of the Intermediate Courts of Appeal had been adopted by the Parliament but could not be taken into force due to the further necessary amendments concerning the provisions of the Penal Code.[114]

---

[110] European Commission, (2001), Ibid., p. 16-18,

[111] Ibid.

[112] European Commission, 2002, Ibid., p. 20-23

[113] European Commission, 2004, Ibid., p. 23-28

[114] Ibid.

During this time, with the increase made in the number of judges and prosecutors, and juvenile courts, a slight decrease had been recorded in the trial proceedings. The Commission in its 2004 Report emphasized the point that after the two visits of expert advisory mission, they recorded a significant progress in the Turkish judicial system in line with EU standards during the period of October 2003 and July 2004.

Another encouraging development achieved by the government to harmonize the legal system in line with the EU had been in the field of human rights and freedoms. In the Progress Reports of 2000 and 2001, the Commission clearly expressed its concern over the violation of human rights in Turkey by referring to the conclusions of the European Convention on Human Rights, which had been contrary to the Turkish domestic law. The Commission stressed the necessary of further arrangements for the re-trial of defendants and the protection of civil and political rights.[115] The government in 2002 recognized the ruling of the European Convention on Human Rights as a reference to the internal legal system, which would ensure the fair trial under 'Article 6 of the ECHR'.[116] In 2003, the Article of the Turkish Constitution was further amended by the harmonization package, which states that the principle of supremacy of international and European treaties will be applied in the case of a contradiction between the domestic legislation and international treaties concerning the fundamental rights and freedoms.[117]

Between the years of 1999 and 2007, the coalition government and then the AKP government demonstrated a great degree of compliance with EU conditions resulting in many changes and amendments in the Turkish legal system. In 2000 report, the Commission stated that 'the Ministry of Justice had intensively worked on a plan establishing the judicial police and an Ombudsman's office in line with the Copenhagen political criteria.'[118] A new Civil Code covering such issues as gender equality, freedom of association and protection of child was adopted in November 2001 and became operational in January 2002.[119] As shown in the 2003 Progress Report, the family courts

[115] European Commission, 2001, Ibid., p. 16-18

[116] European Commission, 2002, Ibid., p. 20-23

[117] European Commission, 2003, Ibid., p. 19-22

[118] European Commission, 2000, Ibid., p. 12-13

[119] European Commission, 2002, Ibid., p. 20-23

were established with the aim of providing necessary measures for the protection of child and adults. The amendment harmonizing the system of judicial records with the Article 1 of the United Nations Convention on Children's Rights was adopted. The age of children, who can be tried in juvenile courts, had been increased from 15 to 18.[120]

In 2004, the Justice Academy was established. The number of judges and prosecutors, who was trained by the Academy had been gradually increased and new training courses concerning the European Convention on Human Rights were organised.[121] The condition for the establishment of Juvenile Courts was amended in 2004 for the purpose of increasing the number of courts in all cities. To increase the efficiency of family courts, there had been further progress by restricting the jurisdiction areas of the courts.[122] Additionally, with the amendment made in the law, single judges, judges without children and under the age of 30 can now work in the Family Courts. The year, 2004, can be considered as the time when the degree of compliance with EU conditions was at its peak point not only because of the quantity of rule adoption made by the government but also because of the quality of the issues that the government demonstrated a significant degree of fulfilment of conditions on the road to opening of accession negotiations.

Between the years of 2005 and 2007, there had been still further progress reported by the Commission despite of the fact that accession negotiations started with Turkey. During this time, the number of judges had been increased. The new Penal Code introduced for the first time the concept of 'cross-examination of witnesses' and plea bargaining.[123] The Ministry of Justice still continued to organize seminars with regards to fundamental rights and freedoms, and European Convention for the training of judges and prosecutors.[124] In 2007, the Commission stated that some progress had been still achieved on the basis of the Criminal Code and Criminal Procedure Code. There had been

---

[120] European Commission, 2003, Ibid., p. 19-22

[121] European Commission, 2004, Ibid., p. 23-28

[122] Ibid.

[123] European Commission, (2005a), 'Turkey 2005 Progress Report', p. 15-17, Access 15 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2005.pdf

[124] Ibid.

efforts to digitalize the judicial system. Positive results of the National Judicial Network project had been reported. The recruitment of judges and prosecutors still continued.[125] As stated by the Commission:

'Overall, there has been some progress as regards the efficiency of the judiciary through implementation of adopted legislation and continued use of IT. However, tensions in the relations between the government and the judiciary have not been conducive to the smooth and effective functioning of the system. More needs to be done in terms of strengthening the independence and impartiality of the judiciary. Finally, there is no overall National Reform Strategy for the Judiciary or a plan to implement it.'[126]

In the light of the External Incentives Model, the period that Turkey had undergone after 1999 can be described as a golden era of political conditionality. First of all, the model argues that the number of domestic veto players determines the effectiveness of conditionality. As shown in the Progress Reports of 1999, 2000 and 2001, the rule adoption taken by the coalition government remained limited due to the strong resonance of the MHP. Despite the fact that all parties agreed on the membership of Turkey, MHP demonstrated a particular resistance not to comply with EU conditions that rule adoption continued at a slower pace. However, when the AKP government came into power in November 2002 with a relatively high percent of electoral votes, the only opposition party in the Parliament was the CHP, which clearly supported the efforts of the AKP on the road to opening of accession negotiations. Moreover, the rule adoption, which particularly indicates the effectiveness of conditionality, had been found in the case of Turkey between the years of 1999 and 2007 when the government introduced a wide range of harmonization packages in line with modern EU standards. The important thing, here, is that the rule adoption does not only cover the low concern technical domestic issues that require a low degree of domestic cost of compliance, but also involves the high concern political issues such as the removal of SSCs, amendments in the Penal Code and the harmonization of domestic legislation with international treaties, which resulted in the effective EU conditionality policy. However, at that point, it has to be noted that there are some issues where the government demonstrated reluctance to comply with the conditions as stated by the Commission. The Commission predominantly stressed its

[125] European Commission, (2007), 'Turkey 2007 Progress Report', p. 9-10, Access 18 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2007.pdf

[126] Ibid.

concerns over the Turkish judicial system with regards to independence of judiciary and therefore separation of power.

In the Progress Reports, the Commission systematically stated that:

'There is continuing concern regarding the extent of the independence of the judiciary in practice. Pressures were exerted on judges and prosecutors, particularly in connection with prosecutions of state officials, for instance in relation to corruption cases. The fact that the Supreme Board of Judges and Prosecutors, in charge of appointments and postings, is chaired by the Minister of Justice, puts into question the separation of powers between judiciary and executive.'[127]

In almost each Progress Report published after 2003, there had been continuous emphasis on the importance of independence and impartiality of the Turkish judicial system. The reports particularly underlined the structure, responsibilities and functions of the High Council of Judges and Prosecutors by arguing that the increased control of the executive body over the judiciary endangers the separation of power resulting in a situation where the judiciary does not always act impartial on its decisions. Even though some provision in the Turkish Constitution guaranteed the independency of the judiciary, other provisions and more importantly the structure that the High Council has, weakened the functioning of the judicial system. In the words of the Commission:

'Appointment, promotion and discipline and, broadly speaking, the careers of all judges and prosecutors in Turkey are determined by the Supreme Council of Judges and Prosecutors, which is chaired by the Minister of Justice and of which the Undersecretary of the Ministry of Justice is also a member. The possibility of removal and transfer to less attractive regions of Turkey by the Supreme Council may influence judges' attitudes and decisions. Aside from the composition of the Council itself, the influence of the executive is further enhanced by the fact that the High Council does not have its own secretariat and its premises are inside the Ministry of Justice building. The Council is entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks.'[128]

Furthermore, even though there had been some progress in the Penal Code harmonized with modern EU standards, the operational of the Code had been postponed because of the concerns over the organised crimes and freedom of expression.[129] Additionally, the inconsistent use and divergent interpretation of the articles of the Penal Code by public prosecutors on the basis of freedom of expression constituted a serious problem. In spite of the reforms undertaken by the government for the improvement of

[127] European Commission, 2001, Ibid., p. 16-18

[128] European Commission, 2005, Ibid., p. 15-17

[129] Ibid.

the Penal Code, untouched articles of the Code had been used by the public prosecutors to open a case such issues as language course at universities.

This ultimately weakened the transparency and unity of the judicial system. As stated in the 2003 report:

'There continue to be reports that the judiciary does not always act in an impartial and consistent manner. The principle of the independence of the judiciary is enshrined in the Turkish Constitution. In practice however, its independence is undermined by several 22 other constitutional provisions, which establish an organic link between the judiciary and the executive. The Constitution provides that judges and prosecutors shall be attached to the Ministry of Justice in so far as their administrative functions are concerned.'[130]

Overall, as clearly expressed by the EU, the process of the rule adoption starting in 1999 with the coalition government was notably accelerated with the incumbent AKP government when it came to the office in 2002. Despite the constitutional amendments made by the coalition government, the EU stated that they remained insufficient to fulfil the conditions and further reforms were needed particularly in the areas of the civilian control of the military, the Penal Code and the freedom of expression, where the preferences of the EU and Turkey demonstrate a clear divergence at most. In response to the demands of the EU, the ruling elites demonstrate a high degree of commitment with the conditions in compared to the coalition government, which raised the question of which factors played a key role in the acceleration of the rule adoption by the AKP government. One of the important variables that determine the degree of compliance was the 'lack of domestic veto players'. As the government was formed by a single-majority and the only opposition party was the CHP; this enabled the ruling elites to pass a wide range of harmonization packages without referenda. More importantly, even though the CHP stand as the only opposition party with a weak power, the party still supported the government's policies in line with the EU for the ultimate reward. On the other hand, divergent party priorities and policies among the coalition partners towards the EU membership in the 1990s put a serious obstacle on the way to the fulfilment of the conditions. Additionally, one of the key proponents for the fulfilment of the conditions is the size of the domestic costs for the government. While looking at the demands of the EU, they were mainly revolved around the military and the Penal Code as the product of the 1982 constitution that material cost of rule adoption for the government was high but the government was explicitly enthusiastic to comply with high costly issues stemming

[130] European Commission, 2003, Ibid., p. 19-22

from the convergent preferences of the EU and the ruling elites. Additionally, as the EU clearly expressed that once Turkey fulfils the conditions, accession negotiations will be opened; this induced the target governments to comply with the EU conditions as they ensure that the reward will be paid at the end.

The EU's high credibility, which reached a peak point with the opening of the accession negotiations, increased the level of compliance by the ruling elites. Therefore, favourable domestic conditions combined with high EU credibility led to an increase in the fulfilment of the conditions on a wide range of issues, culminating the effectiveness of EU conditionality policy in the case of Turkey between the years of 1999 and 2007.

The slowdown of EU conditionality: 2007-2011

Turkey presents a mixed picture of EU conditionality in the post-2007 period. On the one hand, despite of the dominant literature arguing that the loss in EU's credibility in the case of Turkey due to a number of EU level factors, will lead to a decrease in the fulfilment of the conditions; the process of the political reforms still continued but the pace of the rule adoption stalled after 2007. On the other hand, the government still aimed to fulfil the demands of the EU but in a different logic from the period of 1999-2007. Therefore, I will first examine the major EU-level and domestic level factors that led to a decrease in the speed of the political reforms and then I will analyse the ruling elites' compliance with the EU conditionality in a critical way.

As the ruling elites have been the main actors behind the rule adoption, the stance of the political parties in the parliament towards Turkey's EU membership plays a key role whether they would support or oppose to the compliance with the requirements. The preferences and interests of the government notably determine the path and speed of EU conditionality. In this respect, even though the EU's demands have always remained constant requiring mainly the functioning liberal democracy and the rule of law, the pace of the rule adoption in line with the EU has varied across the material costs of the ruling elites, the presence of the veto players and the EU's credibility, weakening the commitment and compliance of the conditions. Considering the fact that the EU has frequently stressed the similar demands and the ruling elites took important steps to fulfil them in the first term of its office, the government's will to comply with the conditions begun to decrease when the domestic veto players begun to become visible, increasing the cost of the compliance of the government. Thus, changes in the preferences of the

AKP government due to a number of domestic factors led to a visible decrease in the fulfilment of the conditions.

After 2007, the domestic veto players within the Turkish politics, including the Turkish military composed of the secular-Kemalist legacy, the Constitutional Court and the organized societal opposition groups, begun to hear their voice and played a key role in the determination of the EU conditions. First indicator of the tensions between the secular circles and the ruling elites comes with the presidential election in 2007. Ahmet Necdet Sezer's official duration as president of the Republic of Turkey expired in May 2007. At that time, it was argued that Prime Minister Erdoğan was planning to run for the presidential elections. However, his pro-Islamist background and religious rhetoric were highly criticized by the Kemalist-rooted Turkish military and secular segments of the society, which put an obstacle on his election.[131] Instead of Erdogan, the Foreign Minister and Deputy Minister Abdullah Gül was nominated for the presidency by the AKP on April 24, 2007. Gül's election as president also took serious opposition from the secular wing of the politics on the grounds that his wife wears a headscarf and opened a case against Turkey in the ECHR.[132] Additionally, in the 1990s, Gül's statements against the secular establishment of Turkey as a member of the Welfare Party led to a crisis. Thus, the election of Gül's candidacy faced with a strong opposition coming from the secular elites.[133]

During this time, despite of the criticisms coming from the opposition parties and civil society organizations, the AKP nominated Gül's candidacy based on its parliamentary majority. After that, a number of massive demonstrations what has come to known 'republic meetings' was mobilized by the Association Ataturkist Thought (Atatürkçü Düşünce Derneği), other civil society organizations and trade unions in order to protest Gül's election. They particularly stressed the point that the election of pro-Islamist figure for the presidency would undermine the separation of power. Thus, the

---

[131] Gabriel R. Ricci, (2012), 'Politics in Theology', Routledge, Volume 38, Access 5 July 2017, Available at https://books.google.com.tr/books?id=OR0uDwAAQBAJ&pg=PT270&lpg=PT270&dq=2007+cumhuriyet+demonstrations&source=bl&ots=vYqXuaURj&sig=x6DzjWxkXBLKRZ0mt5Hvqeh9s1o&hl=tr&sa=X&ved=0ahUKEwj9pNXB783VAhWFvhQKHW_5BEQQ6AEIVzAH#v=onepage&q&f=false

[132] Aydın-Düzgit and Keyman, (2012), Ibid., p. 5

[133] Ricci, (2012), Ibid.

first meeting was held in Ankara in front of Anıtkabir, followed by İstanbul and İzmir.[134] This considerably demonstrates the increasing domestic resistance of the secular circles in the society towards the AKP's increased conservative tendencies, which therefore forced the AKP to fight against the secular establishment for its survival rather than fulfilling the EU conditions.

The presidential election took place on April 27 and the first round of the elections was boycotted by the opposition parties in the parliament. On the same day, a serious statement known as 'e-memorandum' was issued by the Turkish military[135] emphasizing that 'It is observed that some circles who have been carrying out endless efforts to disturb fundamental values of the Republic of Turkey, especially secularism, have escalated their efforts recently.'[136] The statement particularly stressed the potential threats posing by the AKP government on the secular-Kemalist establishment of Turkey by stating that:

> 'The problem that emerged in the presidential election process is focused on arguments over secularism. Turkish Armed Forces are concerned about the recent situation. It should not be forgotten that the Turkish Armed Forces are a party in those arguments, and absolute defender of secularism. Also, the Turkish Armed Forces is definitely opposed to those arguments and negative comments. It will display its attitude and action openly and clearly whenever it is necessary.'[137]

Tensions between the ruling elites and the Turkish military, which regards itself as the ultimate guardian of the secular establishment of Turkey, became apparent and raised the concerns of the AKP government on the role of the Turkish military since the military has the capacity to use all channel to dismiss the government out of power, as did before. Despite of the many political reforms undertaken by the government in order to prevent the Turkish military's interference into politics from 1999 to 2007, this indicates the fact that the presence and power of the Turkish military as a protector of the secular character of the Turkish state, enabled the armed forces to exercise a domestic veto power on the way to the full democratization of the country in line with the EU.

---

[134] BBC, (2007a), 'Huge rally for Turkish secularism', Access 7 July 2017, Available at http://news.bbc.co.uk/1/hi/world/europe/6604643.stm

[135] Aydın-Düzgit and Keyman, (2012), Ibid., p. 5

[136] BBC, (2007), 'Excerpts of Turkish army statement', Access 8 July 2017, Available at http://news.bbc.co.uk/1/hi/world/europe/6602775.stm

[137] Ibid.

The CHP as a secular-democrat opposition party appealed the decision to the Constitutional Court on the grounds that two third of the parliament was necessary to hold a presidential election, which the government could not meet. Four days later, the Court invalidated the election in the parliament by stating that two third quorum was necessary and lacked in the elections.[138] In response to the Court's decision, Prime Minister Erdogan withheld Gül's candidacy and called for early elections that the AKP took 46.6 % of the votes and allocated 341 seats in the parliament, which enabled the party to form a single-majority government and also enabled itself to pass the political reforms without the support of the opposition parties.[139] During that time, on May 11, the 2007 constitutional package was passed by the AKP with the remaining veto of the CHP. The obstacles and increased resistance of the domestic veto players against the political reforms of the ruling elites forced the government to pass the 2007 constitutional amendment.[140] The package revised the duration of the president decreasing from seven to five years with a change in the selection procedure from a parliamentary vote to a direct election. More importantly, as the requirement of two third constituted a serious problem for the AKP, now the package brought about 1/3 necessity quorum for all parliamentary business.[141]

On May 25, the package was vetoed by President Sezer and sent back to the parliament. The package was again passed by the parliament without any change. Therefore, since the AKP had fewer than two third of the seats in the parliament, the package could not be adopted and eventually a referendum was held on October 21. The package, therefore, took the 69 % of the votes in favour and 31% against.[142] Apart from the 2007 constitutional package, previous package presented by the AKP was adopted without any further problem since the CHP was the only opposition party with a weak

[138] Ergun Özbudun, (2012), 'Turkey's Search for a New Constitution', Insight Turkey, Vol. 14, No. 1, p. 44-5

[139] Yüksel Sezgin, (2015) 'Could Erdogan lose Turkey's upcoming election?', Washington post, Access 5 August 2017, Available at https://www.washingtonpost.com/news/monkey-cage/wp/2015/05/19/could-erdogan-lose-turkeys-upcoming-election/?utm_term=.47cfb79c4cec

[140] Müftüler-Baç, (2016), Ibid.

[141] Miray Tamer, (2017), '367 krizi, kaset istifaları, çözüm süreci; 2007'den bu yana Türkiye'nin referandumları, seçimleri...', T24, Access 28 June 2017, Available at http://t24.com.tr/haber/367-krizi-kaset-istifalari-cozum-sureci-2007den-bu-yana-turkiyenin-referandumlari-secimleri,399159

[142] Turkish Daily Newspaper Sabah, (2007), 'Referandumdan 'Evet' çıktı', Access 28 June 2017, Available at https://www.google.com.tr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiP3a6EtM7VAhWBI8AKHS_dDygQFgg2MAI&url=http%3A%2F%2Farsiv.sabah.com.tr%2F2007%2F10%2F21%2Fhaber%2C92A0CBA9A3784A15893A8B8C4C8646A5.html&usg=AFQjCNFqlX9XwMoQCHRww7rQdRaLc_gQJw

power in the parliament and more importantly, the party was not opposed to the changes made in line with the EU. However, after 2007, the CHP as a social-democrat party, has been opposed to the constitutional changes adopted by the AKP on the grounds that political reforms had been achieved not for the fulfilment of the EU conditions but for strengthening the political power and continuation of the ruling elites. Therefore, the demands of the EU based on the democratization of the country had been instrumentalized by the AKP government for the government's own interests, which led to decrease in the credibility of the conditionality.

In 2008, the tension between the secularists and the conservative wing had been worsened with the efforts of the AKP to lift the ban on the headscarf at universities. The constitutional amendment, which enables women to wear headscarf at universities, was passed by the parliament with a strong opposition of the CHP by arguing that this was a further step taken by the government to eliminate the main principles of the Turkish state by using the EU accession process.[143] The resonance shown by the opposition groups on the grounds that the AKP government has been posing a serious threat to the secular-Kemalist character of the state, came to the forefront with the closure case against the AKP in 2008. According to the Turkish Constitution, the Constitutional Court decides upon the party closures on the grounds that if the party is engaged in activities against the main principles of the Turkish state.[144] On March 14, 2007, Turkey's top prosecutor of the Court of Cassation opened a case for the closure of the Islamist-rooted incumbent AKP government and a ban on 71 politicians from political activities by accusing the party of becoming the 'focal point of anti-secular activities'.[145] Even though since the 1960s, mostly Islamist and Kurdish parties have been faced with a shutdown by the courts on the grounds that they were posing a threat to the fundamental principles of the Turkish state, it was for the first time that a single-majority government faced with a closure case. Additionally, the Welfare party and the Virtue Party as the successors of the AKP had

[143] Aljazeera Turk, (2013), 'Türkiye'de başörtüsü yasağı: Nasıl başladı, nasıl çözüldü?', Access 2 July 2017, Available at http://www.aljazeera.com.tr/dosya/turkiyede-basortusu-yasagi-nasil-basladi-nasil-cozuldu

[144] Bianet, (2008), Constitutional Court Takes Up The AKP Closure Case', Access 29 June 2017, Available at http://bianet.org/english/politics/108647-constitutional-court-takes-up-the-akp-closure-case

[145] Turkish Daily Newspaper Hürriyet, (2008), 'Turkey's ruling AKP closure case hearings set for early July', Access 5 July 2017, Available at http://www.hurriyet.com.tr/turkeys-ruling-akp-closure-case-hearings-set-for-early-july-9205143

been also shut down by the court for anti-secular activities.[146] According to the Turkish Constitution, to close a party, a qualified majority is must that seven members of the Court out of 11 have to reach a consensus for a dissolution ruling.[147] However, Haşim Kılıç, the court chairman and chief justice stated that:

"I hope the party in question will evaluate this outcome very well and get the message it should get. The verdict on cutting treasury aid has been given because of members who decided that the party was the hub of anti-secular activities but not seriously enough [to close the party]."[148]

Six members of the Court voted in favour of the closure that the court decided not to close the party but fined.[149] Thus, the closure case presents a good indicator of the ongoing tensions between the secular-Kemalist cleavage and pro-Islamist parties. The AKP as a conservative party, has been mostly accused of threating the secular establishment of Turkey by the military, which was strengthened with the presidency election last year that the military expressed its opposition to Gül's nomination because of his Islamist background and with the efforts of the AKP for the lifting the headscarf ban at universities. Even though the AKP as a liberal-conservative party clearly stated that the party will be committed to promoting EU rules and principles based on democracy and the rule of law, the clash between the secular-Kemalist elites and the new emerging conservative middle class have been apparent after 2007 when the domestic veto players exercised their power on the ruling elites, which increased the domestic material costs of the government and therefore decreased the effectiveness of the conditions. The Constitutional Court as a judicial veto player and the Turkish military as a political veto player as the main guardians of the fundamental principles of the Turkish state constituted the main challenge that the incumbent government has faced with.

Moreover, the 2008 closure case paved the way for the 2010 constitutional changes with regards to the amendments for party closures. The EU frequently expressed the necessity of the revision of the constitution into a civilian democratic adoption. The AKP

[146] BBC, (2008), 'Turkish Court deciding AKP's fate', Access 29 June 2017, Available at http://news.bbc.co.uk/2/hi/europe/7528085.stm

[147] Bianet, (2008), Ibid.

[148] The Guardian, (2008), 'Turkey's governing party avoids being shut-down for anti-secularism', Access 28 June 2017, Available at https://www.theguardian.com/world/2008/jul/30/turkey.nato1

[149] Ibid.

remained as the main supporter of the changes by arguing that political reforms and the adoption of the Constitution would further boost the EU accession process and therefore the compliance of Turkey with the conditions. However, the CHP demonstrated a strong resonance towards the constitutional changes on the grounds that this would enable the government to base its conservative power. As put by Müftüler-Baç, this creates a sort of paradox for the CHP. On the one hand, the party finds itself in a situation that it might be represented as the opponent to the democratic reforms. On the other hand, this might lead to an increase in the power of the AKP, resulting in an illiberal authoritarian democracy.[150] The date of the 2010 constitutional referendum was also meaningful, as scheduled on September 12- same date with the 1980 take-over since the AKP particularly supported the constitutional changes based on the rhetoric that the 1982 constitution was a product of the military coup. Hence, Turkish people voted yes by 52 of the votes and voted no by 48 of the votes.[151]

In 2008, the increased emphasis of the executive over the role of the military as a threat on its government had become apparent through the investigation made on so-called 'the alleged ultra-nationalist Ergenekon network'. In 2010, the Balyoz (Sledgehammer) case was also initiated, which was later merged with the Ergenekon case. Both networks were accused of engaging in activities to plot a coup against the democratically elected AKP government, and to plan assassinations and bomb attacks.[152] While the process started with the arrests of the high-ranking military members, including both active and retired, immediately spread to the opposition groups such as journalists, academics and civil society organisations.[153] In this respect, investigations and trial proceedings were highly criticized by the EU on the grounds that the judicial system failed to conduct a fair trial. It was to be proved that the prosecution investigations turned to be based on fabrications. More importantly, the 'specially authorized courts' established in place of the SSCs, were the main authorities behind the trial proceedings by extending the duration of the custody, prevented the defendants from contacting more

---

[150] Müftüler-Baç, (2016), Ibid.

[151] BBC, (2010), 'Q&A: Turkey's constitutional referendum', Access 10 June 2017, Available at http://www.bbc.com/news/world-europe-11228955

[152] BBC, (2013), 'Dokuz soruda Ergenekon davası' Access 28 July 2017, Available at http://www.bbc.com/turkce/ozeldosyalar/2013/02/130217_rengin_ergenekon

[153] Aydın-Düzgit and Keyman, (2012), Ibid., p. 5-6

than one lawyer, conducting research without court decision and catching the private interviews between the attorney and defendant.[154] Both cases present a good illustration of the strategy of the incumbent government after the constitutional crisis, the closure case and increased societal opposition.

As the visibility of the domestic veto players increased and the AKP perceived possible threats and challenges particularly coming from the military and the judiciary as the main guardians of the secular character of the Turkish state on the path to its government, this led to a growing control of the executive over the judiciary, violating the independence of the trial proceedings. The mistreatment, long unfair trial proceedings and fabricated proofs increased the questions of the real aim of the investigations as they clearly aimed to repress the secular opposition groups. Therefore, the increased struggle between the ruling elites and the opposition groups led to the arrestment and imprisonment of the secular opposition groups, which particularly decreased the power and role of the Turkish military in politics.[155] The legislation, which allowed the civilian courts to try military members had been passed by the parliament in 2009 as a first step over the demilitarisation of the politics after the events of Ergenekon and Balyoz. As put by the Progress Reports, Protocol on Cooperation for Security and Public Order (EMASYA)- the right of the military to carry out operations against domestic security-based threats without the necessity of approval of the civilian authority- had been abolished in 2010.[156] Thus, the ruling elites predominantly focused on the domestic veto players and societal opposition groups, composing of the secular Turkish military, journalists, academics and civil society organizations through the judicial investigations conducted by the specially authorized courts, which raises the arguments that the incumbent government has demonstrated authoritarian tendencies.

Therefore, the attempts of the ruling elites all paved the way for the increased resistance of the secular opposition groups against the AKP government by arguing that the ruling elites after 2007 have certain tendencies towards authoritarianism, which

---

[154] Hıfzı Deveci, (2016), ‘Ergenekon Once Again: an Exemplary Story of How the Law was Abolished’, Research Turkey, Access 29 July 2017, Available at http://researchturkey.org/ergenekon-once-again-an-exemplary-story-of-how-the-law-was-abolished/

[155] Yaprak Gürsoy, (2011), “The Impact of EU-Driven Reforms on the Political Autonomy of the Turkish Military”, *South European Society and Politics*, Vol. 16, No. 2, p. 298

[156] Aydın-Düzgit and Keyman, (2012), Ibid., p. 6

ultimately decreased the level of compliance with the Copenhagen political criteria based on liberal democracy and the rule of law. The apparent resistance of the secular groups against the strengthened electoral power of the ruling elites after the 2007 elections, led to a slowdown in the fulfilment of the EU conditions as the domestic costs of compliance begun to increase, combined with a loss of the EU's credibility. In this respect, the ruling elites particularly begun to concentrate on the government's own interests for the sake of its continuation rather than meeting the EU conditions, which would put certain obstacles on the base of the government's power.

Despite of the electoral victory of the AKP government, the closure case, the constitutional crisis, republic meetings, discussions over the headscarf, and Ergenekon and Balyoz cases all decreased the ruling elites' will in continuing the fulfilment of the conditions, which made the government more defensive against the Kemalist-secular cleavage, resulting in a series of investigation process to repress the opposition group.[157] Therefore, as stressed by Hale, as the external reward offered by the EU could not supersede the domestic governmental interests, the ruling elites intentionally remained reluctant to meet the requirements.[158] The credibility of EU conditionality was further weakened by the emergence of new domestic veto players in the internal politics.

Secondly, the EU an external democracy promoter has been the main anchor or leverage for the political reforms in Turkey. While both parties highly committed itself to do everything necessary for the fulfilment of conditions from 1999 to 2007, the immediate alteration of the EU's attitude towards Turkey's membership led a loss of the EU's credibility and created a situation where the ruling elites kept complying with EU conditions irrespective of the costs of rule adoption, and decreasing the potential of the receiving the reward. One of the reasons that led to a slowdown in the speed of the political reforms was the loss of the EU's credibility.

First of all, the reform process undertaken by the government to fulfil the conditions resulted in the Commission's recommendation to start accession negotiations with Turkey. When the accession negotiations started with Turkey on October 3, 2005, it was

---

[157] David Capezza, (2009), "Turkey's Military is a Catalyst for Reform". *Middle East Quarterly*, Vol. 16, Issue 3, p. 19

[158] William Hale, (2011), Human Rights and Turkey's EU Accession Process: Internal and External Dynamics, 2005–10, *South European Society and Politics*, Vol. 16, No. 2, p.331

highly assumed that the credibility of conditions would reach its peak point as the EU clearly demonstrated that the reward was paid in the case of compliance. Apart from the prediction, after the opening of accession negotiations, the relationship between Turkey and the EU has undergone a new era on the grounds that Turkey is not eligible for the EU membership due to its 'identity', which arises the question of the boundaries of Europe. As of 2005, the exclusion of the country has been based on the concern over its Europeanness rather than political and economic concerns, which traditionally had been the legitimate excuse from the opponents of Turkey's accession. As put by Öniş, 'European approach to Turkish-EU relations was that Turkey was economically backward and, at the same time, had failed to satisfy the criteria in relation to democratization and human rights necessary to qualify for full membership in the foreseeable future."[159]

Despite the fact the EU clearly expressed 'only Europeans can become a member of the EU', the definition is to some extent problematic since nobody totally agrees on where Europe begins and ends. As particularly pointed out by Rumelili, the variation over the boundaries of Europe not only requires a certain definition on the basis of geography but also has to be supported and legitimized by a certain set of 'rhetoric and practices'.[160] The Roman Empire and Christianity used for binding people together always refer to the common historical background of the Europeans.[161] Öniş argues that "Christianity is a key component of European identity, even though it may not be its principal or overriding constituent."[162] On the other hand, as Turkey always seeks to confirm its Europeanness in the eyes of Western part as the superior defining authority over the fundamental values and principles, this creates a sort of inferiority complex among Turkish people that becoming an EU member is therefore extremely significant. With the rejection of Morocco's membership, the EU clearly closed the door without any further possibility on

---

[159] Ziya Öniş, (1999), "Turkey, Europe, and Paradoxes of Identity: Perspectives on the International Context of Democratization", *Mediterranean Quarterly*, Vol. 10, p. 107.

[160] Bahar Rumelili, (2004), 'Constructing identity and relating to difference: understanding the EU's mode of differentiation', *Review of International Studies*, Vol. 30, No. 1, p. 40

[161] Meltem Müftüler-Baç and Evrim Taşkın, (2007), 'Turkey's Accession to the European Union: Does Culture and Identity play a role?', *Ankara Review of European Studies*, Vol. 6, No. 2, p. 38

[162] Önis, 1999, Ibid., p. 113

the grounds that Morocco does not belong to European continent due to geographical considerations.[163] However, in the case of Turkey, Turkey's first application in 1959 was considered as 'association', which means that while Turkey is eligible for EU membership, political and economic situation that Turkey stands is not sufficiently enough to admit the country as a member. This demonstrates us that Turkey was regarded as a European country, which desires to join the Union.

The instrument of candidacy, as emphasized by Rumelili, has been a good illustrator of how the Europeans notably construct the European identity and define the 'others'. By claiming that the applicant countries have to satisfy the conditions for the ultimate reward, the EU therefore puts itself in a superior position. Rumelili further argues that the Europeanness of the CEECs were not questioned by the Union. The EU even encouraged the integration of the continent with the expansion of the European territories to the East by arguing that the CEECs also share the common identity and history with us.[164] The CEECs were not considered as 'outside or other' of the European Union while they had been distant from the continent for almost a century. Therefore, the rhetoric used by the supporters of the eastward enlargement, was based on the common historical and cultural share of the CEECs, which enabled the admission of them into the Union regardless of their relatively poor economy and politically weak political systems. However, Turkey's eligibility for EU membership, which was reconfirmed in the Helsinki Summit by declaring Turkey as a legitimate candidate country, started to be questioned by some member states, which ultimately led to a decrease in the credibility of conditions.

On 1 May 2004, ten mostly CEECs became the member of the EU, which was the biggest enlargement in the history of the EU. Despite the fact the EU aimed the gradual unification and integration of the CEECs in order to prohibit potential shortcomings stemming from the enlargement, there is no doubt that the membership of ten new member states, will substantially have an impact on the structure and functioning of the EU even though the EU institutionally prepared itself for the integration of those countries by signing the Nice Treaty. As the CEECs had different level of economic development and growth from the West, the Union was also suspicious about the Turkish entry, which

---

[163] Rumelili, 2004, Ibid., p. 42

[164] Ibid., p. 41

would constitute a high cost on the shoulders of the EU. Turkey described as a relatively poor economy with a huge young population would endanger the well-functioning EU institutions in the case of its membership. First of all, some member states clearly opposed to Turkey's membership because of their national interests. France as the major beneficiary from the Common Agricultural Policy has been strongly opposed to Turkish entry to protect its own farmers. The CEECs are also opposed to Turkish entry as they have to share the structural and cohesion funds with Turkey.[165] Germany as one of the corner states of the EU is also on the opposition side that the country as the largest net contributor to the EU budget, does not want to take further burden that Turkey would put on it. Additionally, Germany has particular reservations about Turkey's membership with regards to free movement of young and large Turkish labour as the country has the largest Turkish immigrants.[166] One of the most important obstacles that Turkey has faced, has been its population with almost 80 million as it would be the second most populous member state after Germany. Müftüler-Baç argues that Turkey was intentionally excluded from the process of institutional arrangements during the Nice Treaty, which redesigned the EU institutions for the big bang enlargement of 2004 as the EU institutions were designed for the six founding member states, which not only explain us why Turkey was not included in the process of rearrangement but also why the country was not listed among the candidate states in the Luxemburg Summit that Turkey was put in a particular position with the Accession Partnership Document in 2000.[167] In the case of Turkey's membership, the country with its 80 million population would also hold a high number of votes in the Council and seats in the Parliament. Since the size of the Parliament has been already fixed with the Nice Treaty, the seats for the new member states therefore would have to be taken by the other member states. More importantly, as argued by Müftüler-Baç, Turkey would have a chance to hear its voice through EU institutions.[168] With regards to the Council of Ministers, Turkey as the most populous country after

[165] Saatcioglu (2007), Ibid., p. 565-66

[166] Bahri Yılmaz, (2008), 'The Relations of Turkey with the European Union: Candidate Forever?', *Center for European Studies Working Paper Series 167*, p. 16

[167] Meltem Müftüler-Baç, (2002a), 'Turkey in the EU's Enlargement Process: Obstacles and Challenges', *Mediterranean Politics*, Vol. 7, Issue 2, p. 85-87

[168] Meltem Müftüler Baç, (2002), "Enlarging the European Union: Where Turkey does stand?" TESEV (Istanbul), p. 33-36.

Germany, would have the opportunity to impact on the existence bargaining coalitions. Turkey would have relatively same bargaining power with Germany, France and Italy.[169] Therefore, utility-based explanations based on the possible impact of Turkey's population over EU institutions constitute a major obstacle for its accession into the EU. Taking all the arguments into consideration, the Commission in its 2005 Negotiating Framework states that:

'The shared objective of the negotiations is accession. These negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand. While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond'[170]

There are two things here that have to be underlined. First, the term 'absorption capacity' or 'enlargement fatigue' used interchangeably refers to a particular situation where the EU is not fully capable of keeping its own development of institutional structure and policies. The term plays a key role to understand the changing attitude or strategy of the EU towards Turkey's membership that the Commission inexplicitly refers to a new level of relations with Turkey, which is not obviously membership. Second, despite from the CEECs, the open-ended process of Turkey-EU relations emphasizes the point that even if Turkey fulfils the conditions and completes the process successfully, the EU can assert the exclusion of Turkey from the enlargement. The Commission further argues that:

'In accordance with the conclusions of the Copenhagen European Council in 1993, the Union's capacity to absorb Turkey, while maintaining the momentum of European integration is an important consideration in the general interest of both the Union and Turkey. The Commission shall monitor this capacity during the negotiations, encompassing the whole range of issues set out in its October 2004 paper on issues arising from Turkey's membership perspective, in order to inform an assessment by the Council as to whether this condition of membership has been met.'[171]

---

[169] Bahri Yılmaz, (2008), Ibid.

[170] European Commission, The Negotiating Framework, 3 October 2005, Access 5 May 2017, Available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/turkey/st20002_05_tr_framedoc_en.pdf p. 1

[171] Ibid.

2004 European Council with the recommendation of the Commission envisages the opening of accession negotiations with Turkey at the end of 2005. Immediately after the announcement of the Council, some EU member states clearly expressed their concerns over the Turkish entry. Austria and France have been the prominent figures, which arose the question of Turkey's eligibility and possible problems that the country's membership would put on the well-established EU institutions, policies and practices on the basis of material utility-based interests. Therefore, the coalition group particularly led by Austria, France and Germany suggests privileged partnership to Turkey instead of full EU membership.[172] As stated by the Commission:

'While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through *the strongest possible bond'*[173]

The EU, therefore, inexplicitly refers to a situation where Turkey-EU relations would be continued and deepened by institutional ties but not with full membership, which decreases the credibility of conditionality as Turkey started to question the legitimacy of conditions. Moreover, the statement given by the Union implying that Turkey's membership will eventually depend on the internal policies and strategies of the EU based on its absorption capacity, raises the question of what will the EU do in the case of fulfilment of all 35 chapters of the acquis communautaire by Turkey. This perfectly overlaps with the idea of putting referenda adopted by France on possible Turkish entry, which was also adopted by the Austrian government. Given the fact there is a great degree of public opposition in France and Austria, and the strong resonance shown by some member states against the possible membership of Turkey, therefore, demonstrates that member states will always put extra obstacles to prevent Turkish entry, which makes the accession process ambivalent and credibility of conditionality low.

Additionally, after the opening of accession negotiations, the credibility of EU conditionality was further weakened when some MS blocked certain chapters of acquis communautaire. During the negotiation process, opening and closing chapters depend on

[172] Karl-Theodor Zu Guttenberg, (2004), 'Preserving Europe: Offer Turkey a 'privileged partnership' instead', New York Times, Access 5 May 2017, Available at http://www.nytimes.com/2004/12/15/opinion/preserving-europe-offer-turkey-a-privileged-partnership-instead.html

[173] European Commission, The Negotiating Framework, Ibid.

the progress that the candidate country has shown on the fulfilment of conditions. In November 2006, Turkey was obliged to extend the Customs Unions to all new member states, including Cyprus stemming from the Additional Protocol that Turkey signed in 1970.[174] On 14-15 December 2006, after the rejection of Turkey to first recognize Cyprus and then to extend the Customs Union to Greek Cyprus, the Council decided on the suspension of negotiations on 8 chapters: free movement of goods, right of establishment and freedom to provide services, financial services, agriculture and rural development, fisheries, transport policy, customs union and external relations[175]. The Council stated that:

"The Council decided in particular to suspend negotiations on eight chapters relevant to Turkey's restrictions with regard to the Republic of Cyprus, and will not close the other chapters until Turkey fulfils its commitments under the additional protocol to the EU-Turkey association agreement, which extended the EU-Turkey customs union to the ten-member states, including Cyprus, that joined the EU in May 2004".[176]

Furthermore, since the decision on the process of the negotiations with the candidate country is taken by unanimity in an Intergovernmental Conference, which makes each member state a 'veto player', one-member state has the power to block opening or closing of the chapters at any stage of the negotiations. As Turkey rejects the extension of the Customs Union to the Greek Cyprus and since Turkey has an ongoing dispute over the recognition of the island; the chapters on freedom of movement for workers, energy, judiciary and fundamental rights, justice, freedom and security, education and culture, and foreign, security and defence policy were blocked by Republic of Cyprus on December 2009. One of the key concerns over the progress of the negotiations has been how Turkey will keep fulfilling the conditions if chapters can be unilaterally blocked at any stage of the negotiations by one member-state that Turkey has had a serious problem. Therefore, the Cyprus dispute of Turkey between Greece and the Republic of Cyprus will always put many obstacles for Turkey's EU membership unless the problem had would be resolved.

[174] F. Deniz Erdoğan, (2013), 'European Union and Turkish Footwear Industry: A Case of Top-down Europenization?', Middle East Technical University, Master Thesis, p. 8

[175] Republic of Turkey Ministry for EU Affairs, (2017), Access 7 June 2017, Available at http://www.ab.gov.tr/65_en.html

[176] Ibid.

Additionally, the statement given by Jean Claude Junker, President of the European Commission, further weakened the credibility of conditionality by arguing that 'there will be no enlargement of the European Union for the next five years'. Thus, the domestic concerns of some MS and the ambivalent atmosphere created by the EU after the opening of accession negotiations in 2005 led to a sharp decrease in the credibility of conditionality. The decisions and negative signals given by the EU as a whole led to the postponement of Turkish membership in an indefinite time irrespective of Turkey's efforts to comply with the conditions.

All the factors examined above clearly demonstrate the fact that as the EU's credibility begun to decrease immediately after the opening of the accession negotiations, the domestic veto players begun to become visible threating the survival of the government, and the misfit between the EU and Turkey become apparent; the ruling elites started to question that if Turkey completely fulfils the conditions, what kind of an excuse will the EU present to exclude Turkey from the enlargement process. At that point, one can assume that the incumbent government would sharply stop meeting the costly EU conditions in parallel to decrease in the EU's credibility. However, the fact that EU anchor for the democratization of Turkey was weakened after 2007 does not mean that the government immediately stopped fulfilling the conditions. The incumbent government still kept complying with EU conditions. However, rather than comprehensive reform packages, which was the case between the years of 2002 and 2005; the government achieved partial progress in some issue-areas where the size of material cost remained small. In this respect, the important thing, here, is that despite the radical changes of the golden era, the compliance of the ruling elites after 2007 was based on the strategy of 'selectivity'.

With regards to alignment of the domestic legislation in line with the EU, during the period of 2007 and 2011, there had been further reforms. First of all, the budget available to the Ministry of Justice was continuously increased.[177] In 2009, a new Judicial Reform Strategy was adopted, which aimed to increase the efficiency, impartiality and independence of the judicial system that was considered as an important step by the

---

[177] European Commission, (2008), Turkey 2008 Progress Report, p. 9-10, Access 21 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2008.pdf

Commission.[178] The number of judges and prosecutors was increased and their nomination process became more transparent by publishing the number of votes for each candidate on the official website of the Council.[179] By changing the structure of the Appeal courts and establishing more chamber, the Ministry aimed to decrease the large number of caseload that the courts had faced with.[180]As shown in the Progress Reports, apart from the further reforms made by the government, the EU started to criticize the judicial system by emphasizing the point that there have to be more further reforms to enable the efficiency, impartiality and independency of the judicial system.

The composition of the High Council had been frequently criticized by the Commission by referring to the structure, functions and responsibilities. As particularly stated in the 2008 and 2009 Progress Reports, there had been no progress for the improvement of the composition of the Council that impartiality of the judiciary had been still a serious concern.[181] However, 2010 and 2011 Progress Reports stated that there had been further reforms for the democratization of the judicial system.[182] First of all, the amendments made in the Constitution, which allowed the judiciary stuff to open a case against decisions by the Council dismissing from the profession, was a further step.[183] The professional and administrative support provided by the Ministry of Justice now replaced by the Secretariat General founded under the Council. As the judges and prosecutors will be appointed by the High Council to the Secretariat, this would decrease the potential intervention of the executive on the judiciary.[184] The 2010 Constitutional referendum particularly underlined the concerns of the EU over the independence and impartiality of the Turkish judicial system. With the constitutional referendum adopted

---

[178] European Commission, (2009), Turkey 2009 Progress Report, p. 11-12 Access 21 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2009.pdf

[179] European Commission, (2011), Turkey 2011 Progress Report, p. 14-18 Access 23 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/tr_rapport_2011_en.pdf

[180] Ibid.

[181] European Commission, (2009), Ibid. p. 11-12

[182] European Commission, (2010), Turkey 2010 Progress Report, p. 12-14 Access 23 June 2017, Available at http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2010.pdf

[183] Ibid.

[184] Ibid.

on 12 September 2010, the number of the Assembly increased from seven to 22 judges and prosecutors for whom four will be appointed by the President.[185] A separate secretariat was established, which was previously performed by the Ministry of Justice, by culminating in a situation in which the set-up and functions of the HSYK gained a more autonomous degree from the executive branch of the government. However, despite of the amendments for the improvement of the judicial system, the EU frequently addressed the point that the presence of the Minister of Justice as the President of the HSYK constitutes a key problem, which violates the full separation of powers by arguing that the control and pressure of the executive branch over the judiciary through the Minister of Justice might ultimately put pressures over the functioning and responsibilities of judges and prosecutors. Therefore, the changes made in the composition of the HSYK and the Constitutional Court can be regarded as an outcome of the EU conditionality by demonstrating its ability to force the target government-Turkey- to comply with EU conditions at some point. However, this also demonstrates the limits of the EU conditionality through which the domestic environment in the target government notably determines the degree of domestic compliance as in the case of Turkey when the expected utility of the political gains through rule adoption exceeds the expected costs of compliance, then the ruling elites are willing to meet the conditions such as demilitarization of the Turkish politics or changes in the Penal Code.

Moreover, the decision taken by the Authorised Public Prosecutor on the detention of the Chief Public Prosecutor of Erzincan, who was accused of involving in alleged organized crime led to tension between the units of judiciary after the decision of the Council to revoke the powers of the authorised public prosecutor.[186] This raised the question of impartiality and suspicion on fair trial of the judicial system. The 2011 Report underlined this point by arguing that the amendments under the Law on the High Prosecutors adopted in December 2010 changed the composition of the Council in a more pluralistic and representative way, which paved the way for less ministerial interference on the judicial system.[187] Since 2011, the Minister of Justice and the Undersecretary are no longer veto players due to the changes made in appointment procedure and the ratio

---

[185] Ergun Özbudun, (2012), Ibid., p. 3

[186] European Commission, 2010, Ibid. p. 12-14

[187] European Commission, 2011, Ibid. p. 14-18

of membership. In 2011, the High Council was made responsible for the functioning and responsibilities of the Inspection Board, which previously performed under the Ministry of Justice. The report emphasized that as the decision of the High Council on the disciplinary investigations depends on the approval of the Minister and the evolution of judicial stuff is highly centralized, this constitutes a major problem for the empowerment of impartiality and independence of the judicial system.[188]

In 2009 Progress Report, the Commission expressed its concern over the *quality of investigations* regarding the high-profile cases by referring to alleged criminal network Ergenekon, the murder of three Protestants in Malatya and the murder of Hrant Drink-Turkish-Armenian journalist.[189] The Report stressed the suspicion about the murder of Hrant Dink by arguing that in spite of the receiving credible death threats, the security forces had been failure to protect the life of Mr. Dink on the grounds of the report provided by the Prime Ministry Inspection Board. In 2010, the assassination of Hrant Drink had remained a major concern by giving the ruling of the European Court of Human Rights that the security forces, who got information about the credible death treats should have taken the necessary tools to prevent the murder of Dink and the quality of investigations had been ineffective so that this had been regarded as the violation of Article 2- right to life-, Article 10- freedom of expression-, and Article 13- right to an effective remedy. The Commission underlined the point that in spite of the reforms made in the field of fundamental rights and freedoms in line with the EU as shown in the previous reports, further reforms had to be taken.[190]

The amendments changed in the *composition and nomination of the Constitutional Court* made it more democratic and in line with the EU standards as the Parliament started to be involved in the process of nomination of judges. Also, amendments prohibited the trial of civilians in military courts, increased the impartiality of the system.[191] However, the presence of military-background of two judges constituted a problem for the democratic structure of the judicial system. In 2011, the introduction of the individual

---

[188] Ibid.

[189] European Commission, 2009, Ibid. p. 11-12

[190] European Commission, 2011, Ibid, p. 14-18

[191] European Commission, 2010, Ibid, p. 12-14

application to the Constitutional Court on the grounds of violation of fundamental rights and freedoms by the public authorities, extended the powers of the Court resulting in a more fair and impartial trial procedure.[192] The 2011 report stressed that in spite of the amendments made in the Constitutional Court through the 2010 referendum, which extended the normal membership of the Court, still remained inadequate due to the selection procedure of its members. The Report stated that: ‘The current election process in the Assembly does not fully guarantee the Court's political impartiality. At the same time, the President of the Republic plays an over-dominant role in the appointment process’[193]

Analysing the rule adoption in the target government is one of the ways to see the commitment of the ruling elites and the effectiveness of EU conditionality. However, backslidings in the target government can be another way to see the yearly changes of the slowdown in the political reforms as in the case of Turkey that the issue of freedom of expression is one of them as frequently expressed by the EU. The freedom of expression has been particularly important after 2007 when the reforms taken by the ruling elites started to be reversed. Despite the fact that a wide range of reforms had been adopted in the fields of human rights, fight against torture and freedom of expression by changing the Penal Code in line with the EU, the units of the government including the judiciary system had been reluctant to implement those reforms. As put by Aydın-Düzgit and Keyman, the number of applications to the ECtHR in 2011 had doubled the average number of the applications between the years of 2005 and 2010 concerning the issues respectively a fair trial, property rights, freedom of expression and ill treatment.

The EU clearly expressed its concern arguing that the main problem with freedom of expression and therefore the Penal Code lies on the fact that even though encouraging steps had been taken through the harmonization packages during the golden era of the political conditionality, untouched provisions of the Penal Code had been intentionally used by judges and prosecutors to restrict the free speech and to open a trial mostly on the basis of the high concern political issues such as territorial integrity or national unity, which ultimately limits the effectiveness of EU conditionality. This also supports the argument that when such reforms may pose certain obstacles on government’s interests,

---

[192] European Commission, 2011, Ibid., p. 14-18

[193] Ibid.

then the government might be reluctant to either comply with the conditions or implement them, which leads to a loss of EU conditionality. Therefore, national interest in the context of Turkey such as territorial indivisibility or national unity has been one of the most important obstacles over the fulfilment of the conditions.

Overall, in spite of the expectation that the opening of the accession negotiations would further trigger the political reforms, the incumbent government still continued fulfilling the conditions but at a slower pace due to a number of EU-level and domestic level factors. Even though the EU proved to be a credible actor by showing that the EU pays the reward if the target government complies with the required conditions, the opening of the accession negotiations decreased the effectiveness of conditionality as the EU's rhetoric towards Turkey's membership begun to drastically change.

While looking at the rule adoption during the process of 2007 and 2011, one can argue that even though there had been further progress for the improvement of the judicial system in line with the EU, the issues amended by the government mostly remained to 'low concern technical issues' which did not require a high degree of domestic cost for the government as argued by the EIM. The changes regarding the gender equality, consumer protection or the increase in the number of judges and prosecutors demonstrate us that the government still remained reluctant to comply with issues, where the expected cost of compliance is higher than the expected utility of benefits or where the changes may pose obstacles on the base of its power such as the structure of the High Council or impartiality of the judicial system. Therefore, the material rule adoption starting from 2007 was mostly based on the strategy of 'selectivity'. The selection of reforms to comply with by the government depends on the issue areas, which cannot put challenges on the survival of the government.

As the domestic veto players come to the forefront after 2007, increasing the costs of the rule adoption on the path to fulfilling the conditions, the ruling elites mostly concentrated on the survival of its own government. The increase in the number and power of the domestic veto players, including the military, the judiciary and societal opposition group led to a decrease in the government's compliance with the EU requirements. The military clearly expressed its concern over the secular character of the Turkish State by issuing a statement known as e-memorandum on its official website. The Ergenekon and Balyoz cases represent a good illustration of the threats that the

government may face. The judiciary as one of the pillars of the protector of the Turkish state demonstrated its concerns as well through the 2007 constitutional crisis, the closure case and headscarf issue. Therefore, the increased resistance of the oppositional groups towards the ruling elites' policies showing authoritarian tendencies, increased the domestic costs for the government and forced itself to take further judicial amendments, resulted in the 2010 Constitutional referendum, which made the closure procedure complicated. The AKP government, therefore, pragmatically instrumentalized the EU conditions for the elimination of the potential internal veto players on the path to its legitimated electoral power.

The reverse of EU conditionality: 2012-present

While the material rule adoption gradually stalled in the post-2007 period, this was drastically reversed after 2012 when the preferences and priorities of the EU and Turkey begun to diverge and ruling elites particularly concentrated on the continuation of its own survival due to internal challenges that they have been facing. In spite of the fact that EU's credibility was already weakened after the opening of accession negotiations, the ruling elites still tried to comply with the conditions at least a slower pace, which ultimately brings us to the conclusion that the reverse of the political reforms cannot be solely explained by the EU's weakened leverage. As put by Müftüler-Baç, after 2013, the incumbent AKP government had to deal with a strong societal opposition and political struggles stemming from the Gezi event and corruption scandal, resulting a serious decline in the fulfilment of the EU conditions.[194]

In 2013, Gezi Park protests begun with the plans of the Municipality to build a shopping mall in place of the Gezi Park and then rapidly turned into a first organized social movement in the history of Turkey to protest the authoritarian policies of the government.[195] The protestors argued that authoritarian policies of the government have been restricting their rights and freedoms, and threating the secular character of the state. The movement, however, turned into a different dimension when the tear gas and water cannon had been used by the police to disperse the protestors what Erdogan called them as 'a few looters' and the movement as 'undemocratic' by accusing the CHP of provoking

[194] Müftüler-Baç, (2016), Ibid., p. 18

[195] BBC, (2013b), 'Turkey protests: Clashes rage in Istanbul's Besiktas', Access 3 August 2017, Available at http://www.bbc.com/news/world-europe-22749750

the protestors. Furthermore, social media platforms highly used by the protestors to share information and to update the news through photographs and networks, were also criticized by Erdogan calling them 'menace'.[196] The apparent and increased resonance of the societal opposition proved by the Gezi Park increased the tension between the two major camps, secularists and the Islamists. Society as an important veto player demonstrates a strong resistance on the path to government's policies, which resulted in the excessive use of force by the police and later the Constitutional amendments towards more illiberal tendencies that received serious criticism by the EU. Therefore, the ruling elites not only stopped complying with the EU conditions but also lost the gains achieved in its first term in office.

The resonance against the government's policies was also shown by the Turkish judiciary through the 17/25 December investigations. The corruption scandal broke out in 2013 with the investigations conducted by İstanbul Public Prosecutor Zekeriya Öz, who also conducted trial proceedings in the Ergenekon and Balyoz cases against the secular opposition groups.[197] Zekeriya Öz was the prominent prosecutor taking legal measures against the secular-Kemalist opposition groups in the AKP government. However, the corruption case against the government, including politicians from the AKP, the sons of the three cabinet members, high-ranking state officials and businesspeople demonstrates that for the first time, the opposition voices did not come from the secular elites but from the government's previous ally, Gulen movement, who apparently supported the AKP since the beginning by securing important positions in the state institutions, mostly the judiciary and the Ministry of the Interior.[198] Erdogan called the investigations as 'judicial coup' trying to plot a coup against the democratically elected government. Therefore, when the interests of both parties begun to clash and cannot overlap with each other as they used to, the judicial system under the control of the Gulen movement begun to use its veto power against the ruling elites. Thus, after

---

[196] BBC, (2013a), 'Social media plays major role in Turkey protests', Access 1 August 2017, Available at http://www.bbc.com/news/world-europe-22772352

[197] Maximilian Popp, (2014), 'Erdogan's Endgame: Corruption Scandal threatens Turkish leader', Spigel Online, Access 5 August 2017, Available at http://www.spiegel.de/international/world/erdogan-threatened-by-expanding-turkey-corruption-scandal-a-941138.html

[198] The Guardian, 'Turkish ministers' sons arrested in corruption and bribery investigation', Access 5 August 2017, Available at https://www.theguardian.com/world/2013/dec/17/turkish-ministers-sons-arrested-corruption-investigation

2013, it has become apparent that the internal material costs of the ruling elites begun to increase drastically, threating its democratically elected government with the emergence of new veto players that put obstacles on the path to fulfilling EU conditions since the government has to deal with the parallel structure to base its political power. However, the tools to cope with the parallel structure, including dismissal or suspension of the state servants or closure of the companies engaged in activities with the movement, have been hardly criticized by the EU violating the principles of democracy. Increased costs of domestic problems that the incumbent government has faced with, therefore diminished the level of compliance with EU conditions. More importantly, the gains of the golden era regarding the democratization of Turkey in line with the EU through EU conditionality got dramatically reversed.

The conclusions of the period of 2007 and 2011 remained almost same for the last period with a remarkable difference after 2014 when the Commission predominantly and frequently expressed its concern over the recent developments in the judicial system. Progress Reports starting from 2012 highly criticized the situation that the judiciary system finds itself. Even though further progress had been reported by the Commission regarding the efficiency of the system, amendments made in the legislation raised the concerns over the impartiality and independence. In the words of the Commission:

'There has been **backsliding** in the past year, in particular with regard to the independence of the judiciary which represents a significant challenge to the overall functioning of the judiciary. The extensive changes to the structures and composition of high courts are of serious concern as they threaten the independence of the judiciary and are not in line with European standards.'[199]

Despite the fact that important steps had been taken by the ruling elites to trainee judges and prosecutors by organizing a wide range of seminars in cooperation with the ECHR, the Commission particularly addressed the threat of the executive's role over the judicial system stating:

'The Justice Academy is responsible for pre-service and in-service training of candidate judges and prosecutors. Since the February 2014 legislative changes, the President of the Academy and deputies have been appointed by the executive, which is threatening the independence of the Judicial Academy. The human and financial resources of the judiciary seem proportionate to the challenges it faces.'[200]

---

[199] European Commission, (2016), 'Turkey progress Report', p. 17, Access 15 June 2017, Available at http://www.ab.gov.tr/files/pub/2016_progress_report_en.pdf

[200] Ibid.

The Commission in 2012 reemphasized the same point as done in the previous Progress Reports such issues as the composition of the High Council, the interference of the executive body over the judiciary such as 'Deniz Feneri case', and violation of the principle of 'equality of arms'.[201] As regards the fundamental rights and freedoms, despite the fact that there had been significant progress over the democratization of legislation in line with the EU, which had been also readdressed by the Commission in the previous Progress Reports, judges and prosecutors failed to effectively apply the international conventions in the case of a conflict between domestic law and the international agreements.[202] The concern over the High Council had been underlined in each Progress Report. In the words of the Commission:

> 'The HSYK is the key institution managing the judiciary. The Council is independent in managing a budget of EUR 18.5 million. There was no progress in solving the persistent problem of the influence of the executive over the HSYK, in particular following the legislative changes of 2014 strengthening the powers of the Minister of Justice within the HSYK and the subsequent staff changes in the HSYK. As ex officio members, the Minister of Justice, acting as President of the Council, and his undersecretary continue to have substantial influence over the work of the HSYK. The HSYK is therefore widely perceived to be the executive's main means of controlling the judiciary. More transparency in the HSYK's work and strict adherence to procedures are needed to strengthen not only the Council's credibility but also public trust in the judiciary.'[203]

The 2016 Report further argues that the pressure and interference of the executive body over the judiciary had been further worsened after the July coup attempt that a number of judges and prosecutors suspected from conspiring with the Gulen movement, had been dismissed from their profession, which is a good illustrator of how high degree of domestic costs of compliance determines the effectiveness of conditionality. Following the coup attempt, 3508 judges and prosecutors had been suspended by the High Council, and 3390 had been detained.[204] The Commission emphasized the point that:

---

[201] European Commission, (2012), 'Turkey Progress Report', p. 13-17 Access 25 June 2017, Available at http://www.ab.gov.tr/files/tr_rapport_2012_en.pdf

[202] Ibid.

[203] European Commission, (2016), Ibid., p. 17-20

[204] Ibid.

'Following the mass dismissals of judges and prosecutors in the aftermath of the attempted coup, the appointment of new recruits in large numbers within two weeks has raised concerns about the selection procedure and their professional quality.'[205]

Therefore, as the Gulen movement has been constituting a major challenge on the survival and continuation of the government, which is the primary governmental interest, the incumbent government stopped complying with EU conditions as the expected costs of compliance greatly exceeds the expected benefits of the reward. As the government is the major authority to decide on whether the government will continue fulfilling the conditions, unfavourable domestic conditions, and threats diminished the effectiveness of conditionality.

[205] Ibid.

CHAPTER 5

CONCLUSION

The thesis aims to analyse the effectiveness and credibility of the strategy of political conditionality used by the EU for the democratization of the target states in line with EU norms and standards. The thesis analyses EU conditionality by applying the external incentives model based on the data deprived from the Progress Reports prepared and published by the Commission from 1999 to 2016.

Political conditionality as one of the most important foreign policy instruments of the EU for the democratization of the target states, emerged aftermath of the Cold War Era with a specific aim that re-unification of the continent would be achieved resulting a stable and secure continent. Rather than using coercive measures, the strategy has been based on the idea of 'reinforcement by reward', which induces target governments to comply with conditions in exchange of a certain reward. Despite the fact that the strategy of conditionality fully worked in the case of the CEECs, resulting in their EU membership, EU conditionality policy has faced with certain obstacles and challenges in the case of Turkey, which led to 'backslidings'. Turkey as an official candidate, which desires to join the EU, was also obliged to fulfil the conditions with the CEECs when famous Copenhagen criteria was introduced at Copenhagen Summit of 1993. After 1999, when Turkey was granted the status of candidacy, the country has undergone a process of rule adoption first by the coalition and then the incumbent AKP government. Apart from the CEECs, Turkey demonstrates a mixed picture for the effectiveness of EU conditionality. On the one hand, the country considerably aimed to comply with EU conditions by adopting a wide range of harmonization packages in line with the EU until 2007. On the other hand, political reforms begun to gradually stall in the post-2007 period and drastically reverse after 2011, which created a situation where the achievements of the first period were lost.

Taking consideration of all rule adoption and harmonization packages adopted by the ruling elites, we can argue that the period of 1999-2006 was the golden era of political conditionality. First, the lack of domestic veto players towards Turkey's membership within both Turkey and the EU, and high commitment and credibility of both sides enabled the government to pursue the process of rule adoption, not only in low concern technical issues, which require a small degree of adoption costs, but also in the high concern political issues, including the removal of the SSCs, amendments made in the Penal Code, and supremacy of international treaties over the domestic legislation. There is no doubt that high degree of effectiveness was particularly strengthened with the membership incentive. Even though the EU has never promised a clear membership incentive to Turkey, the declaration of Turkish candidacy at the Helsinki Summit of 1999 and good relations between the EU and Turkey stimulated the government to meet the requirements. Therefore, favourable domestic conditions combined with high EU credibility led to an increase in the fulfilment of the conditions on a wide range of issues, culminating the effectiveness of EU conditionality policy in the case of Turkey between the years of 1999 and 2007.

After the opening of accession negotiations when the reward was immediately paid by the EU in exchange of rule adoption, one can further argue that the government would stop complying with conditions due to a number of factors. The opening of accession negotiations not only started a new path for Turkey-EU Relations but also raised several discussions by some member states opposed to Turkish entry. They particularly argue that as the membership of Turkey would be too 'costly' and put certain challenges on the well-functioning of EU institutions, they first argued that Turkey is not a European country. The country does not simply share the same common historical and social background with them, which is extremely important. Until 2005, the ongoing discussion on possible Turkish entry into the EU was based on the logic of consequentiality by analysing the potential costs and benefits. The general consensus towards Turkey's membership was simple. Turkey is not a democratic liberal country, which might endanger the presence fabric of the EU. However, by arguing that Turkey does not belong Europe, they begun to legitimize the exclusion of Turkey based on 'logic of appropriateness' or normative constructivist approaches, which formally cannot be debatable as Turkey had been considered as 'eligible' for membership by the Commission. Therefore, the ongoing discussions over the identity of Turkey, absorption

capacity, alternative options to membership, the Cyprus debate, and a lack of clear membership prospective all led to a decrease in the credibility of conditionality after 2005.

The credibility and effectiveness of EU conditionality had been worsened when the domestic veto players inside Turkey came to the forefront after 2006. Th emergence or visibility of domestic veto players coming from the Turkish military, judiciary and societal opposition groups led to an increase in the costs of material rule adoption on the path to fulfilling the conditions, which led to a decrease in the degree of compliance of the ruling elites. The apparent resonance of the military and the judiciary as the major guardians of the secular Turkish state against the government's policies induced the ruling elites to concentrate on the survival of the government rather than fulfilling EU conditions. However, it has to be noted that the government still kept complying with EU conditions in spite of the weakened EU anchor. The important thing here is that the reforms undertaken by the ruling elites remained limited to certain issues, which required a low degree of adoption cost or may serve the interests of the AKP government. The ruling elites remained reluctant to comply with issues, which were highly criticized by the EU in each Progress Report. Further, even though there had been a wide range of amendments regarding the efficiency of the judiciary or training of judges and prosecutors, the government starting from 2011 remained reluctant to make further arrangements in the high concern political issues, which might pose certain challenges on the survival and power of its government as in the case of the High Council or freedom of expression. The government not only remained reluctant to make further reforms, the reforms undertaken by the previous terms were dramatically reversed as the government attached a particular importance to domestic challenges by taking highly criticized measurements for the survival of its democratically elected government

Therefore, the effectiveness of political conditionality highly depends on the domestic costs of compliance of the target government combined with the presence of veto players. The thesis, therefore, argues that in spite of the four variables of the EIM, it has been the domestic cost of compliance combined with the presence of veto players that predominantly determines the efficiency of EU conditionality as in the case of Turkey. Favourable domestic conditions combined with high commitment and credibility of both sides would be resulted in efficient conditionality. Nonetheless, as shown in the Progress Reports, conditionality framework does not work in Turkey particularly after 2011.

BIBLIOGRAPHY

Aljazeera Turk, (2013), 'Türkiye'de başörtüsü yasağı: Nasıl başladı, nasıl çözüldü?', Access 2 July 2017, http://www.aljazeera.com.tr/dosya/turkiyede-basortusu-yasagi-nasil-basladi-nasil-cozuldu

Amnesty International UK, (2004), 'Turkey: Prolonged imprisonment of Leyla Zana and others allows injustice to continue', Access 15 June 2017, https://www.amnesty.org.uk/press-releases/turkey-prolonged-imprisonment-leyla-zana-and-others-allows-injustice-continue

Aybey, A. (2004), "Turkey and the European Union Relations: A Historical Assessment", Ankara Review of European Studies, 4:1, p. 19-38.

Aydın-Düzgit, S. and Keyman, E. F. (2012), 'EU-Turkey Relations and the Stagnation of Turkish Democracy', Global Turkey in Europe, Working Paper 02, 1-24.

BBC, (2007), 'Excerpts of Turkish army statement', Access 8 July 2017, http://news.bbc.co.uk/1/hi/world/europe/6602775.stm

BBC, (2007a), 'Huge rally for Turkish secularism', Access 7 July 2017, http://news.bbc.co.uk/1/hi/world/europe/6604643.stm

BBC, (2008), 'Turkish Court deciding AKP's fate', Access 29 June 2017, http://news.bbc.co.uk/2/hi/europe/7528085.stm

BBC, (2010), 'Q&A: Turkey's constitutional referendum', Access 10 June 2017, http://www.bbc.com/news/world-europe-11228955

BBC, (2013), 'Dokuz soruda Ergenekon davası', Access 28 July 2017, http://www.bbc.com/turkce/ozeldosyalar/2013/02/130217_rengin_ergenekon

BBC, (2013a), 'Social media plays major role in Turkey protests', Access 1 August 2017, http://www.bbc.com/news/world-europe-22772352

BBC, (2013b), 'Turkey protests: Clashes rage in Istanbul's Besiktas', Access 3 August 2017, http://www.bbc.com/news/world-europe-22749750

Bianet, (2008), 'Constitutional Court Takes Up The AKP Closure Case', Access 29 June 2017, http://bianet.org/english/politics/108647-constitutional-court-takes-up-the-akp-closure-case

Bianet, (2009), '15 Yıl Önce DEP'lilerin Tutuklanması', Access 25 June 2017, https://bianet.org/bianet/ifade-ozgurlugu/117355-15-yil-once-dep-lilerin-tutuklanmasi

Börzel, T. A. and Risse, T. (2000), 'When Europe Hits Home: Europeanization and Domestic Change', European Integration Online Papers, 4(15), p. 1-20.

Burç Yıldız, U. (2012), 'The European Union and Democratic Consolidation in Turkey: The Impacts and Limits', in Müge Aknur (Ed.), Democratic Consolidation in Turkey, Universal Publishers, Florida, p. 149-68.

Canefe, N. and Uğur, M. (2004), 'Turkey and European Integration: Accession prospects and Issues', Routledge.

Capezza, D. (2009), "Turkey's Military is a Catalyst for Reform", Middle East Quarterly, Vol. 16, Issue 3, p. 13-23.

Commission of the European Communities, '2005 Enlargement Strategy Paper', Brussels, Access 10 April 2017, http://www.abgm.adalet.gov.tr/avrupabirligi/temelbelgeler/genisleme/GenislemeStratejiBelgesi2005.pdf

Deveci, H. (2016), 'Ergenekon Once Again: an Exemplary Story of How the Law was Abolished', Research Turkey, http://researchturkey.org/ergenekon-once-again-an-exemplary-story-of-how-the-law-was-abolished/

Doğangil, S. G. (2013), 'Analysing Turkish Foreign Policy under the AKP governments between 2002 and 2013: Is Turkey moving away from the European Union?', Master Thesis.

Erdoğan, F. D. (2013), 'European Union and Turkish Footwear Industry: A Case of Top-down Europenization?', Middle East Technical University, Master Thesis.

European Commission, (1999), Turkey 1999 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1999.pdf

European Commission, (2000), Turkey 2000 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2000.pdf

European Commission, (2001), Turkey 2001 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf

European Commission, (2002), Turkey 2002 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2002.pdf

European Commission, (2003), Turkey 2003 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2003.pdf

European Commission, (2004), Turkey 2004 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2004.pdf

European Commission, (2005), The Negotiating Framework, 3 October, Access 5 May 2017,https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/turkey/st20002_05_tr_framedoc_en.pdf p. 1

European Commission, (2005a), Turkey 2005 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2005.pdf

European Commission, (2006), Turkey 2006 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2006.pdf

European Commission, (2007), Turkey 2007 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2007.pdf

European Commission, (2008), Turkey 2008 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2008.pdf

European Commission, (2009), Turkey 2009 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2009.pdf

European Commission, (2010), Turkey 2010 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2010.pdf

European Commission, (2011), Turkey 2011 Progress Report, Brussels, http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/tr_rapport_2011_en.pdf

European Commission, (2012), Turkey 2012 Progress Report, Brussels, http://www.ab.gov.tr/files/tr_rapport_2012_en.pdf

European Commission, (2013), Turkey 2013 Progress Report, Brussels, http://www.ab.gov.tr/files/2013%20ilerleme%20raporu/tr_rapport_2013_en.pdf

European Commission, (2014), Turkey 2014 Progress Report, Brussels, http://www.ab.gov.tr/files/IlerlemeRaporlari/2014_progress_report.pdf

European Commission, (2015), Turkey 2015 Progress Report, Brussels, http://www.ab.gov.tr/files/5%20Ekim/2015_turkey_report.pdf

European Commission, (2016), Turkey 2016 Progress Report, Brussels, http://www.ab.gov.tr/files/pub/2016_progress_report_en.pdf

Grabbe, H. (2002), "European Union Conditionality and the Acquis Communautaire", International Political Science Review, 23:3, p. 249- 268.

Guttenberg, K. (2004), 'Preserving Europe: Offer Turkey a 'privileged partnership' instead', New York Times, Access 5 May 2017, http://www.nytimes.com/2004/12/15/opinion/preserving-europe-offer-turkey-a-privileged-partnership-instead.html

Gülmez, S. B. 'A Comparative Analysis on Turko-scepticism in the EU vs. Euro-scepticism in Turkey', Dokuz Eylül University, Access 2 August 2017, https://www.google.com.tr/search?q=1999+coalition+government+eu+attitude&oq=1999+coalition+government+eu+attitude&aqs=chrome..69i57.7994j0j7&sourceid=chrome&ie=UTF-8

Gürsoy, Y. (2011), “The Impact of EU-Driven Reforms on the Political Autonomy of the Turkish Military”, in South European Society and Politics, Vol. 16, No. 2, p. 293-308.

Hale, W. (2011), ‘Human Rights and Turkey’s EU Accession Process: Internal and External Dynamics’, 2005–10, South European Society and Politics, Vol. 16, No. 2, p. 323-333.

Helsinki Summit, Presidency Conclusions, 10 and 11 December 1999, Access 15 March 2017 http://www.europarl.europa.eu/summits/hel1_en.htm

Kubicek, P. (2011), ‘Political Conditionality and EU’s Cultivation of Democracy in Turkey’, Democratization, 18(4), 910-931.

Lavenex, S. and Schimmelfennig, F. (2009), ‘EU rules beyond EU borders: theorizing external governance in European politics’, Journal of European Public Policy, 16:6, 791-812.

Luxemburg Summit, Presidency Conclusions, 12 and 13 December 1997, Access 3 March 2017, http://www.europarl.europa.eu/summits/lux1_en.htm#enlarge

Michalski, A. and Wallace, H. (1992), The European Community: The Challenge of Enlargement. London: Royal Institute of International Affairs.

Müftüler-Baç, M. (1997), Turkey’s Relations with a Changing Europe, Manchester: Manchester University Press.

Müftüler Baç, M. (2002), “Enlarging the European Union: Where Turkey does stand?” TESEV (Istanbul).

Müftüler-Baç, M. (2002a), ‘Turkey in the EU's Enlargement Process: Obstacles and Challenges’, Mediterranean Politics, Vol. 7, Issue 2, p. 79-95.

Müftüler-Baç, M. (2005), ‘Turkey’s Political Reforms and the Impact of the European Union’, South European Society and Politics, 10(1): 16-30.

Müftüler-Baç, M. and Taşkın, E. (2007), ‘Turkey’s Accession to the European Union: Does Culture and Identity play a role?’, Ankara Review of European Studies, Vol. 6, No. 2, p. 31-50.

Müftüler-Baç, M. (2016), 'Judicial Reform in Turkey and the EU's Political Conditionality: (Mis)fit between Domestic Preferences and EU Demands', MAXCAP Working Paper Series, No: 18.

Noutcheva, G. and Aydın-Düzgit, S. (2012), 'Lost in Europeanization: The Western Balkans and Turkey', West European Politics, 35(1): 59-78.

Önis, Z. (1999), "Turkey, Europe, and Paradoxes of Identity: Perspectives on the International Context of Democratization", Mediterranean Quarterly, Vol. 10, p. 107-36.

Öniş, Z. (2003), 'Domestic Politics, International Norms and Challenges to the State: Turkey-EU Relations in the post-Helsinki Era', Turkish Studies, 4:1, p. 9-34.

Özbudun, E. (2012), 'Turkey's Search for a New Constitution', Insight Turkey, Vol. 14, No. 1, p. 39-50.

Özkurt, F. (2016), 'The Impact of Eu Conditionality on Democratisation in Turkey: The Case of Civil-Military Relations in The Period of 1999-2008', International Journal of Social Inquiry, 9 (1), 79-108.

Popp, M. (2014), 'Erdogan's Endgame: Corruption Scandal threatens Turkish leader', Spigel Online, http://www.spiegel.de/international/world/erdogan-threatened-by-expanding-turkey-corruption-scandal-a-941138.html

Republic of Turkey Ministry for EU Affairs, (2017), Access 7 June 2017, http://www.ab.gov.tr/65_en.html

Ricci, G. R. (2012), 'Politics in Theology', Routledge, Volume 38.

Rumelili, B. (2004), 'Constructing identity and relating to difference: understanding the EU's mode of differentiation', Review of International Studies, Vol. 30, No. 1, p. 27-47.

Saatcioglu, B. (2007), 'Compliance or Non-Compliance? The Causal Pathways of the European Union's Political Accession Conditionality in Poland, Romania and Turkey', paper presented at the annual meeting of the International Studies Association 48th Annual Convention, Hilton Chicago, CHICAGO, IL, USA.

Schimmelfennig, F.; Engert, S. and Knobel, H. (2003), 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey', Journal of Common Market Studies, 41(3): 495-518.

Schimmelfennig, F. (2004), 'The International promotion of Political Norms in Eastern Europe: A Qualitative Comparative Analysis', Center for European Studies, Working paper No:61, p. 1-21.

Schimmelfennig, F. and Sedelmeier, U. (2004a), "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe", in Journal of European Public Policy, Vol. 11, No. 4, 661-679.

Schimmelfennig, F. and Sedelmeier, U. (2005) 'The Europeanization of Central and Eastern Europe', Ithaca: Cornell University Press.

Schimmelfennig, F.; Engert, S. and Knobel, H. (2006), 'International Socialization in Europe', Palgrave Macmillan UK.

Schimmelfennig, F. and Scholtz, H. (2007), 'EU Democracy Promotion in the European Neighbourhood: Conditionality, Economic Development, and Linkage', Paper for EUSA Biennial Conference, Montreal, May 2007, p. 1-31.

Schimmelfennig, F. (2011), 'EU Political Accession Conditionality after the 2004 Enlargement: Consistency and Effectiveness', Journal of European Public Policy, Vol.15, No.6, p. 918- 937.

Sezgin, Y. (2015), 'Could Erdogan lose Turkey's upcoming election?', Washington post, https://www.washingtonpost.com/news/monkey-cage/wp/2015/05/19/could-erdogan-lose-turkeys-upcoming-election/?utm_term=.47cfb79c4cec

Steunenberg, B. and Dimitrova, A. (2007), 'Compliance in the EU Enlargement Process: The Limits of Conditionality', European Integration Online Papers (EIoP), Vol.11 No.5, p.1-22.

Stokke, O. (1995), 'Aid and Political Conditionality: Core Issues and State of the Art', Aid and Political Conditionality, Frank Cass, London.

Tamer, M. (2017), '367 krizi, kaset istifaları, çözüm süreci; 2007'den bu yana Türkiye'nin referandumları, seçimleri...', T24, http://t24.com.tr/haber/367-krizi-kaset-istifalari-cozum-sureci-2007den-bu-yana-turkiyenin-referandumlari-secimleri,399159

The Guardian, (2008), 'Turkey's governing party avoids being shut-down for anti-secularism', Access 28 June 2017, https://www.theguardian.com/world/2008/jul/30/turkey.nato1

The Guardian, (2013), ‘Turkish ministers' sons arrested in corruption and bribery investigation’, Access 5 August 2017, https://www.theguardian.com/world/2013/dec/17/turkish-ministers-sons-arrested-corruption-investigation

Turkish Daily Newspaper Habertürk, (2002), ‘Genel Seçim 2002’, Access 15 June 2016, http://www.haberturk.com/secim2002

Turkish Daily Newspaper Sabah, (2007), ‘Referandumdan ‘Evet’ çıktı’, Access 28 June 2017,https://www.google.com.tr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiP3a6EtM7VAhWBI8AKHS_dDygQFgg2MAI&url=http%3A%2F%2Farsiv.sabah.com.tr%2F2007%2F10%2F21%2Fhaber%2C92A0CBA9A3784A15893A8B8C4C8646A5.html&usg=AFQjCNFqlX9XwMoQCHRww7rQdRaLc_gQJw

Turkish Daily Newspaper Hürriyet, (2008), ‘Turkey’s ruling AKP closure case hearings set for early July’, Access 5 July 2017, http://www.hurriyet.com.tr/turkeys-ruling-akp-closure-case-hearings-set-for-early-july-9205143

Vachudova, M. A. (2005), Europe Undivided. Democracy, Leverage and Integration after Communism, Oxford, Oxford University Press.

Yılmaz, B. (2008), ‘The Relations of Turkey with the European Union: Candidate Forever?’, Center for European Studies Working Paper Series 167, p. 1-26.

APPENDICES

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
1999 Regular Report (p. 9-10)	• Concern over the **State Security Courts(SSCs),** which deal with overtly political crimes. • **ECHR:** 'The presence of a military judge in the SCC panel violated the European Convention of Human Rights. • The necessity of **'Independent and impartial tribunal'**	• Raising awareness and improving **training of judges and prosecutors** in the human rights are of great importance.	• Constitutional amendments **removing the military judge in the SSCs:** Retrial of Öcalan • A number of draft proposals on the **functioning of the judicial system**: ➢ Penal Code lifting the **death penalty** ➢ Law facilitating the **prosecution of public officers** ➢ Law amending the Code of Criminal Procedure on the basis of **witness protection, payment of compensation to witnesses, physical examination and genetic analyses.**

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2000 Regular Report (p. 12-13)	• A positive development over the increase of the number of judges and prosecutors • Draft Penal Code and the Code of Criminal Procedure has to be adopted. • **The functioning, powers and responsibilities of the SSC** have to be brought in line with EU standards. • Measures designed to make reparation for the consequences of convictions found contrary to the ECHR should be taken. • Further efforts are required to enhance training for judges and prosecutors, particularly related to allege torture.	• No attempt to increase the **efficiency of the judicial system:** A large caseload & long judicial procedures • Turkey has not yet signed any of the Council of Europe Conventions in combating bribery of International Business Transactions.	• An encouraging development with the adaptation of the **Law on the prosecution of civil servants and other State officials** • On EC Law, a 2-day training programme for 150 people took place in October 2000, within the framework of Greece-Turkey cooperation.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2001 Regular Report (p.16-18)	• **The limited number of juvenile courts** resulting in backlog and long duration of court cases • There is still a need **to guarantee the independence of the judiciary from the executive**, to further reform the state security and military courts and to introduce the possibility of reparations for violations of the ECHR. • There is a problem with the structure of juvenile courts, which are too limited in number, resulting in a backlog and long duration of court cases.	• There is no still possibility under the Code of Criminal Procedure to reopen impugned proceedings or to take any other action to readdress violations of the ECHR.	• A law was adopted, which established **criminal enforcement judges for reviewing complaints by prisoners** concerning their rights. • 12 sections regarding **intellectual property rights** were set up. • Judicial sections dealing with **consumer protection** were created in courts in Istanbul, Ankara and Izmir. • Constitutional and legal amendments for **restructuring of SSCs** entered into force. • Numerous courses to train judges, prosecutors and judicial staff have been held. • The implementation of the 1998 law on the increase of legal interest rates for delayed compensation in cases involving public expropriations is a positive development.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2002 Regular Report (p.20-23)	• Despite limitations to the jurisdictions of SSCs, **the powers, responsibilities and functioning of them still need to be brought in line with EU standards.** • The establishment of a Court of Appeal would be an important step forward in ensuring to a fair trial, and increase the speed and efficiency of the judiciary. • **Lack of clarity, transparency and legal certainty** in day to day practice of the law. • The jurisdiction of military courts over civilians is another concern	• Large backlog and long duration of judicial proceedings • No further progress regarding the establishment of intermediate courts of appeal • **Inconsistent use**, by public prosecutors, of a broad range of articles of **the Penal Code**, when applied to cases related to freedom of expression • Certain tendency by prosecutors **to use other provisions of the Penal Code to limit freedom of expression, particularly applied to students petitioning for optional language course at university** • There are continued reports that **the judiciary does not always act in an independent and consistent manner.**	• **A new Civic Code entered into force** with changes on **gender equality, freedom of association, child protection.** • The system of enforcement judges was established. • The SSCs continue to function with some modifications in relation to prosecution methods and criminal organization. • The right of defense for detainees falling under the competence of the SSCs has been improved: **the right to access to a lawyer only after 48 hours** • In spite of the increase of the number of juvenile courts, there has been no progress concerning the structure and the remit of them. • The Constitutional Court's ruling of 2002 regarding the application of the ECHR is a positive development, which should help guarantee fair trial under Article 6 of the ECHR. • Provisions of the third reform package regarding the retrial in the event of convictions found contrary to the ECHR, were adopted. • Training programmes have continued, covering fair trial, the fight against organized crime and the new Civil Code

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2003 Regular Report (p. 19-22)	• The functioning of the judiciary, both judges and prosecutors **are faced with a large backlog and long duration of trial proceedings.** • The number of judges and prosecutors has been increased and the National Judicial Network Project in progress • The continuation in the training of judges and prosecutors • The judiciary plays an important role in the implementation of political reform but **there are still signs of inconsistent use of articles of the Penal Code,** particularly in relation to freedom of expression. • In spite of some progress regarding the detainee's rights and the elimination of 'incommunicado detention, **the powers, responsibilities and functioning of the SSCs still need to be brought in line with EU standards in terms of protection of human rights and fundamental freedoms, in particular the rights of defence.**	• There has been no progress regarding the establishment of intermediate courts of appeal. • **There continue to be reports that the judiciary does not always act in an impartial and consistent manner.** • **The structure of judicial system puts pressure on judges and prosecutors** since the Supreme Council of Judges and Prosecutors chaired by Minister of Justice and the Undersecretary of the Ministry of Justice is a member. • **Processing of evidence:** day to day practice tends to suggest that public prosecutors are not always adequately informed by the security forces about the facts surrounding detention.	• **The law on the establishment of family courts** was adopted. • **The Code of Civil Procedure and Criminal Procedure** have been amended to allow re-trial in civil and criminal cases found contrary to ECHR. • **The law on juvenile courts** has been amended raising from 15 to 18 the age at which young people must be tried in juvenile courts. • **The law on the Forensic Medicine Institution** has been amended with the aim of accelerating judicial procedures. • **The law on the establishment and Trial Procedures of Military Courts** has been amended to end military jurisdiction over civilians. • The Judicial Network Project has been in progress, A Justice Academy was established to train judges and prosecutors, and a guide book including Turkish translation of the case law of the ECtHR was distributed.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2004 Regular Report (p. 23-28)	• There has been a reduction in the average trial period to increase efficiency. • The number of judges and prosecutors has remained largely stable but their salaries, although still law, were increased. • Judges and prosecutors have a considerable role to play in the implementation of political reforms. **The Court of Cassation has delivered important judgements applying the reforms concerning the use of Kurdish language, re-trial, torture and freedom of expression.** •	• So far as prosecutions are concerned, public prosecutors are responsible for supervising all phases of criminal proceedings. However, in practice, **they often exercise little or no supervision over police and gendarmerie officer**s during the investigation of a crime, in part due to their heavy workload. • The principle of the independence of the judiciary is enshrined in the Turkish Constitution but **it is to a certain extent undermined by several other Constitutional provisions.** • Authority of the High Council of Judges and Prosecutors, chaired by the Ministry of Justice on the, on the appointment, promotion, discipline and the careers of all judges and prosecutors	• The SSCs and The Office of the Chief Public Prosecutor for SSCs have been abolished and replaced by Regional Serious Felony Courts. • Improvement of the rights of defence, the operation of Justice Academy, further training of judges and prosecutors, seven handbooks distributed and seminars held. • **The principle of the supremacy of international and European Treaties over domestic legislation adopted** • **A new Penal Code** adopted by strengthening sanctions against certain human rights violations • **The law on establishing the Intermediate Courts of Appeal** was approved but required additional enactment of several laws to come into force. • **The Law on Notification** was amended. • **The Regulation on Apprehension, detention and Statement Taking** was amended to extend the rights of detainees. • **The Law on Juvenile Courts** was amended with the increase of their numbers. • **The Commercial Code** was amended to establish specialised courts to hear maritime cases. • **The Law on Family Courts** was amended to exclude from the jurisdiction of the Family Courts all non-family law matters. • **A new Regulation** was adopted to extend the scope of legal aid to cover court costs. • The National Judicial Network Project has continued to progress.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2005 Regular Report (p. 15-17)	• Important progress was made with the entry into force on 1 June 2005 of the Penal Code, the Code of Criminal Procedure, the Law on Enforcement of Sentences and the Law on the Establishment of the regional Courts of Appeal. • **The Law on Enforcement of Sentences** is generally in line with EU best practice and addresses issues such as prisoners' rights and obligations, order and discipline within prisons, and rehabilitation and reintegration of offenders. • A clear institutional and functional separation of the professional rights and duties of judges and prosecutors needs to be established. • It is of crucial importance that sustained efforts continue with respect to training judges, prosecutors and lawyers.	• In spite of the adaptation of the Penal Code, concerns remain regarding articles which may be used to restrict freedom of expression • Concerns related to the provisions concerning the rights of defence and the rights of detainees in the new Code. • This Law provides that, at the request of the public prosecutor, and with the authorisation of an enforcement judge, a law enforcement officer may be present during meetings between prisoners and lawyer, which has been criticised for being in contravention of Article 10 of the Turkish Constitution, which concerns equality before the law. • The principle of the independence of the judiciary is enshrined in the Turkish constitution but is undermined by several other constitutional provisions. • On the one hand, there are signs that the judiciary is increasingly integrating the new provisions. On the other hand, courts have issued judgments in the opposite direction in the area of freedom of expression, including against journalists.	• **The adoption of a new Code of Criminal Procedure represents a major step forward.** Cross examination of witnesses during trials introduced, the concept of plea bargaining established. • In order to reduce the number of unmeritorious prosecutions, **the Code increases the discretion of prosecutors,** who are now able to assess the strength of the evidence before preparing an indictment. • **An interpreter** free of charge for ones, who cannot speak the Turkish language • **The Law Establishing the Intermediate Courts of Appeal** came into force, which will substantially reduce the case load.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2006 Regular Report (p. 8-10)	• The authorities have been focusing on the implementation of the new Penal Code, the Code of Criminal Procedure and the Law on Enforcement of Sentences. • Overall, there was continued progress in the area of judicial reform. However, **implementation of the new legislation by the judiciary presents a mixed picture so far and the independence of the judiciary still needs to be further established.**	• One circular of particular importance concerns the implementation of legislation on arrest, detention and statement taking and the prevention of human rights violations during these practices. • Certain provisions of the Penal Code, in particular Article 301, have been **used to restrict the expression of non-violent opinions.** • A number of cases have shown **inconsistency in the judiciary approach** to the interpretation of legislation. • The establishment of the judicial police has led to some **tensions between the law enforcement bodies and prosecutors.** • Various provisions of the Turkish Constitution and of domestic law guarantee this principle. **However, a number of factors are perceived as undermining it**. The structure of the High Council of Judges and Prosecutors • Questions were raised on the independence of the High Council of Judges and Prosecutors in the aftermath of the publication in March 2006 of the indictment on the Şemdlinli bombing	• The Ministry of Justice updated all existing circulars by issuing some 100 new circulars mainly addressed to public prosecutors in January 2006. • **620 new judges** were recruited. **Training activities** continued, the budget of the Ministry of Justice increased and **the programme of building Courts of First Instance** continued. **The establishment of Regional Courts of Appeal** is proceeding.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2007 Regular Report (p. 9-10)	• Some progress has been made in terms of the efficiency of the judiciary, including through amendments to the Turkish Criminal Code (CC) and the Criminal Procedure Code (CPC) adopted in December 2006. • Efforts to modernise the judiciary through the use of information technology continued. • Overall, there has been some progress as regards the efficiency of the judiciary through implementation of adopted legislation and continued use of IT. However, tensions in the relations between the government and the judiciary have not been conducive to the smooth and effective functioning of the system. More needs to be done in terms of strengthening the independence and impartiality of the judiciary. Finally, there is no overall National Reform Strategy for the Judiciary or a plan to implement it.	• Concerns remain as regards the independence and the impartiality of the judiciary. The election of the new president in April • There have been tensions as regards the appointment of high court judges.	• Positive results of the National Judicial Network Project • Increased number of judges and prosecutors, and the funds for the judiciary • Şemdinli Case

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2008 Regular Report (p. 9-10)	• Judicial reform strategy, which covers issues related to the **independence, impartiality, efficiency and effectiveness of the judiciary,** enhancement of its professionalism, the management system and measures to enhance confidence in the judiciary, to facilitate access to justice and to improve the penitentiary system. • Other high-profile cases underlined the importance of the quality of the investigation. This pointed to the need to improve the institutional relationship between, on the one hand, the police and the gendarmerie and, on the other, the judiciary. • Overall, the work to date on the draft judicial reform strategy has been a positive development. **The Ministry of Justice needs to continue and expand the consultations with all stakeholders, including civil society, and build the necessary broad support for the strategy.** However, concerns remain as regards **the independence and impartiality of the judiciary.** Reforms in the area of the judiciary are a priority of the Accession Partnership.	• There have been **no developments on establishment of the regional courts of appeal.** This is a matter of concern. • There is a need to strengthen efforts to ensure that interpretation by the judiciary of legislation related to human rights and fundamental freedoms is in line with the ECHR, with the case-law of ECtHR and with article 90 of the Turkish Constitution. • Concerns remain about the **impartiality of the judiciary.** • As regards independence, **there has been no progress on the composition of the High Council of Judges and Prosecutors** or on the reporting lines of judicial inspectors. • The Şemdinli case was transferred to the Van military court following a decision of the Court of Cassation.	• The number of judges and prosecutors and the funds available to the judiciary increased.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2009 Regular Report (p. 11-12)	• The government approved the **judicial reform strategy** in August 2009. This is a positive step, both in terms of the consultative process followed before its approval but also because its content broadly provides the right direction for reforms. • Concerns remain about the **independence, impartiality and efficiency of the judiciary.** As regards independence, **there has been no progress on the composition of the High Council of Judges** and Prosecutors or on the reporting lines of judicial inspectors. (Şemdinli Case & interception of telephone calls & establishment of the regional courts of appeal) • Overall, some progress has been made in the area of the judiciary. The adoption by the government of the judicial reform strategy following a process of consultation with all stakeholders is a positive step. The measures taken to increase staff and funding are also positive. **However, these efforts need to be continued, and concerns remain with regard to the independence, impartiality and effectiveness of the judiciary, such as the composition of the High Council of Judges and Prosecutors and the establishment of the regional courts of appeal.**	• Some progress was made in hiring judicial staff. **However, the overall number of vacancies for judges and prosecutors remains significant.** • High-profile cases raised concerns about the **quality of the investigations**. Furthermore, there is a need to improve the working relationship between the police and the gendarmerie on the one hand and the judiciary on the other. (the alleged criminal network Ergenekon & the murder of three Protestants in Malatya & the murder of Hrant Dink) • Members of the judiciary reportedly **do not limit pre-trial detention to circumstances** where it is strictly necessary in the public interest resulting in the overcrowding of prisons. • There are concerns as regards **juvenile justice.**	

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2010 Regular Report (p.12-14)	• **Implementation of the 2009 judicial reform strategy** has continued. Some of the central pillars of the strategy were put in place by the amendments to the Constitution. • **The amendments to the Constitution** open to judicial review decisions by the High Council dismissing members of the judiciary from the profession. 7 • Overall, there has been progress in the area of the judiciary. The adoption of the amendments to the Constitution on the composition of the High Council of Judges and Prosecutors as well as the limitation of the authority of military courts is a positive step. **However, the Minister of Justice still chairs the High Council and has the last word on investigations. Attention needs to be paid to establishing an effective dialogue with all stakeholders and to implementing these reforms in accordance with European standards and in an open, transparent and inclusive way.**	• Judicial inspectors responsible for evaluating the performance of judges and prosecutors henceforth will report to the High Council and no longer to the Ministry of Justice. **However, the minister is still President of the High Council and the investigative authority of the High Council is subject to his approval.** • **The Semdinli case** is still pending. The dismissal of the civilian prosecutor previously in charge of the case, together with the handling of the case to date, has raised questions about the independence of the High Council. • **The involvement of the Turkish parliament in the election of Constitutional Court judges** brings Turkish practice closer to that of EU Member States. However, two of the judges are still military judges and the selection of military judges (impartiality questionable) • The overall number of vacancies for judges and prosecutors • The regional courts of appeal not established yet.	• **As regards the independence of the judiciary**: increased the number of full members of the High Council of Judges and Prosecutors, the new representatives of first instance judges, the Justice Academy, law faculties and lawyers. • The amendments to the Constitution • The establishment of A Secretariat-General under the High Council (previously provided by the Ministry of Justice) • **With regard to impartiality,** constitutional provisions allowing military courts to try civilians have been taken out of the Constitution and new provisions explicitly prohibit such trials

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	Conclusion	Alignment
2011 Regular Report (p.14-18)	• There has been progress in the reform of the judiciary, notably with implementing the 2010 constitutional amendments. • Ministerial influence has been reduced. • However, neither an overall common strategic framework nor reliable indicators and benchmarks have been established by the Ministry of Justice and the High Council for Judges and Prosecutors to assess the performance of courts and of the judicial system as a whole. • The Ministry and the High Council have yet to develop benchmarks to monitor and assess the duration of court proceedings and improve the efficiency and effectiveness of the judicial system. • There is a need to review the existing strategy fashion, so that the revised strategy will be owned by the Turkish legal community and the wider public. • Further steps are needed on the	• The composition and elections of members of the High Council • Nomination of the four non-judicial me the President of the Republic, whereas the National Assembly is not involved. The current provisions do not ensure permanent representation of members of the Bar in the High Council. • The Minister can veto the launching of disciplinary investigations against judges and prosecutors by the High Council. • The judicial review does not cover all first-instance decisions of the High Council, potentially affecting judicial independence or impartiality • Lack of clarity and precision on the dismissal of judges and prosecutors • Overcentralized assessment of professional of judges and prosecutors • Criticism of the judicial reforms of Bar and independent Associations ➢ Over-dominated by the High Courts, the president,	• As regards the independence of the judiciary, a Law on the High Prosecutors was adopted as a new composition of the High Council. • The Inspection Board transferred to the High Council. Anonymised versions of decisions published on website. (legal certainty and confidence) appeals to judicial bodies against decisions concerning dismissal from the profession • With regard to impartiality, **a Law on the Constitutional Court** was adopted. • The powers of the Constitutional Court have been extended by **introducing the individual application procedure**. • the Laws on the Court of Cassation and the Council of State were amended in order to tackle their large and increasing backlog of cases

	independence, impartiality and efficiency of the judiciary, including the criminal justice system and the large backlog of pending serious criminal cases.	and inadequacy of the role of the parliament in the selection procedure • Minority and the large metropolitan Bars not represented during the selection of judges and prosecutors, and the presence of two military members of the Constitutional Courts • The principle of equality of arms is questionable and the impartiality of the judiciary at risk in key cases • The regional courts of appeal have not been established yet • The backlog of pending cases at the Turkish courts is increasing and Turkey has a large backlog of pending serious criminal cases. • The duration of cases involving pre-trial detention • Frequent use of arrest instead of judicial supervision, leaks of information, evidence or statements, limited access to files, failure to give detailed grounds for detention decisions and revision of such decisions	• More chambers established, working methods modified, a large number of judges and prosecutors appointed and the appointment procedure was transparent. • Legislation was adopted in March 2011 to reduce the workload of first-instance courts. • The 2011 budget for the judiciary increased. • A Regulation on the judicial police, as provided for under Article 167 of the CPC, was adopted in 2005. It came into force on 1 June 2005 together with the CPC but has yet to be implemented. • Cross-examination in criminal trials is not fully implemented.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2012 Regular Report (p. 13-17)	• With regard to the efficiency of the judiciary, amendments to the Laws on the Court of Cassation and the Council of State aiming at tackling their backlog of cases started to generate positive results, although the backlog is still considerable. • Revision of the Justice Ministry's 2009 Judicial Reform Strategy, whose objectives were achieved to a large extent, continues, with the participation of all stakeholders, the Turkish legal community and civil society. • Overall, some progress has been made in the area of the judiciary. Legislation has been amended to improve the efficiency of the judiciary and address the increasing backlog of the courts. The third judicial reform package, adopted in July, while failing to sufficiently address problematic areas in the administration of the Turkish criminal justice system, constitutes a step in the right direction. The 2009 Judicial Reform Strategy is being revised.	• However, criticisms of the legislation on the High Council, including of the role given to the Minister of Justice and to the Under-secretary of the Ministry, have not been addressed. • Decisions to suspend prosecutors in the Deniz Feneri case reflected pressure from the executive. • Failure in the implementation of international agreements • The Regulation on the Judicial Police adopted in 2005 under Article 167 of the Criminal Procedure Code has not yet been implemented in accordance with European standards and there are no judicial police units attached to prosecution offices. • Under the revised Article 10 of the Anti-terror Law, however, prior approval of the authorities for government officials is now needed including for crimes committed in the framework of an organisation to gain illegal economic advantage; launder money; or produce or traffic drugs. • The third package fails to sufficiently revise problematic areas related to the administration of justice and protection of fundamental rights; it does not address issues related to definitions of criminal offences under either the Criminal Code or the Anti-terror Law that are at the source of a number of problems of the Turkish criminal justice system.	• As regards the independence of the judiciary, the High Council of Judges and Prosecutors established its Strategic Plan 2012-2016. • With regard to impartiality, the individual application procedure entered into force. • The Ministry of Justice is drafting a Human Rights Action Plan, based on the case law of the European Court of Human Rights. • A third judicial reform package aiming to accelerate judicial procedures was adopted. • Under the new legislation, not possible for courts;

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2013 Regular Report (p. 12)	• The High Council of Judges and Prosecutors continued with the implementation of its 2012-16 strategic plan, broadly promoting the independence, impartiality and efficiency of the judiciary. • The 3rd Judicial Reform Package, adopted in July 2012, started to produce results, in particular as regards detention (including its length). • The 4th Judicial Reform Package provides judicial remedies for a number of issues on which Turkey had been condemned by the European Court of Human Rights.(Narrowed the scope of terror-related crimes) • Further efforts are needed to consolidate the independence, impartiality and efficiency of the judiciary, including the criminal justice system.	• Criticisms of the legislation on the High Council, including of the role given to the Minister of Justice and to the Under-Secretary of the Ministry, have, however, not been addressed as yet. • In any constitutional reform, Turkey needs to consolidate the achievements of the 2010 constitutional amendments, particularly related to the composition of the High Council. • Concerns about legislation and practice in the criminal justice system remained, in particular as regards the capacity of prosecutors to lead investigations, limited access by the defence to prosecution files, poor implementation of cross-examination at trial, and the poor quality or lack of reasoning in indictments • No significant change in the gender balance in the profession, with women making up approximately a quarter of the judiciary and underrepresented in particular in prosecutorial and managerial positions. • The scope and quality of legal aid is inadequate and there is no effective monitoring that would contribute to remedying long-standing problems.	

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2014 Regular Report (p. 13-14)	• The amendments to the Law on High Council of Judges and Prosecutors and the subsequent dismissal of staff and numerous reassignments of judges and prosecutors raised serious concerns over the independence and impartiality of the judiciary and the separation of powers. • The Turkish Constitutional Court found a number of provisions unconstitutional and gave the legislature a deadline of three months to adopt revised legislation. • The Constitutional Court continued to receive individual applications. (YouTube, and Twitter bans, Hrant Dink's murder case)	• The frequent changes to the justice system, with no proper stakeholder consultation, risk further reducing the efficiency of the Turkish criminal system. • By abrogating Article 10 of the Anti-Terror Law in its entirety, the law suppressed, together with the Regional Serious Crimes Courts, their special powers and reduced the maximum detention on remand from ten to five years. These reforms were adopted without transitional provisions and risk resulting in affecting the effectiveness of the courts that are already overburdened. • The lower statutory maximum limit of five years of detention on remand remains excessive if compared with practice of EU Member States. • A Law on the National Intelligence Services, adopted in April, allows wiretappings and surveillance to be conducted by Turkish intelligence services without judicial oversight, which goes against European standards. • Concerns about criminal justice legislation and practice remained, in particular on the capacity of prosecutors to lead investigations,	• In June, parliament adopted legislation to implement the Constitutional Court's decision. This legislation brought back the legal provisions introduced in 2010, restoring thus the role of the plenary which is a key guarantee of the independence of the judiciary.

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2015 Regular Report (p.13-15)	• Turkey's judicial system reached some level of preparation. Between 2007 and 2013, the judicial system had achieved significant improvements, related to **its independence, the quality of trials, juvenile justice, a substantial reduction in use of police custody, more limited use of pre-trial detention, and respect for human and fundamental rights,** including abiding by the case law of the European Court of Human Rights (ECtHR). • Overall, the quality of judicial decisions has improved in recent years, but the weak reasoning and poor quality of certain indictments – without appropriate selection and assessment of relevance of evidence to support the case – remain a serious criminal justice issue. • Courts across the country tend to have modern ICT equipment. Turkey has observer status in the European Judicial Training Network (EJTN). However, Courts do not issue regular activity reports.	• There has been no progress since early 2014. **The independence of the judiciary and respect of the principle of separation of powers have been undermined** and judges and prosecutors have been under strong political pressure. • Following legislative changes in 2014 and personnel changes in the Council, **the executive reasserted its influence over the Council.** • **The serious concerns over the composition of the High Council, role of the Minister of Justice acting as president and his under-secretary holding an extensive role in the HSYK,** particularly on disciplinary issues and transfers. More transparency in the work of HSYK and its strict adherence to procedures are needed to strengthen its credibility and trust in the judiciary. • In practice, there are numerous reports of selective justice and political interference in court cases. Representatives of the executive have continued to publicly undermine the credibility of the judiciary as a whole. • The appointment and training of judges and prosecutors constitute an important concern	

Table 1: Turkish Alignment to the EU's Judicial System			
The Judicial System based on Turkey's Progress Reports 1999-2016			
	Evaluation	**Conclusion**	**Alignment**
2016 Regular Report (p. 17-20)	• Turkey's judicial system has reached an early stage/some level of preparation. There has been backsliding in the past year, in particular with regard to the independence of the judiciary which represents a significant challenge to the overall functioning of the judiciary. • In general, the Turkish judicial system has enough capacity to handle its caseload. The establishment of the Court of Appeals from 20 July 2016 will contribute to ensuring the consistency of case-law and help reduce the backlog of the Court of Cassation. • The length of proceedings has been a long-standing issue. The backlog of civil, criminal and administrative cases, which had been reduced in 2012, increased again markedly in the following years and more particularly in 2016. • The judicial network is complex and, while there are enough support staff, there is no human resources management strategy.	• The extensive changes to the structures and composition of high courts are of serious concern as **they threaten the independence of the judiciary and are not in line with European standards.** • Judges and prosecutors continued to be removed from their profession and in some cases were arrested, on allegations of conspiring with the Gülen movement. The situation worsened further after the July coup attempt, following which one fifth of the judges and prosecutors were dismissed and saw their assets frozen. • There was no progress on the outstanding issues identified in previous reports. • There was no progress in solving the persistent problem of the influence of the executive over the HSYK, in particular following the legislative changes of 2014 strengthening the powers of the Minister of Justice within the HSYK and the subsequent staff changes in the HSYK. • As ex officio members, the Minister of Justice, acting as President of the Council, and his undersecretary continue to have substantial influence over the work of the HSYK. • The HSYK is therefore widely perceived to be **the executive's main means of controlling the judiciary.** More transparency in the HSYK's work and strict adherence to procedures are needed to strengthen not only the Council's credibility but also public trust in the judiciary. • The application of the principle of immovability of judges remains highly problematic. Transfers of judges and prosecutors against their	

		will were frequent and were not open to judicial review. • A number of disciplinary and criminal cases against judges and prosecutors have not seen due process, being sometimes solely based on the indictments and rulings pronounced by these same judges and prosecutors in the exercise of their functions. This contradicts basic principles of the rule of law and considerably undermines trust in the judiciary and its independence. • The law changing the structure and composition of the Court of Cassation (CoC) and the Council of State (CoS) as adopted in July also raised serious concerns as to it impact on the independence of the judiciary. • Comments by representatives of the executive and the legislative branches on ongoing judicial cases, challenging among others decisions taken by the Constitutional Court, have continued as a regular practice. • The magnitude and rapidity of the measures taken raise 19 questions on criteria applied. These large-scale dismissals as well as large-scale recruitments of new judges and prosecutors raise a serious challenge to the performance and independence of the judiciary. • While all lawyers have to abide by the rules set by the Union of Turkish Bar Associations, there is no code of ethics for judges and prosecutors. • Integrity training is part of the curriculum for initial training but neither a criterion in the initial selection and nomination process, nor for appointments to senior positions.	