

## *Chapter Two*

# **Turkey and the Council of Europe**

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As a result of its western alignment during the 1940s Turkey established formal links with the Western community becoming a member of several western organizations. Turkey, which introduced a multiparty system and a democracy in 1946, became a founding member of the Council of Europe (1949), an organization that serves as the guardian of democracy and human rights.

This study will first attempt to identify Turkey's place in the European international community with historical references to Turkey's transformation, particularly focusing on the country's modernization, westernization, and Europeanization. The paper will then evaluate the relationship between the Council of Europe and Turkey since the beginning of its membership up to the present day, focusing on directions of democratic change in the country. Within this context, the study will draw upon recent external and internal developments and their impacts on Turkey focusing on the security versus freedom dilemma and reactions from the Council of Europe to assess prospects of further cooperation. Finally, the chapter will have recommendations for both sides that might contribute to foster cooperation not only between them but also with their neighborhood and other regions.

## **A Brief History of Turkey's Place in the European Community**

Turkey's place in the European community dates back to 19<sup>th</sup> century, when the Ottoman Empire signed the Treaty of Paris in 1856 after the Crimean War.<sup>1</sup> In fact, the Ottoman Empire became a *de facto* part of the

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<sup>1</sup> The English School of international relations invented the concept "international community." The emergence of a European international community dates back to the Vienna Congress of 1815, which formed the basis of common values and common interests. It also formed the basis of regional and international institutions and organizations starting the establishment of organization that regulates passage of vessels at the European rivers and most importantly established the European "balance of power" (the Concert of Europe) that lasted between 1815 and 1914.

European system, enjoying the balance of power when it formed an alliance with Russia against Britain in the 1830s, and an alliance with Britain and France against Russia in the 1850s.

As a result of the rise of positivism in European international law, the previous history of legal interactions between European and Ottoman powers was erased and Ottoman membership in the international community became contested.<sup>2</sup> The shift from naturalism to positivism redefined the types of interactions and brought the burden of communal bonds between their respective states and the international community of civilized states. States had to be linked through commercial, cultural, religious, or political ties, in order to belong to the “family of civilized nations” governed by law.<sup>3</sup>

The West European model has influenced modernization<sup>4</sup> and nation-building processes in several South European states since the 19th century. The West European norms and values deeply influenced Ottoman–Turkish intellectuals and the direction of modernization from the late 19th century onwards.<sup>5</sup> The ruling Ottoman elites thus pushed forward modernization that ensures its legal participation in the Concert of Europe and led to the Ottoman Empire bound to Europe for centuries through a series of treaties and the law of nations.<sup>6</sup>

Hence, modernization, interchangeably used to describe westernization, was also adopted by the Ottoman Empire, for example by granting increased individual rights, modeled after the Western state system and individual rights. Between 1839 and 1876, educational, political, and economic reforms aimed at modernizing the Ottoman Empire were introduced. The 1876 Tanzimat reforms intended to preserve the weakening Ottoman Empire, and included the 1839 Hatt-ı Şerif of Gülhane reforms (Noble Edict of the Rose Chamber), which guaranteed life and property rights, instituted tax regulations, outlawed execution without trial, and

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<sup>2</sup> Lorca, Arnulf Becker “Mestizo International Law: A Global Intellectual History 1842–1933,” *Cambridge Studies in International and Comparative Law*, (2015), p. 119.

<sup>3</sup> Ibid.

<sup>4</sup> Modernization refers to a transformation, which began at the end of the Middle Ages., Dankwart, Rustow A. and Ward, Robert E., Introduction in Robert E. Ward & Rustow A. Dankwart (eds.) *Political Modernization in Japan and Turkey*, (New Jersey: Princeton University Press, 1964), p. 3.

<sup>5</sup> Kaliber, Alper, “Europeanization in Turkey: In Search of a New Paradigm of Modernization,” *Journal of Balkan and Near Eastern Studies*, vol. 16, no. 1, 2014, pp. 30–46.

<sup>6</sup> Lorca, Arnulf Becker, p. 120.

other liberal reforms, recalled the French Declaration of the Rights of Man and the Citizen (1789), and the 1856 Hatt-ı Hümayun (Imperial Edict), which asserted the equality of Muslim and non-Muslim Ottoman subjects. The Tanzimat reforms, which transformed life in the Ottoman Empire, were based on European state models and were aimed at showing Europe that the Ottoman Empire belonged among European nations.<sup>7</sup>

As long as the international community was composed of peoples belonging to the European civilization, new states had to incorporate fundamental elements of Western culture for the international community to progress. The adoption of this standard of civilization as a yardstick for the recognition of statehood presented the Ottoman elites with an opportunity to justify the process of modernization and Westernization.<sup>8</sup>

Seeking ways to belong to the “family of civilized nations” governed by law continued throughout the Westernization of the Turkish system following the establishment of the Republic of Turkey and Mustafa Kemal Atatürk’s reforms. In 1923, the Republic of Turkey was established as a constitutional parliamentary democracy,<sup>9</sup> and became one of the first countries to grant women the right to vote and to be elected. In the municipal elections of 3 April 1930, women were given the right to vote, and four years later, women gained the right to both vote and be elected in national elections, much earlier than their counterparts in many contemporary democracies in the West.<sup>10</sup> In the general elections held on February 8, 1935, 17 women deputies entered the Turkish Grand National Assembly. In 1946, the first multi-party elections were held and marked a turning point Turkey’s internal politics.<sup>11</sup> Four years later, the peaceful transition of power from one party to another following democratic election realized.<sup>12</sup>

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<sup>7</sup> See: <http://rlp.hds.harvard.edu/faq/tanzimat-reforms>.

<sup>8</sup> Lorca, Arnulf Becker, pp. 120, 127.

<sup>9</sup> Esmer, Yılmaz, Introduction in *Politics, Parties, and Elections in Turkey*, Sabri Sayari & Yılmaz Esmer (eds.) (Boulder and London: Lynne Rienner Publishers, 2002), p. 2.

<sup>10</sup> Davidson, Marilyn J. and Burke, Ronald J., *Women in Management Worldwide: Progress and Prospects*, (Surrey, U.K.: Gower Publishing, 2011), p. 329.

<sup>11</sup> Dankwart, Rustow, A. and Ward, Robert E., Introduction in Robert E. Ward & Rustow A. Dankwart (eds.) *Political Modernization in Japan and Turkey*, (New Jersey: Princeton University Press, 1964), p. 3.

<sup>12</sup> Yılmaz Esmer, Introduction in Sabri Sayari & Yılmaz Esmer (eds.) *Politics, Parties, and Elections in Turkey* (Boulder and London: Lynne Rienner Publishers, 2002), p. 2.

Since the foundation of the Republic, Turkey's orientation and affiliation with the West through modernization (Westernization) became major feature of Turkish foreign policy. Westernization, defined as part of Turkey's identity as a result of adopted norms and values, also shaped the foreign policy interests of Turkey and led it to become part of several western organizations. Its association with the West was realized through the Truman Doctrine of 1947, paving way for its membership to the Organization for European Economic Cooperation (OEEC) in 1948 to utilize the Marshall Plan, and continued membership to the Council of Europe in 1949 and its admission to the North Atlantic Treaty Organization (NATO) in 1952 after Turkey's participation in the Korean War of 1950. This trend continued with Turkey's membership to the Organization for Economic Cooperation and Development (OECD) in 1961 and Organization for Security and Cooperation in Europe (OSCE) in 1975. Most of these institutions are composed of countries committed to democracy, human rights, and the rule of law. The OECD is a forum for countries describing themselves as committed to democracy and the market economy; the OSCE is an organization of countries declaring their commitment to democracy based on human rights and fundamental freedoms; NATO's charter stipulates that the signatories "are determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law"; and finally, the Council of Europe was established to promote democracy and to protect human rights and the rule of law.

Although democracy in Turkey has been interrupted by military intervention (1960), the "half coup" (1971), the military takeover (1980), and the "postmodern *coup d'état*" (1997), the country has achieved significant progress in cooperation with the Council of Europe (CoE), particularly in the early 2000s. These were manifest in areas such as the abolition of the death penalty, the fight against torture, the reform of prisons and detention centers, freedom of thought and expression, freedom of association and reunion, freedom of religion, the functioning of the judiciary, civil-military relations, economic, cultural and social rights, and the fight against corruption. The credible European Union membership perspective attained at the 1999 Helsinki Summit, (when Turkey was declared a candidate state), served to accelerate the reform processes that were already underway in Turkey.<sup>13</sup>

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<sup>13</sup> Ünver Noi, Aylin, "Challenges of Democracy in Turkey: Europeanization, Modernization and Securitization Revisited," in Aylin Ünver Noi and Sasha Toperich (eds.) *Challenges of*

In fact, Turkey's relationship with the European Community (EC) dates back to 1959, when it applied for association with the EEC. This relationship continued with an association agreement—the Ankara Agreement—signed in 1963, and an Additional Protocol signed in 1970. As foreseen in the 1963 Ankara Agreement, the Customs Union decision was taken by the Turkey-EU Association Council in 1995. At the Copenhagen summit of 1993, the EU set out economic and political criteria that raised the bar for membership requiring candidate states to meet a number of political criteria, including the stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities. It also set out certain economic criteria, including the maintenance of a functioning market economy, and the capacity to cope with competitive pressure and market forces within the Union.<sup>14</sup>

In October 2001, the Turkish Parliament passed 34 constitutional amendments expanding democratic rights and liberties. In December of 2002, the Copenhagen European Council clearly linked the EU's prospective decision to open accession talks with Turkey with the performance of the government to democratize state–society relations in Turkey. Then, Turkey witnessed a sweeping wave of reform processes where several legal “harmonization packages” and a further set of constitutional amendments were passed, particularly in 2003 and 2004. The adoption of successive reform packages by the Turkish Grand National Assembly to meet the Copenhagen Criteria has placed the EU at the forefront of the democratization agenda in Turkey. Among these radical reforms are the abolition of State Security Courts, the narrowing of the jurisdiction of military courts over civilians, the abolition of the death penalty, enhancing the exercise of the right of freedom, expression and assembly, and the abolition of the ban on broadcasting and teaching in languages other than Turkish.<sup>15</sup>

Europeanization, (which corresponds to a quest for a new paradigm of political modernity), has turned out to be the main normative and political context of the democratic transformation of the state-centered nature of Turkish political modernity. Europeanization constituted the main normative/political context for the modernizing elite to define and justify their vision of state and society. Europeanization as a pathway leading

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*Democracy in the European Union and Its Neighbors* (Washington D.C.: Center for Transatlantic Relations, 2016).

<sup>14</sup> Ibid.

<sup>15</sup> Kaliber, Alper, “Europeanization in Turkey: In Search of a New Paradigm of Modernization,” *Journal of Balkan and Near Eastern Studies*, vol. 16, no. 1, 2014, pp. 30-46.

societies to the end-stage of modernization, implies that once European-wide norms, rules, and procedures get diffused and the institutional and policy misfit between the domestic and EU level is eliminated, these countries will have completed their process of modernization.<sup>16</sup> Large segments of society tended to see Europeanization as “synonymous to democratization or pressure to enhance and deepen liberal democracy, and to activate appropriate citizenship rights.”<sup>17</sup> Europeanization helped Turkey to achieve a decrease in number of cases in the Council of Europe. Some reforms helped Turkey to improve its place in this institution.

### **The Council of Europe: Guardian of Human Rights and Democracy**

The idea of human rights, which underlay the 1776 American Declaration of Independence and the 1789 French Declaration of the Rights of Man and of the Citizens, re-emerged and developed after World War II (WWII) following the experiences of Nazism and Fascism.<sup>18</sup> The calls for human rights standards to protect citizens from abuses by their governments gained enormous importance. The International Bill of Human Rights: the 1948 Universal Declaration of Human Rights and the two international covenants, (on Civil and Political Rights and on Economic, Social and Cultural Rights) are basic international framework for the protection of human rights declared after WWII. The Genocide Convention and the Convention against Torture are other important treaties in terms of human rights. Yet, committees monitoring their implementation cannot force a state to comply.<sup>19</sup>

The idea of founding the CoE was first voiced by Winston Churchill, the Prime Minister of the United Kingdom, on a radio broadcast during WWII. Churchill repeated his view on the establishment of a United States of Europe in a speech he made at Zurich University in 1946. The idea was

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<sup>16</sup> Ibid. Europeanization and modernization are used here as synonymous terms and at times even interchangeably.

<sup>17</sup> Kaliber, Alper, “Europeanization in Turkey: In Search of a New Paradigm of Modernization,” *Journal of Balkan and Near Eastern Studies*, vol. 16, no. 1, 2014, pp. 30-46.

<sup>18</sup> The Declaration of the Rights of Man (1789) was established to grant individuals natural, sacred, and inalienable human rights—freedom, property, safety, and the right to resist oppression. See: Yale Law School. *Declaration of the Rights of Men-1789, The Avalon Project Documents in Law, History and Diplomacy*, 2008.

<sup>19</sup> E. Karen, *European Union Foreign Policy in a Changing World*, (Cambridge: Polity, 2003) p. 98.

to provide reconciliation among the people of Europe that would prevent the re-emergence of a conflict, as well as to protect individuals in the continent by establishing common institutions, standards, and agreements.<sup>20</sup>

The London Agreement, (which formally established the CoE), was signed on May 5, 1949 by 10 European countries. The European Convention on Human Rights (ECHR), a backbone to the CoE with the aim of developing democratic principles, was signed on November 4, 1950 in Rome. The CoE also contains more than 200 conventions and protocols on the protection of individuals throughout Europe. The CoE achieved a greater unity and collaboration in Europe on the basis of common European values, standards, and institutions. The CoE has monitoring mechanisms such as the European Court of Human Rights to which all member states have accepted the right to individual application.<sup>21</sup>

The ECHR lays down a number of civil and political rights, including freedom from torture and slavery to freedom of religion and expression. Under the ECHR, an individual can file a complaint against his or her own country alleging violations of the convention. Contrary to other international treaties on human rights, the judgment of the ECHR is legally binding. All EU member states that ratify the ECHR indicate their willingness to protect human rights. This reflects the need for making human rights issues that happen within state boundaries subject to international scrutiny.<sup>22</sup>

The democratization process accelerated at the end of the Cold War, which highlighted the political and legal effectiveness of the CoE. With the membership of Central and Eastern European countries in democratic transition, the CoE expanded rapidly.<sup>23</sup> Today, the CoE has 47 members.

Since the 2000s, there have been calls for reforms in the CoE. After the 2009 election of former Norwegian Prime Minister Thorbjorn Jagland as the Secretary General, a comprehensive reform process has been put into practice with the aim to increasing the benefits of the work and con-

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<sup>20</sup> Ünver Noi, Aylin, "An Alternative for Improving Human Security in the Middle East and North Africa" in Sasha Toperich and Andy Mullins (eds.) *A New paradigm: Perspectives on the Changing Mediterranean*, (Washington D.C.: Center for Transatlantic Relations, 2014) p. 30.

<sup>21</sup> Council of Europe: History, Republic of Turkey, Ministry of Foreign Affairs, 2011, <http://www.mfa.gov.tr/council-of-europe.en.mfa>.

<sup>22</sup> Smith, op. cit., p. 99.

<sup>23</sup> Council of Europe: History, op. cit.

tributions of the CoE, as well as to strengthen the CoE's political role and visibility both at the regional and the international level. Moreover, the CoE has initiated a number of activities for North Africa and the Middle East to share its experience on human rights, democratization, and the rule of law norms and standards.<sup>24</sup>

## The Council of Europe and Turkey

Turkey's first institutional ties with Europe after WWII were established with the CoE, following the organization's invitation to Turkey (along with Iceland and Greece) as a founding member, in 1949. Thus, Turkey contributed to joint efforts in transitioning Europe away from the post-war psychology and achieving unification through supporting the accession of the Federal Republic of Germany and Austria to the CoE. Since the establishment of the Parliamentary Assembly of the Council of Europe (PACE), Turkey has supported the common European vision and the idea of European integration, and Turkish parliamentarians have actively participated in PACE. Turkey was one of the democratic countries in the Council when the CoE only had a limited number of democracies in the 1950s. In 1954, Turkey ratified the ECHR, which rules on individual or state allegations of civil and political rights.<sup>25</sup>

The reform process in Turkey was stepped up through a credible European Union membership perspective, which was attained at the end of the 1990s and significantly enhanced Turkey's relations with the CoE. In this context, substantial progress was achieved in the abolition of the death penalty, opposition against torture, reform of prisons and detention houses, freedom of religion, functioning of the judiciary, civil-military relations, freedom of thought and expression, freedom of association, economic, social and cultural rights, and the fight against corruption. All these progresses were realized in the early 2000s and strengthened Turkey's position in the CoE, which led to PACE's decision in 2004 to close the monitoring procedure on Turkey.<sup>26</sup>

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<sup>24</sup> Ibid.

<sup>25</sup> Ünver Noi, Aylin, "Turkey's Increasing Presence in the Council of Europe: What Should be the Next Step?" *Huffington Post*, 2015, [http://www.huffingtonpost.com/aylin-unver-noi/turkeys-increasing-presen\\_b\\_7415638.html](http://www.huffingtonpost.com/aylin-unver-noi/turkeys-increasing-presen_b_7415638.html).

<sup>26</sup> Council of Europe: History, op. cit.

Turkey had sufficiently fulfilled the Copenhagen political criteria to open accession negotiations with the EU on October 3, 2005. Since then, however, the speed of reforms has slowed in parallel to the increasingly dim perspective of membership after the EU's Turko-skeptic leaders offered Turkey a "special relationship," based on "privileged partnership" rather than "full EU membership," vetoing the opening of several chapters in Turkey's EU accession talks. The post-2005 period was marked by the retreat of Europeanization as a normative/political context affecting Turkish politics and policy. This retreat was described by the European Commission as a "significant slowdown in the reform agenda."<sup>27</sup> Human rights activists in Turkey underline that "in parallel to the deterioration of EU-Turkey relations, there has been a decrease in human rights standards and a sharp increase in human rights violations, which has crippled their effectiveness and ability to influence policy."<sup>28</sup>

The slowdown in the EU-required reform process cast a shadow over the prospects of grounding Turkish political modernization on a more pluralist, participatory, and emancipatory basis.<sup>29</sup> Nevertheless, the adoption and implementation of certain domestic reforms continued after 2005. The Ankara criteria replaced the Copenhagen criteria. This preference of the government has been described by Tanja Börzel as "Europeanization à la carte,"<sup>30</sup> in other words, picking and choosing from EU policies.<sup>31</sup>

Despite the slowdown in the reform agenda, since 2005, Turkey's relations with the CoE have nevertheless advanced. In line with Turkey's objective to strengthen its role and visibility on international platforms, in 2006 Turkey became a major contributor to the CoE's budget.<sup>32</sup> Turkey's contribution to strengthening its political role, visibility, and relevance of the CoE were undeniable since Foreign Minister Mevlüt Çavuşoğlu was

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<sup>27</sup> Keyman, Fuat and Gümüüşçü, Şebnem, *Democracy, Identity and Foreign Policy in Turkey: Hegemony through Transformation*, (Hampshire and New York: Palgrave Macmillan, 2014) pp. 48, 50.

<sup>28</sup> Kaliber, Alper and Tocci, Nathalie, "Civil Society and the Transformation of Turkey's Kurdish Question," *Security Dialogue*, vol. 41, no. 2, 2010, p. 203.

<sup>29</sup> Kaliber, Alper, "Europeanization in Turkey: In Search of a New Paradigm of Modernization," *Journal of Balkan and Near Eastern Studies*, vol. 16, no. 1, 2014, pp. 30-46.

<sup>30</sup> Börzel, Tanja A. and Soyaltın, Didem "Europeanization in Turkey: Stretching a Concept to Its Limits?" Working Paper Freie Universität Berlin-KFG *The Transformative Power of Europe*, no. 36, (February 2012), p. 16.

<sup>31</sup> Börzel and Soyaltın, op. cit., p. 16.

<sup>32</sup> Council of Europe: History, op. cit.

elected as President of the Parliamentary Assembly in 2010 (for two years) and Turkey assumed Chairmanship of the Committee of Ministers of the CoE between November 2010 and May 2011. During the Turkey's Chairmanship of the Committee of Ministers, the CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence, (known as the Istanbul Convention), was opened to signature on May 11, 2011. The Convention to which Turkey became the first signatory provides for the highest standards in combatting violence against women and taking necessary measures for its prevention, protection, and prosecution. Aside from the Istanbul Convention, the Neighboring Policy of the CoE was initiated during Turkey's Chairmanship of the Committee of Ministers.<sup>33</sup>

During the Turkish Chairmanship, priorities were also given to reforming the CoE, securing long-term effectiveness of the European Court of Human Rights, strengthening the independent monitoring mechanism of the CoE, facilitating EU's accession to the ECHR, and addressing the challenges of multicultural European societies. Moreover, Turkey's chairmanship offered assistance to countries in the Middle East and North Africa (MENA) in establishing a democratic transition process in the post-Arab Spring era. In this framework, the Turkish Minister of Foreign Affairs of the time, Ahmet Davutoğlu, as Chairperson of the Committee of Ministers, visited Tunisia in February 2011, along with Thorbjorn Jagland, Secretary General of the CoE.<sup>34</sup>

On January 7, 2015 Mevlüt Çavuşoğlu, Turkey's Foreign Minister, signaled the country's continuous support to the CoE by expressing a desire to become the sixth largest contributor to the CoE by increasing its annual contribution to the CoE from 13 million euros to 33 million euros. The Turkish delegation requested to introduce Turkish as a working language in the Assembly, in addition to Italian, Russian and German, and the official languages of English and French. As Europe's third-largest population, the Turkish parliamentary delegation requested an increase in the number of seats in the Assembly. The allocation of seats in the Assembly, based on population size, has not been adjusted since 1977.<sup>35</sup>

The Committee welcomed Turkey's decision to become a major contributor to the CoE's budget from 2016 onwards, and it accepted the request to introduce Turkish as a working language in Assembly. Also, the

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<sup>33</sup> Council of Europe: History, op. cit.

<sup>34</sup> Ünver Noi, 2015, op. cit.

<sup>35</sup> Ünver Noi, 2015, op. cit.

Committee agreed to increase the number of Turkish parliamentarians from 12 to 18 within PACE. Thus, Turkey now had the same number of seats in the Assembly as France, Germany, Italy, the Russian Federation, and the UK.<sup>36</sup>

In addition to Turkey's efforts to support the strengthening of the CoE, Turkey continues to provide voluntary contribution to the work of the CoE in areas such as the policy towards neighboring regions, Prevention of Violence Against Women, CoE's Action Plan in Ukraine, the ongoing process with Kosovo, and the reform of the European Court of Human Rights. Turkey also maintains close cooperation with the monitoring bodies of the CoE in the fight against racism and discrimination, the prevention of torture and ill-treatment, and initiatives against corruption, money-laundering, and counter-terrorism.<sup>37</sup> Moreover, Turkey is party to almost half of the 219 CoE Conventions and protocols. The ratification process of the signed Conventions has been accelerated. Awareness and training activities are given to students, civil society, and public officials in cooperation with the CoE.<sup>38</sup>

## Post-Coup Developments and Their Impact on Turkey-CoE Relations

On July 15, 2016, a fraction within the Turkish Armed Forces directed by FETÖ, the Fethullah Terrorist Organization (a group classified as a terrorist organization within the Turkish National Security Policy) loyal to Turkish-Muslim cleric Fethullah Gülen, had attempted to perform a *coup d'état*. This bloody coup attempt resulted in 265 civilian deaths and 1,440 injured. Following the attempt, tens of thousands of employees who had infiltrated the state institutions were removed from military and government positions. Turkey temporarily suspended the ECHR and implemented a state of emergency to eradicate this organization. Since then, Turkish authorities have arrested more than 47,155 people accused of having links to FETÖ.<sup>39</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> Council of Europe: History, op. cit.

<sup>38</sup> Council of Europe: History, op. cit.

<sup>39</sup> Hürriyet Daily News, "47,155 People Arrested in Gülen Probe Since Coup Attempt: Interior Minister," March 4, 2017. <http://www.hurriyetdailynews.com/47155-arrested-in-gulen-probe-since-coup-attempt-interior-minister.aspx?pageID=238&nID=111530&News-CatID=509>.

A study conducted by the CoE stated that over 125,000 people across Turkish society had been dismissed from their jobs as of December 9, 2016. The study also listed the arrest of 140 journalists, the closure of 177 media outlets (11 of those were subsequently reopened) and the shutdown of more than 2,000 schools, universities, and dormitories. A report released by Nils Muiznieks, CoE's Commissioner for Human Rights, accused the Turkish government of adopting state decrees granting it almost unlimited powers, which led to human right abuses. The study also emphasized "the dismissal of a number of members of the Turkish forces resulted in a decrease, (by one third), of military personnel."<sup>40</sup>

Turkish officials said the military had become more loyal and effective with the removal of rogue officers, some of which commandeered tanks, jets, and helicopters in their attempt to seize power on July 15.<sup>41</sup> Mevlüt Çavuşoğlu, Minister of Foreign Affairs, defended the purge of public officials to the CoE claiming that terrorist organizations had infiltrated Turkish state organizations for the past 15 years and that the government "simply had no other choice." Çavuşoğlu also claimed that France had adopted similar state emergency measures following the November 2016 terror attacks in Paris. He added that the state of emergency would be lifted once the situation was back under full control.<sup>42</sup> Along with the coup attempt, Turkey has suffered a series of devastating terror attacks by the Islamic State of Iraq and Syria (ISIS) and the Kurdistan Worker's Party (PKK).

While condemning the coup, several EU officials expressed alarm over the scope of the arrests. Thorbjorn Jagland, the General Secretary of the CoE, who was one of the most senior European officials to visit Turkey after the coup attempt, said that there had been insufficient understanding in Europe about the challenges this has caused to the democratic state institutions in Turkey, (referring to FETÖ). He accepted the need for a crackdown and taking on those who were behind this coup and this secret network that contrasted with the tone of European officials. The Turkish

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<sup>40</sup> Deutsche Welle, "Turkey Defends Purge of Government Officials to Council of Europe," October 12, 2016. <http://www.dw.com/en/turkey-defends-purge-of-government-officials-to-council-of-europe/a-36025826>.

<sup>41</sup> Reuters, "Turkey's Purge Cuts Military by a Third: Council of Europe," December 19, 2016. <http://www.reuters.com/article/us-turkey-security-rights-idUSKBN1481H2>.

<sup>42</sup> The government extended the state of emergency for another three months at the beginning of October. Deuschewelle, "Turkey Defends Purge of Government Officials to Council of Europe," October 12, 2016. <http://www.dw.com/en/turkey-defends-purge-of-government-officials-to-council-of-europe/a-36025826>.

Minister of Foreign Affairs, Çavuşoğlu, said he hoped the solidarity of the CoE General Secretary would set an example for other European allies.<sup>43</sup> He emphasized that “Europe should also realize how it moves away from its own values as it excludes Turkey.”<sup>44</sup> The CoE Secretary General said he would continue to strengthen cooperation between Turkey and the CoE. The CoE was working with Turkey on post-coup prosecutions and address cases where the court had found violations of European rights to freedom of expression due to the application of Turkey’s laws, and in some cases even the laws themselves. These discussions were aimed at helping Ankara better understand which laws need to be revised, but were nevertheless separate from Turkey’s visa liberalization talks with the EU.<sup>45</sup>

In the post-coup era, the debate on the reinstatement of the death penalty became an important issue. On October 30, 2016, the CoE warned Turkey against the reinstatement of the death penalty, saying that reinstating the death penalty would be incompatible with membership to the CoE. Each country that ratified the ECHR in 1983 excluded capital punishment, except in time of war or imminent threat of war.<sup>46</sup> The other issue on the agenda in the post-coup era was the declared state of emergency. The CoE’s Venice Commission<sup>47</sup>, described as an advisory body and a human rights watchdog, told Turkey it was abusing the state of emergency laws in its wider effort to purge state *saboteurs*.<sup>48</sup>

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<sup>43</sup> Anadolu Agency, “Turkish PM Thanks Council of Europe for Coup Solidarity,” November 11, 2016. <http://aa.com.tr/en/politics/turkish-pm-thanks-council-of-europe-for-coup-solidarity/683102>.

<sup>44</sup> Euractive, “Council of Europe Chief Backs Turkey ‘Clean-Up’ After Coup,” August 3, 2016. <http://www.euractiv.com/section/justice-home-affairs/news/council-of-europe-chief-backs-turkey-clean-up-after-coup/>.

<sup>45</sup> Euractive, “Turkey Working with Council of Europe on Post-Coup Prosecutions,” September 7, 2016. <https://www.euractiv.com/section/justice-home-affairs/news/turkey-working-with-council-of-europe-on-post-coup-prosecutions/>.

<sup>46</sup> Turkey’s 2002 protocol ended the time of war provision. Hürriyet Daily News, “Council of Europe Warns Turkey over Death Penalty Plans,” October 30, 2016. <http://www.hurriyetdailynews.com/council-of-europe-warns-turkey-over-death-penalty-plans-.aspx?PageID=238&NID=105539&NewsCatID=351>.

<sup>47</sup> The Action of the Venice Commission is based on the principles of democracy, human rights, and rule of law. Its key areas of action are democratic institutions and fundamental rights; constitutional justice and ordinary justice; and elections, referendums and political parties. Commission produces reports on topical issues providing states with legal advice in the form of “legal opinions” on draft legislation or legislation already in force which is submitted to it for examination.

<sup>48</sup> Euobserver, Council of Europe Critical of Turkey Emergency Laws, December 9, 2016. <https://euobserver.com/tickers/136221>.

Turkey's decision to change its constitution that would turn the political system from a parliamentarian to a presidential system represented another significant issue between Turkey and CoE. This constitutional change, which would abolish the office of the prime minister and consolidate the power of the president, was criticized by the organization for the lack of necessary checks and balances and separation of powers, which are described as the *sine qua non* of a well-functioning democracy. The February 22, 2017 Venice Commission's report issued on constitutional amendments described the situation as a road to autocracy, and a dramatic decline in the country's democratic order, criticizing Ankara's decision to push through constitutional changes during a state of emergency. Mevlüt Çavuşoğlu (Foreign Minister) responded to the Venice Commission's criticism by saying, "France has a state of emergency, too. France can elect the president under a state of emergency, but when it comes to Turkey, it is a crisis. This is [a] double standard and hypocrisy." Ankara rejected the report of the Venice Commission saying that report was politicized.<sup>49</sup>

Although the technical aspects of the process were well administered, lack of equal opportunities, one-sided media coverage, and limitations on fundamental freedoms created unlevel playing field in Turkey's constitutional referendum, international observers concluded in a statement released on April 17, 2017. Cezar Florin Preda, the CoE's Head of the Delegation from the Parliamentary Assembly said "in general, the referendum did not live up to the CoE standards. The legal framework was inadequate for the holding a genuinely democratic process."<sup>50</sup>

Thorbon Jagland, (CoE Secretary General), made the following statement on Turkish Constitutional referendum:

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<sup>49</sup> Hürriyet Daily News, "Turkey Says Venice Commission's Report on Charter Changes 'Not Acceptable,'" March 10, 2017. <http://www.hurriyetdailynews.com/turkey-says-venice-commissions-report-on-charter-changes-not-acceptable-.aspx?pageID=238&nID=110645&NewsCatID=510>.

<sup>50</sup> Turkey has been an electoral democracy since 1950, and international observers have praised the fairness and freedom of Turkish elections. Most recently, the general elections in 2015 were observed by the OSCE and Council of Europe (CoE), with the organization saying, "Turkey's well-managed, democratic elections demonstrated pluralism." <https://www.dailysabah.com/eu-affairs/2017/04/25/council-of-europe-assembly-to-reopen-monitoring-process-against-turkey>. Also see: OSCE, Lack of Equal Opportunities, one-sided media, coverage and limitations on fundamental freedoms created unlevel playing field in Turkey's Constitutional Referendum," and: International Observers, 17 April 2017, <http://www.osce.org/odihr/elections/turkey/311726>.

The Turkish electorate has voted on the amendments to the Constitution. In view of the close result the Turkish leadership should consider the next steps carefully. It is of utmost importance to secure the independence of the judiciary in line with the principle of rule of law enshrined in the ECHR. The Council of Europe, of which Turkey is a full member, stands ready to support the country in this process.<sup>51</sup>

PACE discussed a report titled “the Functioning of democratic institution in Turkey” and decided to reopen a political monitoring process against Turkey following the April 16 referendum on constitutional reform. With this decision, Turkey became the only country ever to first be cleared from initial monitoring, but then to return to monitoring status.

## Conclusion

“If you want total security, go to [the] prison, there you are fed, clothed, given medical care, and so on. The only thing lacking...is freedom!” These words by U.S. President Dwight D. Eisenhower best describe the security versus freedom dilemma, one of the most difficult challenges facing many states in the world today. The rising security concerns, largely due to increasing terror threats that feed into racism, xenophobia, and Islamophobia, have the potential to turn into a new Weimar syndrome<sup>52</sup> in many CoE member states. This would lead to a retreat in the liberal values of these democracies.

A new impetus is urgently needed for the CoE in order to enable the organization to provide assistance to put its members’ democracies back on track and to achieve its main role as the guardian of democracy, human rights, and the rule of law. Increasing coordination focusing on the shared

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<sup>51</sup> Statement by the Secretary General Thorbjorn Jagland on the Outcome of the Turkish Constitutional Referendum, April 16, 2017, <http://www.coe.int/en/web/portal/-/statement-by-council-of-europe-secretary-general-thorbj-rn-jagland-on-the-outcome-of-the-turkish-constitutional-referendum> OSCE criticized the result of the Constitutional referendum. European Commission called for transparent investigation into irregularity claims regarding Turkey referendum. President Erdoğan told to OSCE “we will not accept their report...”

<sup>52</sup> Weimar syndrome is a term used for explaining the parallel between the collapse of the Weimar democratic republic and the rise of national Socialism and Fascism in the 1920s and 1930s, and in the fragile democracies of today. See: Asmus, Ronald, “Double Enlargement: Redefining the Atlantic Partnership after the Cold War,” in David C. Gompert and Stephen F. Larrabee (eds.) *America and Europe: A Partnership for a New Era*, (Cambridge: Cambridge University Press, 1998) p. 26.

values and rights stated by the CoE has the potential to refocus the members' attention to human rights and the rule of law, which have been largely neglected in recent years.

Turkey's desire to increase its presence and role in the CoE were significant steps for the future of democracy and human rights in Europe and Turkey. As stated by Secretary General Jagland at the Seventh Annual Ambassadors Conference held on January 7, 2015 in Ankara, "increasing unemployment, racism, and Islamophobia are huge threats for democracies." At the same conference, Mevlüt Çavuşoğlu, Foreign Minister emphasized the importance of the CoE by stating, "at a time when Europe needs dialogue, mutual understanding, and respect for diversity, the CoE should take a step forward." Çavuşoğlu's main goal during the Turkish chairmanship was reinforcing the CoE's political role, visibility, and relevance.<sup>53</sup>

The Venice Commission shares the standards and best practices adopted within the CoE framework, and shares it with neighboring countries. The Venice Commission is increasingly called upon to act outside Europe, particularly in countries of the Maghreb, Central Asia, and Latin America.<sup>54</sup> The CoE and Turkey need each other for further cooperation in fields that might help eliminate differences and work towards the common good, and can work together towards the sharing of these standards and best practices in Central Asia and the MENA region. Turkey's support for democratic transition in the MENA region during the Arab Spring, and President Erdoğan's condemnation of the death penalty decision of the Egyptian court against President Morsi<sup>55</sup> can be seen as a part of this unofficial cooperation with the CoE in the region.

Turkey has shown willingness to increase its role in the CoE in solving rising problems in the wider MENA region. The region needs help and direction towards improving its human rights practices to prevent a turn towards radicalization, extremism, and terrorism, which in turn have considerable impacts on increased levels of Islamophobia and xenophobia in

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<sup>53</sup> Ünver Noi, Aylin "Turkey's Increasing Presence in the Council of Europe: What Should be the Next Step?" Huffington Post, 2015, [http://www.huffingtonpost.com/aylin-unver-noi/turkeys-increasing-presen\\_b\\_7415638.html](http://www.huffingtonpost.com/aylin-unver-noi/turkeys-increasing-presen_b_7415638.html).

<sup>54</sup> Council of Europe: Venice Commission, The Commission's Activities, Council, 2014. [http://www.venice.coe.int/WebForms/pages/?p=01\\_activities&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=01_activities&lang=EN).

<sup>55</sup> President Erdogan stated, "The death penalty decision is a massacre of rights and freedoms." See: <https://www.dailysabah.com/diplomacy/2015/06/16/president-erdogan-morsi-death-penalty-massacre-of-rights-and-freedoms>.

Europe. Turkey, (as a founding member of the CoE), has experience working with this value-based multilateral institution, and it has the know-how and resources to share its best practices and institution-building methods. Turkey can become a pioneer country to establish a Council of Middle East and North Africa (CoMENA). Such an initiative is necessary but have so-far been absent in the region. There is a growing tendency of a “winner takes all” mindset, which can lead to tyranny of one group over another; breaking this vicious circle in the MENA region is only possible through a pluralistic democracy and the functioning of regional organizations. Supporting the Venice Commission’s activities and its sharing of best practices in the MENA region, along with the establishment of the CoMENA—an organization with similar goals to the CoE—would facilitate a transition to democracy in the region.

As stated in the February 20-21, 2017 CoE’s Venice Commission report on constitutional amendments, a parliamentary, semi-presidential, and presidential systems are all considered applicable forms of government in democratic states. In other words, there is no standard or ideal system of government in democracies. Rather, implementing a system of democratic governance based on human rights values is more important than the form of state implemented in a country.”<sup>56</sup>

Protecting human rights while countering terrorism is a difficult task, but Turkey needs to find a balance between security and freedom to unchain itself from an inward-looking security understanding. We should not forget that Turkey’s removal from its CoE monitoring status in 2004 had opened up new and promising vistas for its accession process with the EU, which immediately began membership negotiations with Ankara. The strengthened cooperation between Turkey and its Transatlantic partners on counter-terrorism might facilitate Turkey’s compliance with the CoE requirements.

Turkey’s contribution to the fight against discrimination, xenophobia, Islamophobia, and racism on the European continent, and its role in sharing the standards and best practices adopted within the CoE framework in neighboring countries—including Central Asia and the MENA region—will be all the more likely if Turkey returns to normal state of

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<sup>56</sup> The Venice Commission in Turkey and Ministry of Justice Director General for EU Affairs information note on issues handled during the visit of the Venice Commission regarding constitutional amendments (February 20-21, 2017), February 22, 2017. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)015-e).

affairs from a state of emergency and continues to embrace a well-functioning liberal democracy that is in line with CoE human rights standards. The CoE needs a democratic Turkey to help solving the crisis of emerging illiberal democracies in Europe and beyond. This can be realized as long as the EU becomes more honest and fulfills its commitments towards Turkey when it completes its reform process.