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Military, Police and Intelligence in Turkey:
Recent Transformations and Needs for Reform

Biriz Berksoy

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DEMOKRATİKLEŞME
PROGRAMI

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Türkiye Ekonomik ve Sosyal Etüdler Vakfı
Turkish Economic and Social Studies Foundation

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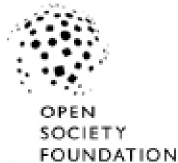

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Table of Contents

TESEV PREFACE, 5

INTRODUCTION, 7

THE MILITARY AND RELATED INSTITUTIONS, 11

The Position of the Army Among State Institutions and the Ongoing Problem of Military Autonomy, 11

Chief of General Staff, 11

The Supreme Military Council, 12

The Military Judiciary, 13

Civilian Democratic Oversight of the Military and Related Obstacles, 17

Parliamentary Oversight of the Military, 17

Oversight of the Military by Extra-parliamentary Institutions, 18

The General Command of the Gendarmerie, the Coast Guard Command and Problems They Contain as Policing Agencies, 22

The Village Guard System and Related Problems, 25

Compulsory Military Service, Violations of Rights and Militarization, 26

THE POLICE ORGANIZATION, 30

Legal Regulations that Extend the Discretionary Power of the Police, 30

The Authority of the Police to Use Firearms, 31

Gatherings and Demonstrations Act and the Regulation of Rapid Action Units, 32

Police Intervention in Everyday Life, 33

Police Sub-Culture, New Strategies of Policing, and Police-Society Relations, 38

Police Violence, the Policy of Impunity and Inadequate Oversight, 42

THE NATIONAL INTELLIGENCE AGENCY AND OTHER INTELLIGENCE AGENCIES, 47

IN LIEU OF A CONCLUSION: THE NEED FOR DEMOCRATIZATION IN THE AREA OF "SECURITY" IN CONSIDERING VIOLATIONS OF RIGHTS, 53

REFERENCES, 59

Abbreviations

AKP / AK Party	Justice and Development Party (*Adalet ve Kalkınma Partisi*)
CGC	Coast Guard Command (*Sahil Güvenlik Komutanlığı*)
CHP	Republican People's Party (*Cumhuriyet Halk Partisi*)
CMK	Criminal Procedure Code (*Ceza Muhakemesi Kanunu)*
ECtHR	European Court of Human Rights
EU	European Union
GCG	General Command of the Gendarmerie (*Jandarma Genel Komutanlığı*)
HSYK	Supreme Council of Judges and Prosecutors (*Hakimler ve Savcılar Yüksek Kurulu)*
IHD	Human Rights Association (*İnsan Hakları Derneği*)
KCK	Kurdish Communities Union (*Koma Civakên Kurdistan*)
LGBT	Lesbian, Gay, Bisexual, Transgender
METU	Middle East Technical University (*Orta Doğu Teknik Üniversitesi*)
MGK	National Security Council (*Milli Güvenlik Kurulu)*
MIT	National Intelligence Agency (*Milli Istihbarat Teşkilatı*)
OSCE	Organization for Security and Cooperation in Europe
OYAK	Military Pension Fund (*Ordu Yardımlaşma Kurumu)*
PKK	Kurdistan Worker's Party (*Partiya Karkarên Kurdistan*)
PVSK	Police Powers and Duties Law (*Polis Vazife ve Salahiyet Kanunu)*
RTÜK	Higher Board of Radio and Television (*Radyo Televizyon Üst Kurulu)*
TBMM	Turkish Grand National Assembly (*Türkiye Büyük Millet Meclisi*)
TCK	Turkish Penal Code (*Türk Ceza Kanunu)*
TIB	Telecommunications Directorate (*Telekomünikasyon İletişim Başkanlığı*)
TIHV	Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı*)
TMK	Anti-Terrorism Law (*Ceza Muhakemesi Kanunu)*
TSKGV	Turkish Armed Forces Support Foundation (*Türk Silahlı Kuvvetleri Güçlendirme Vakfı)*
UN	United Nations
YAŞ	Supreme Military Council (*Yüksek Askeri Şura)*
YÖK	Higher Education Council (*Yüksek Öğretim Kurulu*)

TESEV Preface

Etyen Mahçupyan, *TESEV Consultant*

Turkey is currently undergoing a transformation to end the age old military tutelage regime, which had informally come into being during the one-party rule of the Republican People's Party (*Cumhuriyet Halk Partisi*, CHP) and was systematized in the 1950s following the establishment of the multi-party system. This transformation to end the tutelage regime was affected by both external and internal factors. Externally, the European Union (EU) membership criteria for Turkey, as well as opportunities brought about by globalization have played an important role. Internally, it is the attempts of a political movement with an Islamic identity – a movement which has moved to the center of the political spectrum in recent years, and which seeks to redefine the public sphere from which it was once excluded.

The transformative effects of the ruling Justice and Development Party (*Adalet ve Kalkınma Partisi* - AK Party) in play which became manifest especially in the aftermath of the 2010 referendum, include, in part, the restructuring of the security bureaucracy. This restructuring perspective problematizes not only the organizational structure of the military, police, judiciary and intelligence agencies and their relationship with civilian politics, but also the mentality of these institutions. In AK Party's 2011 election declaration and government program this goal of restructuring was defined as part of perspectives for the "advanced democracy" – which differed from the inherited "contemporary democracy" by its emphasis on the "liberalization of" the political rationality.

In reality however, there seems to be a number of obstacles that prevent the establishment of this "advanced democracy". Among these obstacles are the resistance among the bureaucrat cadres, and the conservative perceptions and assumptions of the AK Party and its constituency that hinder the transformation of their mindset. The most critical challenge, however, is that in governing and solving the entrenched problems of the country, the government has to rely on the very bureaucracy that it seeks to transform. The result is on one hand, a deviation by the government from this imagery of "advanced democracy"; and on the other, relatively independent *de facto* implementations by the security bureaucracy that contradicts the programs of the political power.

Such state of affairs recently became manifest with the Gezi Park Protests that started in late May 2013 as the English version of this report was being prepared for layout. The heavy-handed, unpropotional intervention of the police on the protestors, as well as the government's reaction to the protests have been indicative of the prevalence of a security understanding that downplayed the "advanced democracy" perspective.

What the Gezi Park demonstrations clearly show is that, in today's Turkey, social movements have transformed to the extent that they no longer can be understood through traditional, ideological streotypes they once held. These new movements demand full use of their rights to assembly and free speech. In such times, attempts at crushing the demands of these new groups through old-school practices of the state that were developed to combat old-school ideological threats are bound to fail. Such practices will result in nothing but a blocking of the system, coupled with new crises.

All in all, it is clear that the responsibility to take the necessary steps towards the constitution of a state system based on democratic rule of law, with a legitimate legal basis, falls on the government. In undertaking this task, the AK Party government and the civilian authorities need to examine and learn from all past experiences; should act to limit the autonomy of the security bureaucracy; and should take full responsibility of and maintain control in shaping both the security practices and the norms from which those practices are informed.

In this context, the task of the civil society, in its efforts to assist and accelerate the reform process involves supporting the government in its progressive reform efforts, while criticizing it should the government remains inadequate, or opts for the easy way out, or has difficulty in overcoming its mental obstacles to undertake the reform steps.

TESEV regards the reform of the security bureaucracy as one of the main elements of the democratic transformation in Turkey. In recent years TESEV published comprehensive reports that address all the security institutions in this context; most prominent of which are *Almanak Türkiye 2005* and *Almanak Türkiye 2008*. Subsequent to a variety of researches with limited scopes, now we present to the public Biriz Berksoy's thorough study in this field.

In this study Berksoy examines the military, the police organization and the intelligence agencies holistically in order to "identify existing problems in terms of demilitarization, accountability mechanisms, and civilian democratic oversight" within these institutions, and seeks to "present the legal and institutional changes necessary both for the solution of these problems and for the prevention of frequently committed human rights violations".

The section of the study on the police organization is of particular importance to TESEV for it marks the beginning of TESEV's upcoming research that focus on police and society in the issue area of security and democracy.

We hope that this report will serve as a reference for both the decision makers and the civil society; that it will serve as a resource for both the reinforcement and oversight of security sector reforms.

Introduction

Since the 2000s, the military tutelage regime in Turkey, reinforced through the National Security Council (*Milli Güvenlik Kurulu*, MGK), has entered into a process of dissolution.[1] The Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) has guided a large part of this process within the framework of the process of harmonization with European Union (EU) acquis. In this regard, the power of the MGK has been limited, its structure has been demilitarized, and memberships in a variety of institutions reserved for the military have been abolished. The scope of the military judiciary has been limited, those responsible for the 1980 coup and the subsequent attempts to carry out a military coup started to be tried in civilian courts by making it legally possible to prosecute military coup attempts in civilian courts. Institutions acting as pillars of the military within the judiciary such as the Supreme Council of Judges and Prosecutors (*Hakimler ve Savcılar Yüksek Kurulu*, HSYK) and the Constitutional Court have found their organizational structure transformed (for more information see Box 1). Thus, the dominant status of the military among the state institutions, which had been acquired after the 1960 military coup and reinforced by 1980 military coup, has been weakened in this process through the enactment of various legal and institutional regulations and its active role in politics has been curbed to a substantial extent.

Within the perspective of the process of democratization in Turkey, this report aims to evaluate the problems of the "security" institutions in Turkey. The problems regarding the "security" institutions have been partly shaped within the transformation experienced in the last decade; and have partly prevailed as the remnants of the military tutelage regime.

However, the legal and institutional transformation which took place in this period was not limited to the military. A new Turkish Penal Code (*Türk Ceza Kanunu*, TCK) and the Criminal Procedure Code (*Ceza Muhakemesi Kanunu*, CMK) were enacted in 2005, changes were made in the Anti-Terrorism Law (*Terörle Mücadele Kanunu*, TMK) in 2006, and in the Police Powers and Duties Law (*Polis Vazife ve Salahiyet Kanunu*, PVSK) at various times. These and many other legal and institutional modifications laid the foundation of a broad structural transformation encompassing the judiciary and the police organization.[2]

Within the perspective of the process of democratization in Turkey, this report aims to evaluate the problems of the "security" institutions in Turkey. The problems regarding the "security" institutions partly have been shaped within the transformation experienced in the last decade; and partly prevail as the remnants of the military tutelage regime. The purpose of this report is to identify

1 **For more information see, Berksoy, B. (2012). "'Güvenlik Devleti'nin Ortaya Çıkışı, 'Güvenlik' Eksenli Yönetim Tekniğinin Polis Teşkilatındaki Tezahürleri ve Süreklileşen 'Olağanüstü Hal': AKP'nin Polis Politikaları" ["The Emergence of the 'Security State', The Manifestation of the 'Security' Oriented Governmental Technique in the Police Organization and the Permanence of the 'State of Emergency'": The Police Policies of the Justice and Development Party"].** ***Birikim*, 276, p.75-88.**

2 **An evaluation of the structural transformation which took place in the state form and in this regard, a regime analysis including the Justice and Development Party falls outside the scope of this report.**

BOX 1: Constitutional and legal amendments that were carried out as part of the EU harmonization process and have been of key importance in the disintegration of the military tutelage regime[3]

The amendment made to Article 118 of the Constitution in 2001 increased the number of civilian members of the National Security Council (MGK), which is the dominant instrument for the military's interference in political affairs. The wording of Article 118 was changed in such a way that the Council of Ministers shall "evaluate" instead of "give priority consideration to the decisions of the MGK." The amendments made in the Law on National Security Council and General Secretariat of the National Security Council in 2003 rendered it possible for a civilian to hold the position of general secretary of the MGK. The responsibility of "co-ordinating and monitoring" applications in line with the decisions of the MGK was transferred from the general secretary of the MGK to the deputy prime minister, and the meetings of the Council are to be held once every two months instead of every month. The secret regulation of the General Secretariat of the MGK was abolished and the duties and authority of the General Secretariat were narrowed by the new regulation. In accordance with the amendments, civilians were appointed as the General Secretary, chief advisor to the MGK and heads of some departments and the contracts of 20 of the 53 retired military members of the Secretariat were not renewed. With the amendments to the laws on the Higher Education Council (*Yüksek Öğretim Kurumu*, YÖK) and the Higher Board of Radio and Television (*Radyo Televizyon Üst Kurulu*, RTÜK) in 2004 and 2005, respectively, the provisions for appointing military members to these institutions were abolished.

In 2006, the legal amendment stipulated that in times of peace, civilians who commit crimes referred to in the Military Criminal Law will be tried in a civilian court. In the 2010 referendum, the military judiciary was limited to crimes committed by military personnel with respect to military duties and crimes against the constitutional order are likewise to be tried in civilian courts. The structures of the institutions acting as the military's prop within the judiciary such as the Supreme Council of Judges and Prosecutors (HSYK)[4] and the Constitutional Court were transformed and the necessary legal amendments were made to allow individuals to seek justice for dismissal decisions taken by the Supreme Military Council (YAŞ). Both those who carried out and attempted coups, as well as the paramilitary gangs in the state structure, are currently being tried in the September 12 1980, Ergenekon and Balyoz trials. Again in 2010, the EMASYA protocols regulating the intervention of military forces in cases of public disorder were abolished. In the same year, the task of preparing the National Security Policy Document was transferred mainly to the political power.

3 Information hereby shared is compiled from Hale Akay's article entitled "Civil-Military Relations in Turkey: An Evaluation for the period 2000-2011" See Akay, H. (2011). "Civil-Military Relations in Turkey: An Evaluation for the period 2000-2011." Retrieved 03.10.2012, from www.hyd.org.tr/staticfiles/files/asker_sivil__hale_akay.pdf.

4 For more information on the HSYK please also see, TESEV. (2012). "The High Council of Judges and Prosecutors in Turkey: Roundtable Discussion on Its New Structure and Operations". Istanbul, TESEV Publications.

existing problems in terms of demilitarization, accountability mechanisms, and civilian democratic oversight within the context of the military, the police organization and the National Intelligence Organization (*Milli İstihbarat Teşkilatı*, MIT) together with other intelligence agencies, and to present the legal and institutional changes necessary both for the solution of these problems and for the prevention of frequently committed human rights violations.

The ongoing major issues regarding these institutions set out in the report can be summarized briefly as follows:

The autonomous and privileged position of the military is largely constant; and at the same time a variety of practices continues to expand the militaristic culture and militarization of everyday life; such as the compulsory military service system and the use of the gendarmerie within the scope of policing. The monitoring and oversight of the military

by the parliament, extra-parliamentary institutions and judiciary is extremely limited; especially in terms of fiscal oversight and in relation to the implemented military strategies as well as the human rights violations committed during military service.

While many problems concerning the police organization have long been of concern, recently new problems have also surfaced. The amendments made to the TMK in 2006 and to the PVSK in various times have created convenient ground for the solidification of police violence. Furthermore, because of the policing strategies which have been put into practice in the 2000s, the line between the individual and the prison has become thin and brittle. These new strategies are based on a "security" logic that seeks prevention of "risks".

This new "security" logic is based, not on the penalization of a crime committed, but on the individual's potential to commit a crime. In line with this approach, intelligence-based preventive policing strategies have been implemented: wire-tapping of communication has acquired a legal basis, continuous surveillance through security cameras, and violent and aggressive policing techniques have constituted important parts of these strategies. Moreover, the policy of impunity regarding human rights violations carried out by the police has been maintained; and all existing and planned accountability and oversight mechanisms for the police organization have been deprived of the independence criterion - an indispensible part of the Paris Principles developed by the United Nations (UN).

The powers and jurisdiction of the MIT, regulated by the Law on State Intelligence Services and the National Intelligence Agency dated 1983,[5] is so wide that it could lead to dangerous consequences in terms of protecting citizens' rights, especially those of political dissidents. No restrictive regulation has been proposed, and more worryingly, the protection provided for the agency against judicial review was further reinforced after the intervention of the judiciary in the political decisions of the government in February 2012. In the Constitution and the Draft Law on Personal Data Protection, the "confidentiality" of personal data is not protected as a fundamental human right; only the protection of collected data is provided. The definition of "state secret" remains based on the vague concept of "national security," making it possible for all kinds of information and documents to be concealed from the public and the international community with no means of recourse.

A new Audit Act was adopted in 2010 which has brought significant gains in the democratic oversight of the public institutions. However, barriers to an effective and transparent audit of these institutions has been largely preserved both through amendments to the law and with regulation of the public disclosure of reports of the public administrations regarding the defense, security and intelligence in 2012. It remains impossible to monitor how the citizens' taxes are used within the military, the police organization and intelligence agencies.

These and other issues that will be discussed in more detail in this report reveal that the transformation that began with the dissolution of the military tutelage regime remains problematic in terms of democratization. The report reviews these problems and discusses the steps that should be taken to establish a fully democratic rule of law in Turkey in three main chapters. In the first chapter, the legal and institutional changes necessary to subject the military to effective civilian democratic oversight are addressed. The second chapter on the Police evaluates the legal legislation which leads to human rights violations; assesses the strategies implemented by the Police organization since it has the authority to intervene in daily life; and discusses the steps to establish institutional mechanisms, necessary to achieve civilian democratic oversight of the Police

5 **Official Gazette. (1983). "2937 sayılı Devlet İstihbarat Hizmetleri ve Milli İstihbarat Teşkilatı Kanunu" [Law No. 2937 on State Intelligence Services and National Intelligence Agency]. No. 18210, 3 November 1983.**

Without doubt, in the task of overcoming these problems of democratization and envisioning a democratic state of law, the greatest responsibility falls on the Turkish government.

organization. The third chapter focuses on the intelligence agencies. Due to the scarcity of research, this chapter mainly addresses those legal regulations and legislative changes regarding the MIT and other intelligence agencies, that have paved the way for the power exceeding and violations of rights. In addition, attention is drawn to the institutional mechanisms which may be useful for the formation of civilian democratic oversight of these institutions. The final, conclusive chapter of the report focuses on select current cases that are representative of the problems detected in the report; particularly regarding human rights violations. Based on these examples, the report intends to draw attention to the severity of the ongoing problems related to the military, the police force and the MIT and to the necessity of the solutions proposed in the report to overcome these problems.

Without doubt, in the task of overcoming these problems of democratization and envisioning a democratic state of law, the greatest responsibility falls on the Turkish government. In this context, it should be taken into account that a significant part of the current legal, institutional and strategic problems identified in the report are remnants of the military tutelage regime and militaristic state form. At the same time, however, a significant part of these problems have also been shaped by the government policies implemented in the last decade. Therefore, policies by both the current government and future governments that will be introduced to overcome these problems should be based on principles of democracy.

In addition, decision makers should also work towards ensuring that these principles and related discourses govern both the social sphere and the sub-culture of the security institutions; based on these principles, should envision the strategies of the state holistically; and should be determined to ensure that public officials who commit human rights violations are subjected to judicial review and are sentenced. Otherwise, legal and structural changes, no matter how comprehensive, will bound to be ineffective in democratizing the practices of the state institutions.

The Military and Related Institutions

Today, when we examine the principles of parliamentary democracy (rule of law, inalienable human rights, civilian democratic oversight, the separation of powers and the supremacy of legislation, etc.), we can see that many serious problems still plague Turkey, specifically in terms of the position of the military in the structure of the state and civilian democratic oversight of it. These issues can be briefly stated as follows. First, the autonomous position of the military that enables it to intervene in politics is still present in some ways. The military judiciary, which operates alongside the civil courts, undermines the principle of an equal and fair right to trial and the principle of natural judge. Some of the features of the military judiciary system make it impossible to apply the principles of independence and impartiality. Second, monitoring and oversight of the military by parliamentary and extra-parliamentary institutions remains extremely limited; hence, there is insufficient civilian democratic oversight of the military in the areas of budget control, development of defense policies and limitation of arms procurement.

Third, policing by the General Command of the Gendarmerie and the Coast Guard Command which are military organizations is problematic from the viewpoint of a democratic regime; and the civilian oversight of the Gendarmerie by administrative chiefs is limited due to the fact that it is attached to the Office of the Chief of General Staff in terms of its military tasks and organization. The established Gendarmerie Human Rights Evaluation Center and the "Law Enforcement Oversight Commission" which will be established to investigate human rights violations committed by the Gendarmerie and the police organization are not autonomous institutions and are therefore rendered insufficient.

Fourth, the village guard system deepens the Kurdish problem, causes divisions among the people of the region and leads to a high level of violence and severe human rights violations. Despite its drawbacks, this system has not been abolished; on the contrary, it has been fortified in the late 2000s with the deployment of new guards. Fifth, compulsory military service plays an important role in spreading a militarist culture and brings with it a process through which rights are violated of those who object to the military service as a conscientious objector or due to religious, political or other reasons. The human rights violations during military service are not subject to effective and independent judicial proceedings. In addition to all of the above, the military has a privileged and autonomous position in the field of education.

THE POSITION OF THE ARMY AMONG STATE INSTITUTIONS AND THE ONGOING PROBLEM OF MILITARY AUTONOMY

Chief of General Staff

The first of the problems addressed under this heading is the position of the Office of the Chief of General Staff vis-a-vis the Ministry of National Defense and the other institutions of the administration. As stated by Taha Parla, "the rule in a parliamentary democracy is that the Chief of General Staff is subordinate and accountable to the elected Minister of National

Having been established by the Constitution of 1961 and still valid, this hierarchical structure places the Office of the Chief of General Staff in a directing position while degrading the Ministry of National Defense to an auxiliary role.

Defense."[6] However, according to Article 117 of the Turkish Constitution, the Chief of General Staff is accountable to the Prime Minister in such a way that he holds a position equal with the Ministry of National Defense. Bayramoğlu defines this structure as containing a "defect of authority and responsibility."[7] Having been established by the Constitution of 1961 and still valid, this hierarchical structure places the Office of the Chief of General Staff in a directing position while degrading the Ministry of National Defense to an auxiliary role. Accordingly, the Chief of General Staff is appointed not by the Council of Ministers, but by the President. Organization Law of the Ministry of National Defense (Law no. 1325) also reinforces this structure. A large part of the duties of the Ministry, as defined in Law 1325, is as follows: "in line with the principles, priorities and programs to be determined by the Chief of General Staff: Recruitment of soldiers in times of peace and war; provision of weapons, tools and logistical requirements; war industry services; health services; construction, real estate, settlements and infrastructure services; and financial services including account enquiries."[8] As such, the Ministry, which is supposed to be authorized for the making of defense policies, their execution and military-related projections, has rather been assigned to facilitate coordination. This situation is at odds with the principle that the agency/institution accountable for an area should also be entitled to authority for the same area.

Furthermore, the Ministry of National Defense has no authority of oversight and inspection over the Office of the Chief of General Staff.[9] Such an institutional and authority structure has created a broad autonomous space for the Office of the Chief of General Staff.[10] This autonomous position has been solidified by Article 35 of the Internal Service Law, which was enacted in 1961 and is still in force, because according to Article 35, "the role of the Armed Forces is to guard and protect the Turkish homeland and the Republic of Turkey, as proclaimed by its Constitution." This article enables the military to directly intervene in politics and paves the way for any form of intervention on their part, including military coups.

The Supreme Military Council

Another problem with regard to the position of the military in the state structure is related to the organization and decision-making processes of the Supreme Military Council (*Yüksek Askeri Şura*, YAŞ). The majority of the council, whose organizational structure and functions are defined by Law No. 1612, is composed of military officers who have the authority to make independent decisions regarding many of the important issues facing the elected government.[11] The Minister of National Defense is preceded by the Chief of General Staff in the state protocol and lacks the authority to represent the Prime Minister. Within the council, many powers are held by the Chief of General Staff, but not held by the Minister of National Defense, who is elected and therefore expected to hold a

6 Parla, T. (2002). *Türkiye'de Anayasalar* [Constitutions in Turkey]. İstanbul: İletişim Publications, p. 87.

7 Bayramoğlu, A. (2009). "Asker ve Siyaset" [Military and Politics]. In A. Bayramoğlu and A. İnsel (eds.), *Bir Zümre, Bir Parti Türkiye'de Ordu* [*An Estate, A Party, The Army in Turkey*]. Istanbul: Birikim Publications, (4th edition), p. 69.

8 See Official Gazette. (1970). "1325 sayılı Milli Savunma Bakanlığı Görev ve Teşkilatı Hakkında Kanun" [Law No 1325 on the Duties and Organization of the Ministry of National Defense]. No. 13572, 7 August 1970.

9 Akay, H. (2010). "The Turkish Armed Forces: Institutional and Military Dimension." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*, Istanbul: TESEV Publications, p. 106.

10 Bayramoğlu, A. (2009). *ibid.*, p. 69.

11 Official Gazette. (1972). "1612 sayılı Yüksek Askeri Şuranın Kuruluş ve Görevleri Hakkında Kanun" [Law No. 1612 on the Establishment and Duties of the Supreme Military Council]. No. 14257, 26 July 1972.

competent and authorized position. For example, the Chief of General Staff has the authority to represent the Prime Minister as well as to set a date for the next meeting and convene the council for an emergency meeting.[12]

The duties of the YAŞ include deciding promotions, retirements and dismissals in the military command echelon; and providing feedback to related agencies on issues which include the formation and revision of the Military Strategic Concept prepared by the Office of the Chief of General Staff, formulating the main agenda and objectives of the Armed Forces, the drafting and revision of important laws, rules and regulation drafts regarding the Armed Forces, and other issues related to the Armed Forces which the Prime Minister, the Chief of General Staff or The Minister of National Defense deem necessary.[13] Decisions are made by the absolute majority of those in attendance, and according to the law, in case of a tie, the vote of the Prime Minister determines the decision which is then signed and approved by the President. Therefore, unless precluded by the President, military officers are in a position to make independent decisions about many important issues.[14]

Meetings of the YAŞ are closed to the public, and very little transparency is provided afterwards. According to Article 8 of the law, the disclosure and dissemination of any discussions or decisions are prohibited, preventing any critical evaluation by the public, though meeting proceedings are published if allowed. With the 2010 amendment to Article 125 of the Constitution, recourse to judicial review became available for all types of expulsion except promotion and retirement due to a lack of position. However, this amendment does not apply to decisions on other issues, leaving judicial review limited. In addition, with regard to other military officers, the Chief of General Staff has a privileged position regarding expulsion and retirement decisions. Despite the fact that the Constitution clearly delineates the process of appointing the Chief of General Staff, it does not contain any clear regulations addressing issues such as on what grounds and through what process he/she can be dismissed or asked to retire from his/her position.[15] In short, the structure of the Council and the decision-making processes are in no way compatible with the principles of transparency or accountability. The military command echelon has a decisive authority over the decisions made in the council, a structure which does not allow for inspection by the government, by the judiciary or by the public.[16]

The Military Judiciary

Another chain of problems with respect to the military's position in the state structure relates to the military judiciary. The military judiciary, which presides over a string of military courts and military disciplinary courts, was established by the 1961 Constitution and has continued to form a second judiciary line based on Article 145 of the Constitution of 1982. The greatest problem with the military judiciary is, in fact, its very existence. All citizens should have the right to a fair and equal trial. Since there is no separate judicial mechanism within other

12 See Özçer, A. (2012, Aug. 4). "Askerin Egemenlik Alanı" [The Dominion of the Military]. *Taraf*. Retrieved from, http://www.taraf.com.tr/akin-ozcer/makale-askerin-egemenlik-alani.htm.

13 Erdal, M. (2010). "The Executive Branch". In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*, Istanbul: TESEV Publications, p. 33.

14 Özçer, A., *ibid*.

15 Akay, H. (2010). "Security Sector in Turkey: Questions, Problems, Solutions." Istanbul: TESEV Publications, p. 15.

16 The European Commission addressed the necessary reforms regarding the YAŞ in the 2012 Progress Report for Turkey as follows: "The legal provisions on the composition and powers of the Supreme Military Council, particularly the legal basis for promotions, need to be reformed to ensure appropriate civilian control." See European Commission. (2012). *Turkey 2012 Progress Report*. Retrieved 25.09.2012, from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf, p. 10.

occupational groups, there should not be a separate judicial mechanism within the military. Therefore, the military judiciary should be abolished.

Taking into account the high possibility that the military judiciary will not be abolished in the near future, we should address the numerous problems in this area and the necessary steps to be taken towards their solution.

At this point, it should be noted that the constitutional and legal amendments made since 2010 have provided some moves toward improvement. Crimes committed "against the security of the State, constitutional order and functioning of this order" are to be tried before civilian courts; non-military personnel cannot be tried in military courts, except in war time; the criteria which are specified in the legislation for the military judicial bodies are limited to the independence of courts and judges' security of tenure; "the requirements of military service" is removed from among these criteria and the *military officers* who are not qualified as judges are forbidden to hear cases in military courts. The promotion of military judges and prosecutors through administrative records - an application which violated

BOX 2: Legislative Improvements in the Military Judiciary

Some improvements were implemented by a series of amendments made to Article 145 of the Constitution by the referendum held on September 12, 2010, to Law No. 353 on the Establishment and Criminal Procedures of Military Courts by Law No. 6000[17] and to Law No. 357 on the Military Judges by Law No. 6318[18]. The first amendment to Article 145 relates to members of the military involved in a military coup and the like: "Crimes against the security of the state, the constitutional order and its functioning". These crimes were removed from the jurisdiction of military courts, undermining the immunity from judicial oversight granted to members of the military. With respect to this, the first paragraph of this article, after the first sentence, is formulated as follows: "These courts shall have jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or for offences related to military service and duties. Cases regarding crimes against the security of the state, constitutional order and its functioning shall be heard before the civil courts in any event."
The second paragraph of the Article limits the jurisdiction of military courts also during periods of martial law by stating that *"Civilians shall not be tried in military courts, except wartime."* By removing the *"under martial law"* portion from the 3rd paragraph, the jurisdiction of military courts is clearly limited to wartime. These are very important developments in terms of consigning civilians to their natural judges and ensuring the right to a fair trial. Another amendment was made to the last paragraph of Article 145, to the criteria to be applied in the laws on the organization and the functions of the military judicial organs, matters relating to the personnel status of military judges, and relations between military prosecutors and the office of commander under which they serve. As a result of this amendment, the criteria to be applied to these laws were restricted to guarantee the independence of courts and judges' security of tenure, and "the requirements of military service" portion was removed from the Article.[19] In line with this change, the last sentence of the Article (Relations between military judges and the office of commander under which they serve, regarding the requirements of military service apart from judicial functions, shall also be prescribed by law) was removed from the Constitutional text. Hence, a progressive step has been taken towards the solution of the problems regarding the independence of military courts and judges.
A further improvement in the military jurisdiction is related to the participation of military officers in the establishment of military courts. Before the

17 Official Gazette. (2010). "Askeri Mahkemeler Kuruluşu ve Yargılama Usulü Kanunu ile Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun" [The Law on the Amendment of the Establishment of Military Courts and Criminal Procedure Code and Certain Laws and Decrees]. No. 27627, 30 June 2010.

18 Official Gazette. (2012). "Askerlik Kanunu İle Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun" [The Law on the Amendment of Military Law and Certain Laws]. No. 28312, 3 June 2012.

19 Similar amendments were also made to Articles 156 and 157 of the constitution regarding the Military Supreme Court and the Supreme Military Administrative Court.

the principles of the independence and the security of tenure– is also terminated, while the principles of the independence of the courts and the security of tenure of judges have found a legal basis in the legislation (for more information, see Box 2).

However, despite all these changes for the better, many problems related to the military judiciary that were analyzed by Kardaş in detail in the study entitled *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*, still persist. The most important of these problems pertains to the authority of the military courts to try crimes committed by a military person against another military person, and military crimes related to military service and duties, which amounts to the violation of the principle of natural judge. According to Article 9 of Law No. 353 regarding the Establishment and Criminal Procedures of Military Courts,[23] "unless indicated to the contrary [elsewhere]

23 Official Gazette. (1963). "353 sayılı Askerî Mahkemeler Kuruluşu ve Yargılama Usulü Kanunu" [Law No. 353 on the Establishment and Criminal Procedures of Military Courts]. No. 11541, 26 October 1963.

amendments by Law No. 6000, military courts consisted of two military judges and one military officer, as mandated by Article 2 of Law No. 353 on the Establishment and Criminal Procedures of Military Courts, while the military courts established under the Office of General Staff, which hears the trials of generals and admirals, consisted of three military judges and two generals or admirals. As Ümit Kardaş states, the participation of military officers, who are not qualified as judges, in trials created insecurity among individuals who were tried in these courts and violated the right to a fair trial.[20] The participation of military officers who are not qualified as judges in the establishment of military courts was prevented through the amendments to the Law (Articles 2 through 5).
A series of amendments made to Law No. 357 on Military Judges by the passing of Law No. 6318 has led to other partial improvements. With this law, the above-mentioned amendments were made to Article 145 of the Constitution. In line with the ruling of the Constitutional Court dated 8 October 2009 and numbered E. 2006/105,[21] Article 12 of the Law No. 357 entitled "registry documents and superiors" was revised. The amendment abolished the granting of administrative record to military judges and military prosecutors who serve under military courts and only military prosecutors are able to issue administrative records to assistant military prosecutors and deputy military prosecutors.[22] Thus, the practice of taking administrative records into account in the promotion of military judges and prosecutors - an application which violated the principles of the independence and the tenure of judges – was terminated. In addition, the repealed Article 37 of the Act was revised and now includes the following provisions: "Military judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges. No organ, authority, officer or individual may give orders or instructions to courts or judges relating to the exercise of judicial power and may not send them circular notes or make recommendations or suggestions. Military judges shall not be dismissed." With this amendment, the legal basis of the principles of the independence of the courts and the security of tenure of judges was established.

20 Kardaş, Ü. (2009). "Military Judiciary." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 65.

21 Before the decision of the Constitutional Court dated 08.10.2009, in paragraph (B) of article 12 of Law No. 357 on the Military Judges, the authority to arrange and issue administrative record of the military officer judges was given to "the commander or chief of the military institution which a military court was established in its name according to the connection of establishment of the military officer judge whose administrative record will be organized." Subparagraph No. 1 of the same paragraph, "senior judges were determined as the first administrative superior of the judges they work with." With the decision of the Constitutional Court in 2009, it was determined that these two regulations were contrary to the constitution and the guarantee of the independence of courts and judges and concluded their abolition.

22 See the preamble of the Law No. 6318 and dated 22 May 2012: http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss248.pdf.

Independence of the military judiciary is also compromised by the fact that the Minister of National Defense has the authority to appoint and oversee military judges. This authority allows the government to exercise undue control over military judges, eliminates the independence of judges and casts suspicion on their impartiality.

in the law, military courts shall hear legal cases relating to military crimes by military persons and the crimes they commit against military persons (...) or crimes related to military service and duties." The removal of the phrase "in military zones" from the Law has prevented the referral of many crimes committed by military persons to the military courts on the grounds that they have been committed in military zones and thus prevented the expansion of military courts' jurisdiction.

However, the criterion "related to military service and duties" in this Article still remains a problem because a service and task-related crime may not truly be a military crime. In this sense, what constitutes a military crime should be clearly defined and, as stated by Kardaş, should be regulated as activities which directly disrupt military discipline or undermine military interests and needs.[24] Delineating the definition this way will allow military personnel to be tried in their natural jurisdiction for any offenses that do not violate discipline. The same article authorizes the military judiciary to deal with the crimes committed by military personnel against other military personnel, leading to a similar problem. With this regulation, criminal offenses committed by military personnel are included in the jurisdiction of the military courts and the principle of "natural judge" has been violated. [25]

Another problem related to the military judiciary is the establishment and abolishment of the military courts and the procedure for change in the jurisdiction set out in the second paragraph of Article 1 of Law No. 353, on the Establishment and Criminal Procedures of Military Courts. This regulation, which allows courts to be abolished by the military bureaucracy, allows arbitrary practices and leaves military judges insecure, since courts can be established and abolished by the Ministry of National Defense upon proposal of the force commands or upon the direct request of the Office of the Chief of General Staff. This regulation, which undermines the right to a fair trial, does not comply with the principle of judiciary independence.[26]

Moreover the independence of the military judiciary is also compromised by the fact that the Minister of National Defense has the authority to appoint and oversee military judges. This authority allows the government to exercise undue control over military judges, eliminates the independence of judges and casts suspicion on their impartiality. According to Article 16 of Law No. 357 on Military Judges, the appointment of military judges is based on a joint decree signed by the Minister of National Defense and the Prime Minister, with the approval of the President of the Republic. Furthermore, according to Article 23 of the same law, "[I]f complaints are made concerning crimes committed by military judges because of or during their duty or or regarding acts that do not suit their title and duty, or individual crimes that they commit concerning military jurisdiction, or information about the above is obtained from events taking place, a military justice inspector more senior than the judge in question is appointed by the Ministry of National Defense to establish whether there is a need to obtain permission for an investigation."

In line with this, according to Articles 25 and 29, the Minister of National Defense decides on whether to conduct an investigation, to determine disciplinary action or to cancel the processing of a document if he

24 Kardaş, Ü. (2009). "Military Jurisdiction." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 66-67.

25 Kardaş, Ü., *ibid*, p. 69.

26 Kardaş, Ü,. *ibid*, p. 65.

does not deem it necessary to grant permission for the investigation. This situation makes it impossible to ensure the independence and impartiality of judges and makes judges further vulnerable to political pressures.[27] As a result of the amendments made in Law No. 6318 in 2012, Article 23 specified which notifications and complaints could not be put into effect, however, the decision-making authority remains the same.[28]

The last issue to be addressed regarding the military judiciary is the presence of institutions such as the Military Court of Appeals and the High Military Administrative Court, both of which deepen the duality in the judiciary. These institutions and the military judiciary itself prevent citizens from having an equal position before the law, causing different citizens to be subjected to different trial procedures. Both in this sense and regarding the circumstances in which military judges function, these institutions violate the principle of fair trial. For example, according to Article 157 of the Constitution, the High Military Administrative Court is the first and last court of appeals for the judicial supervision of disputes arising from administrative acts and actions involving military personnel or relating to military service, even if such acts and actions have been carried out by civilian authorities. However, in disputes arising from the obligation to perform military service, there is no condition that the person concerned be a member of a military body, which means that it has a mandate that also includes civilian persons. It follows that this duality of jurisdiction should be terminated by abolishing these institutions.

According to the democratic paradigm, the parliament serves as a bridge between the executive branch of the government and the citizens it governs; and hence, should play an active role in the formation and development of defense and security policy, legislative activities, budget control, and the supervision and limiting of arms procurement. However, in the current structure, the parliament appears to have little, if any, oversight of the military.

CIVILIAN DEMOCRATIC OVERSIGHT OF THE MILITARY AND RELATED OBSTACLES

The military and police hold the authority to use force and, as such, must be subject to civilian democratic oversight in order to check abuse of these powers. This section will address existing oversight of the military by parliamentary and non-parliamentary institutions.

Parliamentary Oversight of the Military

According to the democratic paradigm, the parliament serves as a bridge between the executive branch of the government and the citizens it governs; and hence, should play an active role in the formation and development of defense and security policy, legislative activities, budget control and the supervision and limiting of arms procurement.[29] In other words, its effective participation in an oversight process is a sine qua non of democratic oversight.[30] However, in the current structure, the parliament appears to have little, if any, oversight of the military. The parliament exercises its supervisory power in three extremely limited ways: oversight through the assessment of bills and draft laws in the context of defense policy by the

27 Kardaş, Ü. *(ibid)*. p. 65. In addition, Kardaş points out that the retirement of military judges in accordance with the age limit set for military officers in Article 21 of the Law no. 357 causes injustice. The retirement age for judges is determined as 65 in Article 140 of the Constitution while colonel judges retire at the age of 60, the retirement age set for colonels.

28 Official Gazette. (2012). "Askerlik Kanunu İle Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun" [The Law for the Amendment of the Law on Military Service and Some Other Laws]. No. 28312, 3 June 2012.

29 Akay, H. (2010). "Security Sector in Turkey: Questions, Problems, Solutions." Istanbul: TESEV Publications, p. 15.

30 See Fluri, P. (2005). "Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector and Its Reform." In C. Paker, M. Dülger, Ü. Cizre, Ş. Sayın (eds.). *Democratic Oversight of the Security Sector: Turkey and the World*. Istanbul: TESEV-DCAF Publications, p. 12-24.

National Defense Commission; budget control and oversight carried out by the Planning and Budget Commission; and oversight conducted through oral and written interrogation, general debates, parliamentary inquiries, interpellation and parliamentary investigations.

The first oversight mechanism carried out by means of the National Defense Commission is ineffective, as the commission plays no role in the determination of the defense policy, the budget or its supervision. Draft bills and proposals related to national security, defense, civil defense and the military which are submitted to the Presidency of the Turkish Grand National Assembly (Parliament) are delivered to the commission, whose task is limited to their examination according to the legal grounds of the Parliamentary bylaw. After the examination in the commission, they are sent to the General Assembly.[31] However, this limited supervision does not meet the criteria of democratic oversight because, although, in accordance with Article 33 of the bylaw, minutes, taken of the work of the commissions,are archived so that it can be referred to in the event that a legal issue arises later on, the National Defense Commission does not comply with this parliamentary regulation,[32] thus preventing the public and researchers from critically evaluating proposals and draft laws and their enactment processes.

The second oversight mechanism of the parliament is the auditing of the budgets of the Ministry of National Defense by the Planning and Budget Commission. However, the budget is revised only broadly both in the Commission and in the General Assembly and the programs and projects are not investigated.[33] Neither the Ministry of National Defense, nor the Planning and Budget Commission are composed of civilian specialist personnel that can audit and critically evaluate the budget. It follows that, due to the lack of civilian specialist personnel, the Office of the Chief of General Staff has acquired an autonomous space and determines the budget of the Ministry of National Defense on its own initiative without being subject to any substantive oversight.

The third parliamentary oversight mechanism is oral and written questions presented to related ministers by the members of the parliament, as well as general debates, parliamentary inquiries, interpellation and parliamentary investigation demands. The most commonly used method of oversight listed here is written questioning, usually in reference to current matters that frequently appear in the press. However, this mechanism is extremely ineffective; the parliament does not provide prompt answers to written questions and hence they are more often than not tabled and ignored.[34]

Oversight of the Military by Extra-parliamentary Institutions

Oversight of the military by extra-parliamentary institutions is also limited and problematic because the military has been left outside the jurisdiction of the State Supervisory Council (*Devlet Denetleme Kurulu*) and is subjected only to cursory oversight by the Institution of the Ombudsman (*Kamu Denetçiliği Kurumu*) and the Court of Auditors (*Sayıştay*). The State Supervisory Council was established, upon the request of the President of the Republic, to conduct all inquiries, investigations, and inspections of all public institutions and organizations, professional organizations in the statute of public institutions, employers' associations and labor unions at all levels, as well as public welfare associations and foundations. However, the Armed Forces and all its judicial organs are outside the jurisdiction of the State Supervisory Council. Therefore, the activities of the military and its affiliates, associations and foundations are likewise outside the jurisdiction of the President of the

31 Yıldız, A. (2006)"Grand National Assembly of Turkey." In Ü. Cizre (ed.), *Almanac Turkey 2005: Security Sector and Democratic Oversight*, Istanbul: TESEV Publications, p. 15.

32 Akyeşilmen, N. (2010). "Legislation: the Grand National Assembly of Turkey." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 16.

33 Akyeşilmen, N. (*ibid*), p. 15. In *Turkey 2012 Progress Report* of the European Commission, this issue is also addressed and it is stated that the parliament has a limited oversight mechanism in terms of military expenditure . See European Commission. (2012). *Turkey 2012 Progress Report*.

34 See Yıldız, A. *ibid*, p. 21-25; Akyeşilmen, N., *ibid*, p. 18, 19.

Oversight of the military by extra-parliamentary institutions is also limited and problematic because the military has been left outside the jurisdiction of the State Supervisory Council and is subjected only to cursory oversight by the Institution of the Ombudsman and the Court of Auditors.

Republic.[35] The Institution of the Ombudsman has an extremely limited authority for inspection. According to Article 5 of Law No. 6328 on the Institution of the Ombudsman, "the transactions of the Turkish Military Forces which are of exclusively military character are out of the competence of the institution."[36] As stated by Akay, the vague statement "of exclusively military character" is worded so as to leave almost all of the institution's activities uninspected.[37]

Oversight of the military by the Court of Auditors is equally limited and problematic, despite the fact that in recent years, a number of amendments have been made with regard to the Court of Auditors. Although a new Law on the Court of Auditors was adopted in 2010 and subsequently "the Regulation of the Announcement of the Reports to the Public Prepared As a Result of the Auditing of the State Properties Belonging to the Public Administrations of Defense, Security and Intelligence" prepared by the Court of Auditors has been on the books since 15 August 2012, the problems continue to increase. According to Article 160 of the Constitution, "the Audit Court shall be charged with auditing, on behalf of the Turkish Grand National Assembly, all accounts related to revenues, expenditures and properties of the government departments financed by general and subsidiary budgets, with making final decisions on the acts and accounts of the responsible officials, and with exercising the functions required of it by law in matters of inquiry, auditing and judgment." With the amendment to Law No. 832 on the Court of Auditors, enacted in 2003, the Court of Auditors was authorized to audit the acts and accounts of all public institutions upon the request of Parliament. However, the procedures for auditing were revised in a non-transparent manner, most notably through a regulation adopted in 2006 and classified as "confidential." In 2004, the following provision was removed from Article 160 of the Constitution: "[T]he procedure for auditing, on behalf of the Turkish Grand National Assembly, of state property in possession of the Armed Forces shall be regulated by law in accordance with the principles of secrecy required by national defense."[38]

A new Law applicable to the Court of Auditors (Law No. 6085) which covers these amendments and allows for the implementation of auditing was adopted as late as 3 December 2010. However, this new law has not implemented the principles of transparency and accountability regarding the audit of the military, as was expected, and has left many additional issues unresolved. First of all, institutions such as the Military Pension Fund (*Ordu Yardımlaşma Kurumu*, OYAK) and the Turkish Armed Forces Support Foundation (*Türk Silahlı Kuvvetleri Güçlendirme Vakfı*, TSKGV) still remain outside the jurisdiction of the Court of Auditors in the absence of a demand by the Parliamentary Petitions Committee.[39] Second, despite the fact that a de facto

35 Akay, H. (2010). "Security Sector in Turkey: Questions, Problems, Solutions." Istanbul: TESEV Publications, p.8.

36 Official Gazette. (2012). "Kamu Denetçiliği Kurumu Kanunu" [The Law on the Institution of the Ombudsman]. No. 28338, 29 June 2012.

37 Akay, H. (2011). "Türkiye'de Asker-Sivil İlişkileri: 2000-2011 Dönemine İlişkin Bir Değerlendirme" [Civil-Military Relations in Turkey: An Evaluation for the period 2000-2011]." Retrieved 03.10.2012, from www.hyd.org.tr/staticfiles/files/asker_sivil__hale_akay.pdf.

38 Kemal, L. (2012). *Zayıf Kalan Meclis İradesi: Yeni Sayıştay Yasasında Askeri Harcamaların Denetimi Sorunu* [The Parliamentary Will Remains Weak: The New Law on the Turkish Court of Accounts and the Ongoing Problems of Monitoring Military Spending]. Istanbul: TESEV Publications, p. 11-16.

39 See Kemal, L., ibid. p. 29-32 for a discussion about the existence of the legal base for the oversight of the TAFSF by the Court of Auditors. Here, Kemal addresses a master's thesis written on the subject: Işın, M. (2011). "Güvenlik Alanının Demokratik Denetimi: Türk Silahlı Kuvvetlerinin Sayıştay Denetimi Örneği" [Democratic Oversight of the SecurityField: A Case of Auditting of the Turkish Armed Forces by the Court of Auditors]. Unpublished Master's Thesis, Police Academy. 2011.

audit was expected and auditors were authorized to initiate legal action if a situation against the interest of the public came to light, the amendment made to the law before it was enacted rendered auditing ineffective; as a result of these amendments, the authority of the Court of Auditors was limited in such a way that it would not be able to question the feasibility of the objectives and conduct an inspection of appropriateness. The Court of Auditors, as it is, will not be able to assess the necessity of expenditures and purchases. It follows that the only power wielded by the Court of Auditors is that of measuring the compatibility of the objectives and the results of operations determined within the context of a performance audit, making it impossible to assess and account for potential losses.[40]

The third problem relates to some institutions not being obliged to prepare a "strategic plan" on the grounds that they fulfill critical services (this applies to the Ministry of Foreign Affairs, the General Secretariat of the National Security Council, MIT, the Ministry of National Defense, the General Command of the Gendarmerie and the Coast Guard Command). Hence, it is possible for the Court of Auditors to audit the properties of these institutions; however, it is not possible for the auditors to measure the target-outcome effect compatibility in practice.[41]

40 Kemal, L., *ibid.*, p. 20-23.

41 Kemal, L., *ibid.*, p. 28, 29. The oversight executed by the Court of Auditors was further limited with an ammendment to the law that was enacted in 2012 (Official Gazette. (2012). "6353 sayılı Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun" [Law No. 6353 on Amending Certain Laws and Decrees in the Force of Law]. No. 28351, 12 July 2012.). With this ammendment (that was later partly cancelled by the Constitutional Court), the powers of the Court of Auditors to give an opinion on the reliability and accuracy of financial reports and statements of public administrations and to determine if the public resources are used in an effective, economic and efficient way and to assess internal control systems were cancelled. In addition, the independence of the Court of Auditors was damaged by the regulation which stipulated that the Court cannot form a report contrary to the regulations made by public administrations and to the opinions given by the public authorities. [In the same way, the principle of the independence of the audit was destroyed by the introduction of the obligation to solve the differences of opinion with the public administration audited within the scope of the audit through a regulation.] Finally, the provision which stipulates that the draft audit reports shall be evaluated by a commission of three persons was also added to Law No. 6085 on The Court of Auditors. See The Court of Auditors Association. (2012). "Sayıştay Kanunu'nda Değişiklik Teklifi Hakkında Kamuoyu Açıklaması" [Public statement regarding the request to modify the Law of Court of Auditors]. Retrieved 27.10.2012 from http://www.sayder.org.tr/sayistay-kanununda-degisiklik-teklifi-hakkinda-kamuoyu-aciklamasi-1587h.htm.
However, as a result of the application of the CHP to the Constitutional Court, an important part of these amendments have been canceled by the decision of the court on December 27, 2012. As a result of the decision of the Constitutional Court, the provision which stipulate that the Court of Auditors should not conduct propriety audit in the place of public authorities and the provision that the draft audit reports shall be evaluated by a commission of three persons before being sent to public institutions remained in the law. However, after this decision, it was rendered possible for the Court of Auditors to determine if public resources are used in an effective, economic and efficient way, to assess internal control systems, to oversee the reliability and accuracy of financial reports and statements of public administrations as well as to assess the lawfulness of procedures of income, expenses and assets related to the public administrations. In addition, the court's decision also removed the amendments which put more limitations on the independence of the Court of Auditors. As a result, the provision which stipulates that a report cannot be prepared contrary to the regulations, communiqués, circulars etc. made by the public administrations and the opinions stated arrangement and the provision which stipulates that during the conduct of an audit, if the administrative arrangement in question or the opinions given are found to be unlawful it shall be acted upon according to the decision made by a committee consisting of 3 persons from the Court of Auditors and 2 persons from the administration in question were removed. In addition, any decision taken by any department of the Court of Auditors was also prevented from being binding in terms of oversight and decisions taken by other departments in the conduct of the audit and in judicial decisions in such a way that only the law in force will be applicable. See Naynaşın, N. (2013, Jan. 2). "Yargı Meclis'e gasp ettiği yetkisini geri verdi" [Judgement restored Parliament's exhorted authority]. Retrieved from, http://taraf.com.tr/haber/yargi-meclis-e-gasp-ettigi-yetkisini-geri-verdi.htm. Also see TESEV Democratization Program. (2013). "Basın Duyurusu: 'Zayıf Kalan Meclis İradesi' (Sayıştay) Raporu ve Anayasa Mahkemesi'nin Sayıştay Yasası Kararı" [Press Release: TESEV Report 'The Parliamentary Will Remains Weak' (The Court of Auditors Report) and the Rule of the Constitutional Court]. Retrieved 10.01.2012, from http://www.tesev.org.tr/Upload/Editor/Say%C4%B1%C5%9 FtayAYMiptal_BasinDuyuru.pdf. For criticisms regarding the amendment made before the decision of the Constitutional Court, see also European Commission. (2012). *Turkey 2012 Progress Report*. The report emphasizes that the change in the law made in July 2012 constitutes a great problem in terms of the independence and efficiency of the oversight executed by

The fourth issue relates to the sharing of the reports with the public. The regulation, which has been in effect since 15 August 2012, included the previously exempt Undersecretary for the Defense Industry among the public administrations to be audited.[42] Despite this development, however, the regulation was worded in such a way that report findings can be, to a great extent, concealed from the public.

According to the regulation, the report should first be sent to the audited public administration itself in compliance with the principles of confidentiality, and then to the related department of the Court of Auditors and the board. Thereafter, the report should be presented to the Parliament in compliance with the principles of confidentiality, after the cases in which the law prohibits the disclosure and those parts which include matters related to state property have been redacted by the board. After the meeting, another round of redactions can be made and the remaining information should be announced to the public. In the event of a proceeding related to the properties of the institutions, the decision of confidentiality maybe made with regards to the process and its results.

In addition, according to Article 5 of the regulation, a great deal of information both on the properties obtained through the "discretionary fund" and state property (their location, where and how they are used, quantities etc.) should not be disclosed to the public. This means that it will not be possible, as before, for the public to discover what use their taxes are put to. Clearly, this law and regulation do not actualize the principles of transparency and accountability especially in terms of the military, the police, and the intelligence agencies.[43]

Ensuring institutional supervision of the military by the parliament and by extra-parliamentary organizations only in terms of legal regulations and budget oversight is insufficient. For sufficient civilian oversight, the decisions made and the strategies and tactics implemented in the military should equally be subject to civilian oversight.

Finally, it should be noted that ensuring institutional supervision of the military by the parliament and by extra-parliamentary organizations only in terms of legal regulations and budget oversight is insufficient. For sufficient civilian oversight, the decisions made and the strategies and tactics implemented in the military should equally be subject to civilian oversight. Towards this goal, "policy" and "programs" that are currently prepared by the Office of the Chief of General Staff should be planned by the Minister of National Defense.[44] In addition, all military decisions, especially those regarding defense strategies to be implemented, should be monitored by both the parliament, through bodies such as the National Defense Commission, and by extra-parliamentary institutions such as the State Audit Institution and the Ombudsman Institution. This change would cause civil actors to be involved in the inspection and supervision process, such that they would have the information necessary to critically analyze technical military knowledge and ultimately break the military's monopoly on "security" and "defense" knowledge.[45]

the Court of Auditors.

42 Official Gazette. (2012). "Savunma, Güvenlik ve İstihbarat ile ilgili Kamu İdarelerine Ait Devlet Mallarının Denetimi Sonucunda Hazırlanan Raporların Kamuoyuna Duyurulmasına İlişkin Yönetmelik" [The Regulation on the Public Announcement of the Reports Prepared As a Result of Auditing of State Properties Belonging to the Public Administrations of Defense, Security and Intelligence, Official Gazette].No. 28385, 15 August 2012.

43 See *Taraf*. (2012, Aug. 16). "Devlet Kurumları Hâlâ Sır Küpü" [Government Institutions are still secretive]. For the discussions made after the adoption of the regulation, see Kemal, L., *ibid*, p. 23-27.

44 See Official Gazette. (1970). "1325 sayılı Milli Savunma Bakanlığı Görev ve Teşkilatı Hakkında Kanun" [Law No 1325 on the Duties and Organization of the Ministry of National Defense]. No. 13572, 7 August 1970.

45 Paker, C. (2010). "Foreword." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*, Istanbul: TESEV Publications, p. vii.

THE GENERAL COMMAND OF THE GENDARMERIE, THE COAST GUARD COMMAND AND PROBLEMS THEY CONTAIN AS POLICING AGENCIES

The main problem regarding the General Command of the Gendarmerie (GCG) and the Coast Guard Command (CGC) is that these two institutions serve as policing agencies, and that within the current structure, the administrative authorities are not able to use their mandate over the gendarmerie as they should in practice. The gendarmerie uses power that exceeds its legally delineated bounds and there is no independent committee providing oversight.

The main problem regarding the General Command of the Gendarmerie and the Coast Guard Command is that these two institutions serve as policing agencies, and that within the current structure, the administrative authorities are not able to use their mandate over the gendarmerie as they should in practice.

The Law on the Organization, Duties and Authority of the Gendarmerie prescribes the duties and responsibilities of the gendarmerie.[46] These obligations, delineated in Article 7 of the Law, are to perform administrative tasks such as to ensure, preserve and protect public order, safety and security; to prevent, follow up and investigate smuggling; to take and implement the necessary measures to prevent the commission of offenses; to provide external protection for prisons and detention centers; to perform judicial tasks in relation to crimes committed and provide related legal services; to perform military tasks such as those needed to fulfill the tasks required by the military laws and regulations and those specified by the Office of the Chief of General Staff.

According to Article 10, the gendarmerie's area of responsibility is that which falls outside the purview of the police, namely the areas outside the boundaries of the province and district municipalities or areas where there is no police force. Until recently, 91% of Turkey's surface area was under the responsibility of the GCG.[47]

The gendarmerie consists of military personnel who undergo training around the concepts of "war" and "enemy" and of persons who fulfill their compulsory military service. This military training renders them unfit for day-to-day police responsibilities. Therefore, the gendarmerie should either withdraw from day-to-day policing activities or be transformed into a civilian organization attached to the Ministry of the Interior.[48] This requirement is underlined within the framework of the European Code of Police Ethics prepared by the Council of Europe.[49]

The administration and civilian oversight of the gendarmerie is also problematic. The GCG is responsible to the Ministry of the Interior in terms of fulfilling its tasks as well as its duties regarding safety and public order, while in terms of military tasks, organizational form, the promotion and registration system, personnel training and education, it answers

46 Official Gazette. (1983). "2803 sayılı Jandarma Teşkilat, Görev ve Yetkileri Kanunu" [Law No. 2803 on the Establishment, Duties, and Authorities of the Gendarmerie]. No.17985, 12 March 1983.

47 Aksoy, M. (2010). "Gendarmerie." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 213. Kemal, L. (2006). "General Command of the Gendarmerie." In Ü. Cizre (ed.), *Almanac Turkey 2005: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 101.

48 News reported the preparation made by both the Ministry of Interior and the General Command of the Gendarmerie to convert the gendarmerie to "rural police" within the framework of the European Union. See the articles in *Milliyet*. (2012, June 4). "Jandarmanın Yerine Kır Polisi" [Rural Police Instead of the Gendarmerie]. Retrieved from, http://gundem.milliyet.com.tr/jandarmanin-yerine-kir polisi/gundem/gundemdetay/04.06.2012/1549220/default.htm and *Sabah*. (2012, Mar. 5). "Jandarma İçişleri Bakanlığına Bağlanıyor" [The Gendarmerie is being attached to the Ministry of Interior]. Retrieved from, http://www.sabah.com.tr/Gundem/2012/03/05/jandarma-icisleri-bakanina-baglaniyor.

49 Aksoy, M. *ibid*. p. 174.

to the Office of the Chief of General Staff. It becomes subordinate to the force commands during martial law, mobilization and wartime, or when the Office of the Chief of General Staff finds it necessary, which means that the gendarmerie is much more strongly linked to the military than to the Ministry of the Interior.

These structural limitations have brought with them some questionable practices. According to the legislation, provincial governors and district governors have the authority to oversee the gendarmerie, distribute disciplinary punishment, and assign locations of deployment.[50] However, as indicated by the State Planning Organization's (*Devlet Planlama Teşkilatı*) Special Commission Report on the Efficiency of Security Services from 2001 and the Public Administration Council's Ankara reports from 2002, these powers cannot be exercised as they should be due to resistance on the part of the gendarmerie.[51]

One of the few important amendments on this issue to date is the February 2010 abolition of the EMASYA protocol. The now-abolished protocol was adopted in July 1997 and granted the military the authority to take action in civilian affairs without the request of administrative authorities, and attached all policing agencies to the highest Land Forces Command unit in the area. However, as Akay points out, the official repeal of the protocol does not mean that the activities carried out within the framework of the protocol cease.[52] In fact, in 2006 the governors of 40 provinces including Ankara, Konya and Izmir granted the gendarmerie the authority to conduct searches, operations and raids which are carried out by the police[53] and it has been discovered that this practice continued after the protocol was abolished.[54]

The same problem occurred in the case of wire-tapping. The GCG received permission from the 11th High Criminal Court of Ankara to obtain all details of communications made by means of telecommunications throughout Turkey between November 2007 and June 2008.[55] Therefore, from

50 See Official Gazette. (1983). "2803 sayılı Jandarma Teşkilat, Görev ve Yetkileri Kanunu" [Law No. 2803 on the Establishment, Duties, and Jurisdiction of the Gendarmerie]. No.17985, 12 March 1983.

51 Akay, H., *ibid*. p. 20; Aksoy, M., *ibid*, p. 174, 175.

52 Akay, H. (2011). "Civil-Military Relations in Turkey: An Evaluation for the period 2000-2011." Retrieved 03.10.2012, from www.hyd.org.tr/staticfiles/files/asker_sivil__hale_akay.pdf.

53 Bayramoğlu, A. (2009). "EMASYA: Üç anlam, üç işlev" [EMASYA: Three Meanings, Three Functions]. In A. Bayramoğlu, A. İnsel (eds.), Almanak Türkiye 2006-2008: Güvenlik Sektörü ve Demokratik Gözetim [*Almanac Turkey 2006-2008: Security Sector and Democratic Oversight – Turkish Edition*]. Istanbul: TESEV Publications, p. 204.

54 Akay, H., *ibid*. Another important change eliminated the problems of determination of the task of the police and the gendarmerie, because this power exceeded that which had been manifest in the process of determination of duty areas. The Provincial Administration Law left the determination of which regions belong to which law enforcement unit to governors and district governors. However, GCG acted as the de facto authority for granting permission regarding this issue and refused to sign the protocols which would transfer authority between the gendarmerie and the police. The gendarmerie has not withdrawn from the provincial and district municipal boundaries of the regions and has not transferred its responsibility to the police. The problem was solved by making amendments to two regulations in March 2009. The publication of Regulation No. 2009/14808, dated March 30, 2009, on the Amendment of the Regulation on the Organization, Duties, and Authority of the Gendarmerie and the Regulation No. 2009/14809, dated March 30, 2009, on the Execution of Gendarmerie and Security Duties and the Use of Authority in Provinces, Districts, and Sub-Districts in Security and Public Order Operations and on Relations between the Gendarmerie and Law Enforcement in the Official Gazette No. 27185 solved the problem without the need to implement the protocol and the civilian authorities were authorized to solve problems in a restricted period of time. See Aksoy, M. (2010). "Gendarmerie." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 176, 178.

55 In the same period, the same permission was given to the police and the MIT. See Aksoy, M., *ibid*, p. 179. The Gendarmerie Intelligence Agency officially gained the authority to wiretap within the area of responsibility with the permission of the judge with Law No. 5397 adopted on 03.07.2005. After the establishment of the Gendarmerie Intelligence and Anti-Terrorism Unit (JITEM) - which was involved in unsolved murders and torture and in many covert government operations as revealed by the Susurluk, Ergenekon and Semdinli trials - was denied by

Oversight of the gendarmerie, however, should extend beyond administrative chiefs, as part of the civilian democratic oversight process, to the establishment of a new independent body of experts in the field of human rights since the gendarmerie has the authority to interfere in the daily life of citizens.

Article 11/D of the Provincial Administration Law, on which the EMASYA protocol is also based, and including the Law on the Organization, Duties and Authority of the Gendarmerie, it is clear that a legal amendment is needed which expressly limits and narrows the powers of the gendarmerie. This regulation should firmly establish the authorities of the administrative chiefs and provide them with direct oversight of the gendarmerie.[56]

Oversight of the gendarmerie, however, should extend beyond administrative chiefs, as part of the civilian democratic oversight process, to the establishment of a new independent body of experts in the field of human rights since the gendarmerie has the authority to interfere in the daily life of citizens. The Gendarmerie Human Rights Violations Examination and Evaluation Center, established 27 April 2003, does not meet this requirement, as it is not autonomous and therefore cannot serve as an effective and impartial oversight mechanism. The Center was established *within* the body of the GCG in order to evaluate complaints regarding the gendarmerie. Its inefficiency is evident from the following: 235 applications were made to the center in 2010, but only two of these resulted in the punishment of the personnel concerned.[57] To ensure efficient and effective oversight, the Center should be composed of elected representatives of organizations working in the field of human rights and equipped with sufficient authority and assurance to carry out their imperative.

The "Law Enforcement Oversight Commission" is another institution which will be established to investigate notifications and complaints filed against human rights violations committed both by the gendarmerie and the police. Towards this end, the Ministry of the Interior engages in preparations within the framework of a twinning project titled "Independent Law Enforcement Complaints Commission and Complaints System for the Turkish National Police and Gendarmerie" in the context of the EU pre-accession program. However, as understood both from the draft law, which is in the process of renewal, and from the EU Harmonization Commission report presented to the President of the Assembly of the Parliament in April 2012, the commission will primarily be composed of members from the Ministry of the Interior.[58] Hence, it is not possible to say that this institution, established within the scope of the executive branch, will be able to execute effective oversight.

Likewise, there is insufficient oversight of the CGC, which operates parallel to the gendarmerie and is responsible for the supervision of all shores, inland waters and marine areas. The CGC functions as part of the Ministry of the Interior in peacetime, while in wartime it is attached to the Naval Forces. CGC

the military, the Gendarmerie Intelligence Agency has become an integral part of the legal regulation of the law in question. See Kemal, L. (2006). "Gendarmerie General Command." In Ü. Cizre (ed.), *Almanac Turkey 2005: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 106. Elements that must be present in the legislation for democratic oversight/monitoring of the institutions that collect intelligence and for the protection of the "confidentiality of private life" will be addressed under the heading "National Intelligence Agency and the Intelligence Agencies".

56 A similar criticism of inadequate civilian control over the Gendarmerie was also made in the European Commission's Turkey 2012 Progress Report. See European Commission. (2012). *Turkey 2012 Progress Report*.

57 Gendarmerie General Command. (2010). "2010 yılı Faaliyet Raporu" [2010 Annual Report]. Retrieved 16.09.2012, from http://istifhane.files.wordpress.com/2012/01/jgk-2010.pdf.

58 See General Directorate of Laws and Regulations, Office of Prime Ministry (2012)."Kolluk Gözetim Komisyonu Kanunu Tasarısı ve Gerekçesi" [The Draft and Preamble to the Enforcement Oversight Commission Law]. 28 September 2012. http://www2.tbmm.gov.tr/d24/1/1-0584.pdf; see TBMM European Union Compliance Commission. (2012 Apr. 11). No. 1/584. Retrieved 09.28.2012, from http://www.tbmm.gov.tr/komisyon/abuyum/belge/faaliyet/donem24/1_584.pdf.

personnel are considered to be military personnel and perform their duties according to Law No. 211, concerning Military Internal Service and Law No. 926 regarding the Turkish Armed Forces Personnel.[59] Due to its dual nature, tensions similar to those between the police and the gendarmerie exist between the CGC and the maritime police.[60]

Within the framework of the Schengen acquis, the EU stipulates the establishment of a civilian organization, integrated with the cross-border management system of other EU countries, which will be deployed on the borders to demilitarize the area's police forces and dissipate tension created by power sharing. Therefore, in 2003, an "integrated border management" action plan was established to look into border control by a single civilian organization and the integration of the Coast Guard and this organization.[61] This change, if realized, will be a positive development in terms of the demilitarization of policing. The Ministry of the Interior announced the establishment of the Integrated Border Management Coordination Committee on 18 April, 2012 in a press release, along with the establishment of the personnel cadres for Border Administration Authority which will be responsible for inter-agency cooperation and coordination at border checkpoints.[62] However, the European Commission's 2011 Progress report pointed out that there has been very limited progress on this issue.[63]

THE VILLAGE GUARD SYSTEM AND RELATED PROBLEMS

Another important problem that should be addressed regarding the policing mechanisms of the military is the maintenance of the village guard system which is an extension of the Gendarmerie. With the amendment made to the Village Law by Law No. 3175 on 26 March 1985, the village guard system, comprised of provisional and voluntary village guards, was established to solve the Kurdish problem through militaristic means and serve in the fight of the military against the PKK. Within the system, based on the arming of villagers, "provisional village guards" answered to the commander of the gendarmerie which oversaw their village of employment and participated in operations, while voluntary village guards employed by administrative chiefs were authorized to bear arms only in their own villages.[64]

As Kurban points out, the village guard system divides the Kurdish people in the region and turns some Kurdish families into an extension of the state; in this way, it allows the state to exercise control over the people of the region through violence.[65] In addition to this dominant feature, according to the reports prepared by the Human Rights Association and the Parliamentary Investigation Commission on Unsolved Political Murders, the village guards have been involved in many incidents involving serious human rights violations such as murder, torture, mistreatment, harassment and rape.[66] As Kurban

59 Akay, H. (2010). "The Turkish Armed Forces: Institutional and Military Dimension." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight,* Istanbul: TESEV Publications, p. 141.

60 Akay, H. *ibid*. p. 141.

61 See Aksoy, M. (2010). "Gendarmerie." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 185.

62 The Ministry of Interior of Turkey. (2012). Entegre Sınır Yönetimi Eylem Planı Kapanış Töreni [Integrated Border Management Action Plan Closing Ceremony], Press Release, No: 2012/40. Retrieved 18.09.2012, from www.Icisleri.Gov.Tr/Default.Icisleri_2.Aspx?Id=7498.

63 European Commission. (2011). *Turkey 2011 Progress Report*. Retrieved 18.09.2012, from http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf.

64 Kurban, D. (2010). "Village Guard System as a 'Security' Policy." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 203-205.

65 Kurban, D., *ibid*. p. 209-210.

66 Kurban, D., *ibid*. p. 207. See Human Rights Association. (2009). "The Special Report on the Human Rights Violations Perpetrated by the Village Guards between January 1990 and March 2009." Retrieved 14.11.2012, from http://www.ihd.org.tr/images/pdf/ocak_1990_mart_2009_koy_korucülari_ozel_raporu.pdf; Erdoğ, F. (2005). *TBMM Faili Meçhul Siyasi Cinayetleri Araştırma Komisyonu Raporu* [*Parliamentary Research Commission Report on Unsolved Political Killings*]. Istanbul: Gizlisaklı Publishers.

further notes, the Village Guards Regulation[67] does not contain a provision regarding the dismissal of guards who are found to have committed a crime in their capacity as policing agents.[68] For these reasons, the EU and the UN recommend that the Turkish state abolish the village guard system. However, instead of doing so, the government passed Law No. 5673 on 27 May, 2007, authorizing the recruitment of 60.000 additional village guards (the existing guards numbered almost 70.000) and issued a notice of confidentiality for the new regulation adopted by the Council of Ministers on 9 January, 2008.[69] The recruitment of new village guards continues.[70]

This system, deepens the Kurdish problem, causes division among the people of the region, gives rise to the use of a high level of violence and leads to serious human rights violations, and therefore should be abolished in order to establish a democratic regime based on human rights.[71]

COMPULSORY MILITARY SERVICE, VIOLATIONS OF RIGHTS AND MILITARIZATION

By Turkish law, all male citizens who have reached the age of 20 are subject to compulsory military service - a practice that both contributes to the expansion of a pro-war and violent militarist culture in society, and violates the rights of people who oppose the military service due to conscientious, religious and political reasons. Many people like Mehmet Tarhan, Mehmet Bal, Halil Savda and Osman Murat Ülke have been drawn into the criminal process and stuck in an unending cycle of court/prison on the grounds of "disobeying orders" based on Articles 87 and 88 of the Military Criminal Code and on the grounds of "alienating the public from military service" based on Article 318 of the Turkish Penal Code.[72]

Many gay men who do not want to carry out the military service have been forced to undergo an examination or to provide evidence through other degrading means. Those who were judged to be gay were then issued "defected" reports and subjected once more to degrading treatment.[73] As underscored

67 Official Gazette. (2000). "Köy Korucuları Yönetmeliği" [Regulation of Village Guards]. No. 24096, 1 July 2000.

68 Kurban, D. *ibid.*, p. 207.

69 Kurban, D., *ibid.*,p. 208-210.

70 For example see Midyat Governorship. (2012). "Midyat ilçesine bağlı aşağıda yazılı köylerde belirtilen sayıda geçici köy korucusu alımı yapılacaktır" [The specified number of village guards will be recruited in the villages of Midyat written below]. Retrieved from, http://www.midyat.gov.tr/goster.php?yazilim=adnan&anid=164&board=c042f4db68f23406c6cecf84a7ebb0fe&msgn=299&ekmen=2,; Hasan Keyf Governorship. (2011). "Geçici korucusu alımı ile ilgili duyuru" [Announcement regarding the recruitment of village guards]. Retrieved from, http://www.hasankeyf.gov.tr/haber/haberdetay.asp?ID=147,; Idil Governorship. (2012). "Geçici Köy Korucusu Alımı Yapılacaktır" [Temporary Village Guards will be Recruited]. Retrieved from, http://www.idil.gov.tr/haber_detay.asp?haberID=96, accessed 29.01.2013.

71 Turkey 2012 Progress Report of the European Commission recorded that no steps were taken towards the abolition of the village guards system. See European Commission. (2012). *Turkey 2012 Progress Report*.

72 See Boyle, K. (2008). "Uluslararası Hukukta Vicdani Red ve Osman Murat Ülke Davası" [Conscientious Objection in the International Law and the Case of Osman Murat]. In Ö. H. Çınar and C. Üsterci (eds.), Çarklardaki Kum: Vicdani Red-Düşünsel Kaynaklar ve Deneyimler [Sand in the Reels: Conscientious Objection-Intellectual Resources and Experiences]. Istanbul: İletişim Publications. p. 273-290. While Freedom of Expression in the Context of Human Rights and the Law on the Amendment of Certain Laws known as "The Fourth Judicial Reform Package" does not decriminalize the actions defined as "alienating the public from military service" and taken within the scope of criminal actions according to Article 318, it converts the imprisonment period ranging from six months to three years provided for these actions to criminal fines. See *Radikal*. (2013, Feb. 5)."İşte 4. Yargı Paketi: KCK tutuklularına tahliye yolu" [Here is the 4. Judicial Package: The Way for the Eviction of KCK detainees]. Retrieved from, http://www.radikal.com.tr/turkiye/iste_4_yargi_paketi_kck_tutuklularina_tahliye_yolu-1119993. In order to ensure full freedom of expression in this area, these actions, defined as "alienating the public from military service", should be decriminalized and Article 318 of the TCK should be abolished.

73 See Biricik, A. (2008). "Çürük Raporu ve Türkiye'de Hegemonik Erkekliğin Yeniden İnşası" [Rotten Report and

by the "Ülke vs. Turkey" decision of the European Court of Human Rights, the criminal process initiated by the rejection of Turkey's compulsory military service leads to violations of human rights.[74] The European Commission's 2012 Progress Report on Turkey points out that in the Council of Europe, Turkey is the only country which does not recognize the rights of contentious objectors, or those who do not wish to serve for other religious or political reasons.[75] As such, the right to "conscientious objection," which includes the option of civil service obligations, or "total objection," which excludes the option of civil service obligations as well, should be recognized as a human right and Article 318 of the TCK should be abolished.

Human rights violations have also committed during the compulsory military service. The majority of these violations can be categorized as suspicious deaths, penalties of imprisonment imposed by military superiors without a court order, and violence perpetrated on soldiers especially in places referred to as 'disciplinary wards'. The Minister of National Defense İsmet Yılmaz, responding to written questioning regarding the suspicious deaths of soldiers in the barracks which was presented on 20 March, 2012 to the President of the Parliament[76], told his interlocutors that in the last 22 years, 2.221 people have "committed suicide" while 1.602 people have lost their lives "trying to make themselves unfit for military service."[77]

Human rights violations have also been committed during the compulsory military service. The majority of these violations can be categorized as suspicious deaths, penalties of imprisonment imposed by military superiors without a court order, and violence perpetrated on soldiers especially in places referred to as 'disciplinary wards'.

However, it is evident from many of the cases being opened up, as well as from ongoing cases that there are strong doubts as to the nature of these deaths, as can be seen in the cases of Eren Özel and Sevag Balıkçı.[78] Covering up wrongful deaths exacerbates the violation of the right to life, and the fact that the military courts rather than High Criminal Courts

the Reconstruction of Hegemonic Masculinity in Turkey]. In Ö. H. Çınar, C. Üsterci (eds.), Çarklardaki Kum: Vicdani Red-Düşünsel Kaynaklar ve Deneyimler [Sand in the Reels: Conscientious Objection-Intellectual Resources and Experiences]. Istanbul: İletişim Publication, p. 143-152.

74 European Court of Human Rights (ECtHR) (2006) Country v. Turkey, No: 39437/98.

75 European Commission. (2012). *Turkey 2012 Progress Report*.

76 The written questioning was presented to the President of the Parliament by the Peace and Democracy Party MPs Özdal Üçer and Hüsamettin Zenderlioğlu.

77 *Bianet*. (2012, May 15). "22 Yılda 2221 Asker İntihar Etti" [2221 Soldiers have Committed Suicide in 22 Years]. Retrieved from, http://bianet.org/bianet/insan-haklari/138345-22-yilda-2221-asker-intihar-etti.

78 Eren Özel died on 2011 while on military duty in Maraş as part of the fifth armored brigade, the first Mechanized Battalion. The military officials first declared his death a suicide but it was found out in the trial, which took place in Gaziantep Military Criminal Court, that Eren Özel was killed by a bullet from the G-3 infantry rifle which belonged to Ahmet Aktaş, with whom he stood guard. There was suspicion that the death might have been intentional. See Kılıç, S. (March 19). "Eren Özel Kürt ve Alevi olduğu için mi öldürüldü?" [Was Eren Özel murdered just because he was Kurdish and Alevi?]. *Birgün*. Retrieved from, http://www.birgun.net/mobile.php?news_code=1332159368&year=2012&month=03&day=19&action=online; Demokrat Haber. (2012, Mar. 19). "Er Eren Özel cinayetindeki yalanlar" [The Lies about the Murder of Private Eren Özel]. Retrieved from, http://www.demokrathaber.net/guncel/er-eren-ozel-cinayetindeki-yalanlar-h7687.html.
Sevag Balıkçı, was killed on April 24, 2011 while on military duty in Batman, Kozluk, by a bullet from the rifle of a private who was also serving in his military unit. Military authorities claimed that he was killed "not deliberately but while joking around." However, the expert's report of the Land Forces Command found that Ağaoğlu was responsible for wrongful conduct. The trial is currently being held in Diyarbakir 2nd Air Force Command Military Court. See *Demokrat Haber*. (2012, July 7). "Sevag Balıkçı'nın Ölümünde Ağaoğlu Kusurlu" [Ağaoğlu is culpable for the murder of Sevag Balıkçı]. Retrieved from, http://www.demokrathaber.net/guncel/sevag-balikcinin-olumunde-agaoglu-kusurlu-h11638.html.; *Bianet*. (2012, Sep. 18). "Sevag Davasının Takipçisiyiz" [We are following the Trial of Sevag Balıkçı]. Retrieved from, http://bianet.org/bianet/militarizm/140717-sevag-davasinin-takipcisiyiz.

handle these trials leads to the violation of the principle of natural judge and negates the possibility of an independent, impartial trial process.[79]

Penalties of imprisonment imposed by military superiors without a court order are likewise a serious problem during the compulsory military service. According to Article 165 of Law No. 1632 on the Military Penal Code and Article 38 of Law No. 477 on the Establishment of Disciplinary Courts, Trial Procedure and Discipline Offenses and Penalties, military supervisors are granted the authority to execute penalties of imprisonment. However, as stated in many decisions of the ECtHR,[80] those penalties which are not subject to judicial oversight and are not based on the decision of a judge in an independent court are violations of human rights. In addition, at the beginning of 2012, 22 petitions delivered to the Parliamentary Human Rights Commission indicate that systematic torture and mistreatment is common in what are referred to as "discipline wards."[81]

One such incident involves Private Uğur Kantar, who was doing his military service in Cyprus and died as a result of torture in a disciplinary ward on 12 October, 2011.[82] Given the vast numbers cited by the Minister of National Defense İsmet Yılmaz above, suspicious deaths in the military should be handled by civil courts in accordance with the principle of natural judge and not in the military judiciary; in addition, military superiors' authority to impose penalties of imprisonment on recruits should be abolished and effective measures should be implemented to prevent torture and mistreatment. To this end, an effective process of investigation and prosecution should be initiated in such cases and these cases should be tried in civilian courts.

It should also be noted that the military exerts undue influence over the curriculum in civilian educational institutions. One positive development is the removal of the "National Security Information" course which was added to the curriculum after the 1980 coup and played a key role in the militarization of secondary education. The course was removed from the common courses in the Ministry of Education's secondary education weekly lesson schedules as of the 2012-2013 academic year in accordance with the decision of the Council of Ministers on 3 January, 2012.[83] However, the

79 See also Asker Hakları Girişimi [Soldier's Rights Initiative]. (2012). "Asker Hakları Raporu-Zorunlu Askerlik Sırasında Yaşanan Hak İhlalleri" [2012 Soldier's Rights Report- Violations of Rights Experienced during Military Duty]. Retrieved 27.10.2012, from www. askerhaklari.com/rapor.pdf.

80 European Court of Human Rights (ECtHR) (2011) *Ersin Pulatlı v. Turkey*, No: 38665/07.

81 *Bianet*. (2012, Jan. 19). "Asker Hakları TBMM'deydi" [Soldier Rights Initiative visited the Parliament]. Retrieved from, http://bianet.org/bianet/insan-haklari/135559-asker-haklari-tbmmdeydi. Freedom of Expression in the Context of Human Rights and the Law on the Amendment of Certain Laws known as "The Fourth Judicial Reform Package" does not abolish the confinement room" penalty, known as "disko", given to the soldiers; however, it opens the military to administrative judicial oversight. See *Radikal*. (2013, Feb. 5).
As discussed in detail above, the military justice system is a problematic structure in terms of the principles of natural judge and the independence of judges and the right to a fair trial. Therefore, it is not possible to say that this amendment is enough to provide a legal guarantee. In order to ensure adequate legal assurance, the authority to audit must be granted to the civil courts. However, beyond that, these kinds of penalties which are not given in an independent court administered by a judge constitute a violation of human rights as underlined by the ECtHR (see footnote 80). Therefore, in order to prevent human rights violations, the authority of the military superiors to impose punishment should be abolished.

82 Some news reports appeared in the press regarding the abolition of the military superiors' authority to "sentence." See, for example, *Milliyet*. (2012, Jun. 23). "Diskolar Tarih Oluyor" [Soldier Disciplinary Wings are Becoming History]. Retrieved from, http://gundem.milliyet.com.tr/-disko-lar-tarih-oluyor/gundem/gundemdetay/23.06.2012/1557503/default.htm. See again Asker Hakları Girişimi [Soldier's Rights Initiative]. (2012). "Asker Hakları Raporu-Zorunlu Askerlik Sırasında Yaşanan Hak İhlalleri" [2012 Soldier's Rights Report- Violations of Rights Experienced during Military Duty]. Retrieved 27.10.2012, from www. askerhaklari.com/rapor.pdf.

83 The National Security Information Directive was also repealed on 25 January 2012. See *Milliyet*. (2012, April 20). "Milli Güvenlik Dersi Yerine Seçmeli Ders Geliyor" [National Security Classes to be Replaced by Elective Classes]. Retrieved from, http://gundem.milliyet.com.tr/milli-guvenli-dersi-yerine-secmeli-ders-geliyor/gundem/

Office of the Chief of General Staff retains the capacity to direct civilian educational institutions through a variety of means. One example of curriculum intervention involves the screening of the documentary "The Yellow Bride: The Inner Face of the Armenian Question." Produced by the Office of the Chief of General Staff in June 2008 to promote the official Turkish perspective on the Armenian Issue, the documentary was distributed to all schools across the country through the Ministry of Education and the Provincial Directorate of Culture, and in January 2009 the District National Education Directorates sent a letter to schools demanding that all students watch the documentary.[84]

In addition, according to the Higher Education Act in force, the Higher Education Supervisory Board and the Inter-university Board must by law include one representative selected by the Office of the Chief of General Staff, while the National Education Council includes one representative from the General Secretariat of the National Security Council.[85] This law is currently under review and is expected to be revised in the near future.

The laws and regulations related to secondary and higher education at undergraduate and graduate levels within the military exclude civilian oversight of military education. In the Turkish Armed Forces' regulation regarding secondary education, oversight by the Ministry of Education is conditional and Law No. 4566 on Military Colleges (undergraduate) and Law No. 3563 on Military Academies (graduate) do not grant any authority to the Higher Education Council (*Yüksek Öğretim Kurulu*, YÖK) for supervision and oversight. Taking into account the fact that universities in Turkey are not autonomous and are subjected to scrutiny by YÖK, this regulation exempting military schools from oversight, is further evidence of the military's privileged position in the state apparatus.

It follows that secondary education within the Turkish Armed Forces should be subject to civilian oversight in such a way that eliminates the military's autonomy in this field, as well as the influence of the Chief of General Staff on civilian education so as not to allow a militarization of education. Furthermore, representatives from the Office of the Chief of General Staff should no longer be included in the civilian educational boards.

gundemdetay/20.04.2012/1530700/default.htm.

84 *Bianet*. (2010, Jul. 20). "Mahkeme Irkçı 'Sarı Gelin' Belgeselini Engellemedi" [The Court Did Not Block the Racist 'Yellow Bride' Documentary]. Retrieved from, http://www.bianet.org/bianet/azinliklar/123571-mahkeme-irkci-sari-gelin-belgeselini-engellemedi.

85 Akay, H. (2010). "Security Sector in Turkey: Questions, Problems, Solutions." Istanbul: TESEV Publications, p. 18.

The Police Organization

Preventive and intelligence-based policing strategies put into practice around a new "security" logic centered on the concept of "risk", both violate the right of privacy and, in many cases, allow the police to establish absolute control over society. Moreover, these strategies stigmatize some neighborhoods and groups as "potential criminals" and occasionally extend this stigmatization to the whole society, inevitably bringing about aggressive policing techniques.

While the military in Turkey has always had problems of "autonomy" and "democratic control", many of the current problems concerning the police organization have taken their final form with regulations introduced in recent years. These problems have led to numerous human rights violations such as violations of the right to life, the prohibition of torture and the right of privacy. The annual reports of organizations such as the Human Rights Association (*İnsan Hakları Derneği*, IHD) and the Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı*, TİHV) indicate that although police violence has differed in terms of form, degree, and frequency of application in recent years, it continues to be a troublingly significant part of policing strategies. Preventive and intelligence-based policing strategies put into practice around a new "security" logic centered on the concept of "risk", both violate the right of privacy and in many cases allow the police to establish absolute control over society. Moreover, these strategies stigmatize some neighborhoods and groups as "potential criminals" and occasionally extend this stigmatization to the whole society, inevitably bringing about aggressive policing techniques.

These problems will be examined under three headings: legal regulations that extend the discretionary power of the police; police sub-culture, new policing strategies, and the relationship between the police and society; and the problem of impunity.

LEGAL REGULATIONS THAT EXTEND THE DISCRETIONARY POWER OF THE POLICE

The primary problem arising from the legal regulations is the fact that the discretionary power of the police is not restricted in relation to many authorities of the police. This unrestricted nature of the police's discretionary power has been reinforced with recent regulations. As will be explained below in more detail, the authorities of the police to use firearms; to use force (especially on the part of riot police); to stop and frisk as well as check citizen's identity documents; to prevent behavior which is "contrary to the rules of public morality and decency"; and to monitor telecommunication are not subject to restrictions necessary for the prevention of police violence and human rights violations. Another problem concerning the legal regulations is the lack of disclosure of the regulations for some units of the organization, such as the Department of Special Operations and the Intelligence Department. The fact that the regulations which define the activities of these units are not publicly available provides the police with a great deal of autonomous space to negotiate the methods of carrying out their duties. In addition, the regulation denying those detained under the Anti-Terrorism Act access to a lawyer during the first twenty-four hours, other restrictions on the right

to a compulsory defense lawyer, and the fact that no judicial police has been established, as will be explained below, allow the police to establish dominance over the judicial process.

The Authority of the Police to Use Firearms

The first issue to be addressed here concerns regulation of the police's authority to use firearms. The two main laws governing the authority in question are the Police Powers and Duties Law (*Polis Vazife ve Selahiyet Kanunu*, PVSK) No. 2559 and the Anti-Terrorism Law (*Terörle Mücadele Kanunu*, TMK) No. 3713. The authority of the police to use firearms significantly increases the likelihood of violations of the right to life and therefore should be restricted as much as possible. However, the amendments made to the TMK in 2006 and to the PVSK in 2007 neglected to address this serious concern, leaving police authority to carry firearms unimpeded.

On June 2, 2007, Article 16 and Additional Article 6 of the PVSK were amended and combined under Article 16 to assert that the police were entitled to use firearms "b) vis-a-vis resistance which cannot be rendered ineffective by way of using bodily physical and material force, with the objective of and proportional to breaking such resistance, c) in order to capture individuals for whom there is an arrest warrant, a decision to detain, be captured or apprehended; or in order to capture the suspect in cases where he/she is apprehended while the crime is in progress, and the extent proportional for that purpose." According to this amendment, the police have been authorized to use firearms for the apprehension of suspects or defendants even in cases where there is no threat directed towards the officer's life or the life of another. Moreover, no further criteria regarding the use of firearms in the sanctioned situation are specified, such as "not targeting vital areas."

Article 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the United Nations in 1990, stipulates that there must be

The authorities of the police to use firearms; to use force (especially on the part of riot police); to stop and frisk as well as check citizen's identity documents; to prevent behavior which is "contrary to the rules of public morality and decency"; and to monitor telecommunication are not subject to restrictions necessary for the prevention of police violence and human rights violations.

an "imminent threat to life" for the police to legitimately use their firearms. The report on Law No. 5681 prepared by TİHV also emphasizes the international norms: "according to international norms, policing agencies are allowed to resort to firearms only in the case of an imminent threat to his/her own life or those of others."[86] In Turkey, between 2007 and 2011, 115 people lost their lives as a result of police's use of firearms and, as in the Izmir Limontepe case, deadly incidents still occur.[87] In other words, the fact that the current legal regulation increases the likelihood of the violation of the right to life has also been proven by experience on the ground.

Another cause for concern is Additional Article 2 of the TMK, which was added to the law in 1996 and reads "In operations executed against a terrorist

86 Türkiye İnsan Hakları Vakfı [Human Rights Foundation of Turkey]. (2009). İkinci Yılında PVSK Özel Raporu, Ankara. Retrieved 19.09.2012, from http://www.tihv.org.tr/index.php?AEkinci-YAElAEnda-PVSK-Azel-Raporu.

87 Limontepe is an impoverished neighborhood in the town of Izmir, inhabited by Kurdish people who came to the city as a result of forced migration. On August 12, 2012, while Emrah Barlak, his brother Erhan Barlak and one of their relatives were in their vehicle, they hit a parked police car and an argument broke out between the men and the two police officers about fining. During the commotion, one of the police officers opened fire and wounded Emrah Barlak in the stomach, the others in the legs, and slightly wounded a passer-by. Emrah Barlak lost his life as a result of this incident. See Koçer, M. A. (2012, Aug. 20). "Polis Şiddetinin Kaynağı Yasa mı" [Is the Cause of Police Violence the Law?] *Taraf*. Retrieved from, http://www.taraf.com.tr/haber/polis-siddetinin-kaynagi-yasa-mi.htm, p.14. The case of Limontepe, Izmir is evaluated in more detail in the "Results" section of this report.

organization, officials of policing agencies are authorized to use firearms, directly and without hesitation, against the targets to render the perpetrators ineffectual, in case of their noncompliance to the call for surrender and intention to use weapons."[88] The Court of Constitution found this amendment unconstitutional and annulled it on the grounds that it was contrary to Law 17 of the constitution which defines the right to life,[89] stating that the weapons "intended to be used by the suspect" do not need to be firearms but may be arms of any kind, perhaps not warranting the use of lethal force on the part of the policing agencies. It also underlined the ambiguity of the word "intention" and further found the amendment unconstitutional on the grounds that there was no mention of other possible methods to be implemented against the suspect and it lacked the criteria "by necessity" for the use of firearms.

Despite this ruling, the article was reinstated on 29 June, 2006 with much more dangerous wording[90]:

Police officials are now authorized to use firearms in case of noncompliance to the call for "surrender" *or* intention to use arms, which means that the noncompliance to the call for "surrender" would be sufficient for police to exert lethal force. Therefore, these regulations amount to an authority to "shoot to kill". The authority granted in these two laws should be made conditional on "imminent threat to life" and with the further condition that police officers "not target vital areas" when firing on civilians.

Gatherings and Demonstrations Act and the Regulation of Rapid Action Units

The unconstrained authority of police officers to use force explicitly allows them to use high levels of violence at gatherings and demonstrations that can easily be declared unlawful. Article 23 of Law No. 2911 lists a number of vague circumstances under which gatherings and demonstrations will be declared unlawful, for instance if the situation "deviate[s] from the purpose specified in the notification." This wording allows Newroz celebrations and similar gatherings held in the Kurdish geography to be prohibited with ease, and the right of any group to congregate and demonstrate can arbitrarily be limited.

At gatherings which have been declared illegal, Rapid Action Units are deployed to disperse groups; and the police chiefs at the scene have the authority to determine the degree of force to be used – a decision which is entirely unregulated and unlimited.[91] As observed during the Newroz celebrations nearly every year, and at the May Day celebrations in 2008 and 2009, the Rapid Action Units resort to tear gas, pressure water cannons and a high level of physical violence to disperse crowds. The Regulation of Rapid

88 Official Gazette. (1996). "4178 sayılı İl İdaresi Kanunu, Terörle Mücadele Kanunu, Kuvvetli Tayın Kanunu, Er Kazanından İaşe Edileceklere İlişkin Kanun, Ateşli Silahlar ve Bıçaklar ile Diğer Aletler Hakkında Kanun ve Kimlik Bildirme Kanununda Değişiklik Yapılmasına Dair Kanun" [Law No. 4178 on the Provincial Administration, the Anti-Terrorism Act, Strong Ration Law, Firearms, Knives and Other Instruments and the Amendment of the Law on Identity Notification]. No. 22747, 4 September 1996.

89 Official Gazette. (2001). "İl İdaresi Kanunu, Terörle Mücadele Kanunu, Kuvvetli Tayın Kanunu, Er Kazanından İaşe Edileceklere İlişkin Kanun, Ateşli Silahlar ve Bıçaklar ile Diğer Aletler Hakkında Kanun ve Kimlik Bildirme Kanununda Değişiklik Yapılmasına Dair Kanunun (4178 Sayılı) Bazı Maddelerinin Anayasaya Aykırı Olduğu Gerekçesiyle İptaline Dair 1999/1 sayılı Karar" [The Constitutional Court Decision No. 1999/1 to Annul the Law No. 4178 on the Provincial Administration, the Anti-Terrorism Act, Strong Ration Law, Firearms, Knives and Other Instruments and the Amendment of the Law on Identity Notification, on the premise that some amendments are unconstitutional]. 24292, 19 January 2001.

90 Official Gazette. (2006). "5532 sayılı Terörle Mücadele Kanununda Değişiklik Yapılmasına Dair Kanun" [Law No. 5532 on Amending the Law on the Prevention of Terrorism]. No. 26232, 18 July 2006.

91 Official Gazette. (1982). "Polis Çevik Kuvvet Yönetmeliği" [Police Rapid Action Unit Regulation]. No. 17914, 30 December 1982. Article 4 of the Regulation defines "use of force" as follows: use of bodily force, material force or weapons,... in order to neutralize or prevent or disperse a social event which has turned into an unlawful collective action.

At gatherings which have been declared illegal, Rapid Action Units are deployed to disperse groups; and the police chiefs at the scene have the authority to determine the degree of force to be used – a decision which is entirely unregulated and unlimited.

Action Units lacks limits to the degree of force police can inflict in these situations. In Article 27 of the regulation it is stipulated that "[F]orce may be used in necessary proportions to apprehend identified suspects" but the principle that the force cannot turn into "beating" is not specified, nor is the use of force subject to any restrictions for the protection of human health and the limits of bodily integrity such as the absolute inviolableness of critical regions, such as the head or thorax.

Weak regulations have allowed the police to act independently and without fear of legal recrimination. In one of the interviews conducted by the author, a Rapid Action Units police officer acknowledged this problem: "there are no clauses restricting the authority of the officers, the use of force or how to use force. The use of force is a very wide concept."[92] To correct the situation, the use of excessive force should be made illegal by including specific criteria to the regulation limiting the authority of police officers to use force. In line with this, the use of pepper gas, which has led to the death of 11 people since 2007 and has been proven to be harmful to human health, should likewise be terminated.[93] The criteria for characterizing a gathering and demonstration as illegal should be reviewed and limited; and vague statements extending the discretionary power of the police should be removed.

Police Intervention in Everyday Life

Article 4A and 11 of the PVSK also contain problematic provisions which allow for regular police intervention in individuals' everyday lives arbitrarily, and hence in an unnecessarily intrusive manner. Therefore, they enable circumstances in which police violence may easily materialize.

Some articles of the PVSK allow for regular police intervention in individuals' everyday lives arbitrarily, and hence in an unnecessarily intrusive manner.

Article 4A, regulating police authority to stop and frisk and demand an individual's identity card, was formulated by Law No. 5681 on 2 June 2007. According to the second paragraph of this article, "[T]he police can exercise the authority to stop an individual provided that there is a reasonable ground, based on the experience of the police officer and the impression he gets from the prevailing circumstances." This paragraph does not contain any indication of what "reasonable grounds" refers to, stating instead that a police officer is able to base the presence of "reasonable grounds" completely on his own subjective "experience" and "impression." The sixth paragraph also contains the same problem. According to this paragraph, "the police can take necessary measures to prevent any harm to himself/herself and others on having reasonable doubt that there exits a weapon or any other belonging causing danger on the person or in the vehicle stopped".

To the extent that "reasonable doubt" is not defined, the police are given the authority to conduct a search on any person, as well as the individual's belongings or vehicle, based entirely on their subjective

92 Berksoy, B. (2009). "Devlet Stratejilerinin Bir Tezahürü Olarak Polis Alt-kültürü: 1960 Sonrası Türkiye'de The Polis Teşkilatında Hâkim Olan Söylemlere Dair Bir Değerlendirme" [Police Sub-culture as a Manifestation of State Strategies: An Evaluation of the Dominant Discourses of The Police Organization in Turkey After 1960]. *Society and Science*, vol. 114, p.127.

93 *Birgün*. (2010, Apr. 12). "Biber Gazı Polise Neden Zarar Vermez?" [Why Doesn't the Pepper Spray Hurt the Police?]. Retrieved from, http://www.birgun.net/actuels_index.php?news_code=1334230650&year=2012&month=04&day=12.

The police are authorized, even if there is no complaint or appeal made on the part of the citizenry, to prevent and prohibit certain actions committed by "those who behave against general morals and manners and those who possess shameful and unacceptable attitudes from the perspective of society's order."

discretion. The remainder of the article defines the authority of the police to demand that an individual present his or her identity card, with the expectation that the threat of such a demand prevents crime. The legal ground provided for the article is as follows: "As stated in comparative law; the recording of a person's identity by means of an identity card check prevents that person from committing a crime at that scene. The awareness that if he or she commits a crime, he or she will be identified provides sufficient deterrence against performing the intended crime."[94]

Therefore, the stated aim of this regulation is to preemptively prevent crime through the "uneasiness" created by allowing the police unrestricted authority to stop individuals or vehicles and perform I.D checks. Far from constituting a problem then, the potential for arbitrary police intervention largely constitutes the purpose of the regulation. However, this authority has been shown to lead to police domination over certain individuals. In addition, there have been cases, like that of Feyzullah Ete, in which arbitrary interventions carried out by the police turned into fatal incidents of violence.[95] To prevent this authority from turning into a means of abuse and domination, it must be restricted and the terms "reasonable grounds" and "reasonable doubt" should be clearly defined.

Another problem with the legal regulations is related to Article 11 of PVSK. In the first paragraph of the Article, the police are authorized, even if there is no complaint or appeal made on the part of the citizenry, to prevent and prohibit certain actions committed by "those who behave against general morals and manners and those who possess shameful and unacceptable attitudes from the perspective of society's order." This regulation has allowed the conservative sub-culture which dominates the police organization to likewise extend its moralistic attitude over the population at large,[96] paving the way for the police to marginalize, stigmatize, and harass certain social groups. The lesbian, gay, bisexual, and transgender (LGBT) community, for instance, is often on the receiving end of this unwanted and unwarranted attention.[97] To address this problem, vague statements such as "against general morals and manners," which extend the discretionary power of the police and increase the likelihood of the criminalization of many groups on the grounds of this conservative culture, should be removed from the

94 See "TBMM Sivas Milletvekili Selami Uzun ve 3 Milletvekilinin; Polis Vazife ve Salahiyet Kanununda Değişiklik Yapılmasına Dair Kanun Teklifi ve Adalet Komisyonu Raporu" [The Law Amending the Law on Police Duties and Powers of the Offer and Justice Commission Report of Selami Uzun, Sivas Parliamentary Deputy, and Three Deputies], 2/1037: http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1437m.htm.

95 A discussion broke out between the civil police team that came up to Feyzullah Ete and his friends while sitting in a park in Avcılar and Ete lost his life as a result of a kick in the chest by one of the police. Reported in *Milliyet*. (2007, Nov. 23). "Polis Tekmesi Öldürdü" [Police Kick Killed]. Retrieved from, http://www.milliyet.com.tr/2007/11/23/guncel/agun.html.

96 See Berksoy, B. (2009). "Devlet Stratejilerinin Bir Tezahürü Olarak Polis Alt-kültürü: 1960 Sonrası Türkiye'de The Polis Teşkilatında Hâkim Olan Söylemlere Dair Bir Değerlendirme" [Police Sub-culture as a Manifestation of State Strategies: An Evaluation of the Dominant Discourses of The Police Organization in Turkey After 1960]. *Society and Science*, vol. 114, p. 98-130.

97 LGBTT Rights Platform. (2008). "LGBTT Bireylerin İnsan Hakları Raporu" [Report on the Human Rights of LGBTT Individuals]. Retrieved 06.10.2012, from http://www.kaosgl.com/resim/KaosGL/Yayinlar/lgbt_bireylerin_insan_haklari_raporu_2008.pdf. The European Commission's Turkey 2012 Progress Report pointed out that the articles of TCK regarding "exhibitionism" and "offenses against public morality" and the Misdemeanor Law have a similar discriminatory effect for LGBT citizens. See European Commission. (2012). *Turkey 2012 Progress Report*. Retrieved 25.09.2012, from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdfTCK, p. 29.

article and the authority of the police to intervene should be limited to cases in which the behavior in question violates the rights of other persons such as molestation.

The additional Article 7 of the PVSK that addresses the monitoring of telecommunications, contains regulations which further enable police control and domination of society. The article clearly defines the procedures to be applied, stipulating that permission to monitor must be decreed by a judge, and that the writ must state personal information along with justification for resorting to the measure. Any monitoring of telecommunications that violates the principles and procedures stated in the article is held to be legally invalid. However, two factors in the article render the authorization unlimited and unchecked; one of these is the police's ability to claim the measure as "preventative" action, and the second is the lack of oversight over the use of authority granted by this article.

The first paragraph of the article reads "The Police… take preventive and protective measures relating to the indivisible integrity of the State with its territory and nation, the constitutional order and general security." The second paragraph contains the further statement that monitoring of telecommunications is permissible "in relation with the fulfillment of the duties described under the paragraph above,… for the purpose of preventing the commission of crimes under art. 250, paragraph 1, subparagraphs (a), (b) and (c) of the Code of Criminal Procedure." The usage of the term "preventive" in these statements allows the monitoring of telecommunications for a period of three months even in the absence of crime.[98] Since the concern is not the detection of a crime committed, the logical conclusion of this article is the fact that the whole of Turkey can be tapped, which has in fact happened. Aksoy narrated a scandal regarding this issue in *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*:

> In June 2008 a development that could come to be described as a scandal took place. It was revealed that the 11th High Criminal Court of Ankara had ruled that all details of communication made by means of telecommunications throughout Turkey from the Telecommunications Directorate (*Telekomünikasyon İletişim Başkanlığı*, TIB) were to be obtained and delivered to the Intelligence Department of the General Directorate of Security. It became clear that the decision made by the Court for the period April 25 – July 25, 2007, had previously been made for the period January 26 – April 25, 2007, that a similar decision had also been made in November 2007, and that this practice had become routine, fully and permanently violating the right to privacy.[99]

98 It should also be noted that with the amendment made to the PVSK in 2005, Telecommunications Communication Presidency (*Telekominikasyon İletişim Başkanlığı*, TIB) was established to execute the wiretapping and recording of telecommunication from one center. TIB is obliged to share the information identified and recorded with the intelligence, police and gendarmerie units as well as prosecutors and the courts upon request. It was determined by law that one representative from MIT, the General Directorate of Security and the Gendarmerie General Command will be in the institution. (TIB is in the Information and Communication Technologies Authority [Bilgi Teknolojileri ve İletişim Kurumu, BTK]. BTK has administrative and financial autonomy. The parliament has no role in the selection of seven members appointed by the Council of Ministers.) See Kurban, D. and Sözeri C. (2012). "Caught in the Wheels of Power: The Political, Legal and Economic Constraints on Independent Media and Freedom of the Press in Turkey." Istanbul: TESEV Publications, p. 20.

99 Aksoy, M. (2010). "Gendarmerie." In A. Bayramoğlu, A. İnsel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 180. Additionally, in the 47th footnote of the same article, the printed verdict No. 2007/2084 of the high criminal court dated 25.04.2007 was quoted (p:179-180): "The decision by the 11th High Criminal Court was as follows: 'In order to establish in advance the strategies of terrorist organizations that aim to disrupt the indivisible unity, constitutional order and general security of the state, its law enforcement and public order, the life and property of the people and the democratic process that the country is undergoing, to prevent provocative incidents that may be carried out in connection with the presidential and parliamentary election and decipher the planning and preparatory stages of activities, and especially because GSM phones are used in activating bombs to be used in bombing activities, it has been decided through the letter No.

Article 5 of the PVSK contains another problematic regulation, that reduces the whole society to the status of "potential criminals."

With regard to the problem of oversight, the ninth paragraph of the Article states that oversight of "activities within the framework of this article shall be inspected by hierarchical superiors, the General Directorate of Security and inspectors appointed by the relevant ministry." However, oversight within the institution and the executive branch does not constitute a sufficient guarantee against the misuse of this authority. At the very least, an ad hoc commission of investigation in the parliament should be established, so that oversight can be conducted by a body which is independent of the executive branch.[100]

Article 5 of the PVSK contains another problematic regulation, namely provisions which reduce the whole society to the status of "potential criminals." The article reads: "The police can collect the fingerprints of those who a) are volunteers, b) apply to receive a firearms licence, driver's licence, passport or document substituting passport, c) are employed first of all as a police officer, general or specialized policing agency or private security officer, d) apply for acquiring Turkish citizenship, d) apply for asylum or as a foreigner entering the country if found necessary, d) are detained." According to this article, individuals do not have to be considered a suspect nor a defendant for the recording of fingerprints. Moreover, the article gives the police the authority to take the photographs of all those people indicated in the article except the volunteers and enter them into the data system. This regulation clearly violates the individual's right to privacy as well as Article 8 of the European Convention on Human Rights, which prohibits comprehensive and indiscriminate recording of any data of individuals.[101] Therefore, this regulation should be amended in such a way that it requires that an individual be accused of a crime before he or she can be forced to record fingerprints and photographs.

Another problem is that the regulations of some of the units of the organization are kept confidential, such that it is not possible to access the regulations defining the functions of the Special Operations Department and Department of Intelligence. Ertan

88854, dated April 25, 2007, *in line with Additional Article 7 on Law No. 2559, amended via Law No. 5397, that detailed records for the next three months, including foreign calls, should be obtained* on-line from the Telecommunication Directorate and should be electronically examined as soon as possible. It is understood that illegal organizations conducting terrorist activities continuously carry out plans and realize them whenever possible and it is clear that for operations against these organizations to be successful, it is important that technical surveillance, interceptions and detailed recordings be made and that inefficiency in this area will result in success for these organizations. As the conclusion has been reached that it is obligatory for all details to be recorded so that they can be used exclusively by intelligence agencies, in a way that will not constitute evidence against individuals, for the surveillance of terrorist organizations, the apprehension of militants and the prevention of action that they may be about to carry out, it has been decided to accept the request for the recording of details [...] It has been decided, in accordance with Law No. 5397, that detailed records of communications over DATA cable and fax information will be obtained on-line from the Telecommunications Directorate for the next three months...' Printed verdict No. 2007/2084, dated April 25, 2007, by the relevant court" (emphasis added).

100 For the standards of intelligence-gathering processes see, Born, H. and Leigh, I. (2005). "Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies." Oslo: Publishing House of the Parliament of Norway, Oslo, p. 77-87.

101 This was proven by the "S. and Marple Against England" decision of the European Court of Human Rights on 4 December 2008. The decision ruled that databases in the UK, including fingerprints and DNA profiles, violate the principle of the privacy of the private life and that the legislation be amended to ensure respect for the privacy of individuals. At the date of the decision, the United Kingdom was able to record the fingerprints and DNA information of invididuals defined as "suspects." The following statements were used in the decision: "The retention of personal data in a wide-range and indiscriminately"; "failed to strike a fair balance between the competing public and private interests." See European Court of Human Rights (ECtHR) (2008) *S. and Marper v. the United Kingdom*, No: 30562/04 and 30566/04.

Beşe, in his article entitled "The Department of Special Operation" in *Almanac Turkey 2005: Security Sector and Democratic Oversight*, has pointed out that the regulations of the Police Special Operations are classified as "Top Secret,"[102] meaning that they are not accessible to the public and opening up an autonomous space in which the police can operate. To ameliorate this situation, all regulations related to the police should be open to public inspection.

The relationship between the police and judiciary likewise requires attention. According to Article 156 of the former Code of Criminal Procedure, the police was granted the authority to define a crime in the police reports known as *fezleke*, allowing the police to easily and legally direct the judicial process on the basis of this authority until 2005. When the new Code of Criminal Procedure came into power in 2005, the police were prohibited from defining the crime in their reports. Instead, the police were required to notify the public prosecutor of the incidents so that they might be investigated in compliance to the judicial orders of the Public Prosecutor.[103]

A great deal of criticism has been raised with regard to the police not abiding by these legal amendments and continuing to determine the contents of indictments. As such, what has been referred to as *fezleke hukuku* (law of reports) continues to dominate the judicial process.[104] One step that can be taken to ameliorate the situation is to make the "judicial police" (those officers tasked with conducting investigations) responsible to the Ministry of Justice. It is important to take this step because as a result of this amendment for establishing "judicial police", prosecutors will become the police's superiors and the police will share the information obtained with the prosecutors rather than with their superiors in the police organization. The amendment would also bring relative isolation for the police from the political and bureaucratic power centers and the strategies they implement. Despite the fact that some steps were taken in this direction in 2005, these amendments have since been annulled due to the reactions of the Ministry of the Interior and the General Directorate of Security.[105] However, it can be said that it is essential to enforce this amendment in order to eliminate *fezleke hukuku*.[106]

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102 **Beşe, E. (2006). "The Department of Special Operation." In Ümit Cizre (ed.), *Almanac Turkey 2005: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 119.**

103 **See Official Gazette. (2005). "Adli Kolluk Yönetmeliği" [Regulation of the Judicial Police, Official Gazette]. No. 25832, 1 June 2005, Article 6.**

104 **Bora, T. (2012). "Çağdaş Hukukçular Derneği Genel Başkanı Selçuk Kozağaçlı ile Söyleşi: Olağanüstü Yargı Rejimi ve Polis-'Elastik ve Yapışkan Bir Ağ'" [An Interview with the President of the Contemporary Lawyers Association Selcuk Kozağaçlı: Exceptional Judicial Regime and the Police - 'Flexible and Sticky Network']. *Birikim*, 273, p. 31; Tutuklu Öğrencilerle Dayanışma İnsiyatifi [Solidarity Initiative for Arrested Students]. (2012). *Tutuklu Öğrenciler Raporu [The Report on Arrested Students]*. Retrieved 23.09.2012, from bianet.org/files/doc_files/../TÖDİ_tutuklu_öğrenciler_raporu.docx; Çandar, C. (2012, Feb. 15). "Akıl Tutulması, Saptırma, Çarpıtma" [The Abdication of Reason, Deflection, Distortion]. *Radikal*. Retrieved from, http://www.radikal.com.tr/yazarlar/cengiz_candar/akil_tutulmasi_saptirma_carpitma-1078779.**

105 **In the preparation of Criminal Procedure Act No. 5271, which came into force in 2005, the provision "an autonomous judicial police unit is established which is attached to the Ministry of Interior for regulatory purposes in places where the Chief Public Prosecutor's Office is found and attached to the Ministry of Justice for task purposes" was to be added. However, on account of differences of opinion within the government and the opposition of the Directorate of Security, the inclusion of this provision in the law was abandoned. Radikal. (2004, Nov. 18). "'Adli kolluk'ta geri adım" [A step back in the Judicial Police]. Retrieved from, http://www.radikal.com.tr/haber.php?haberno=134660.**

106 **Bora, T. (ibid.), p. 31, 32.**

The denial of access to legal counsel during the first 24 hours of custody in Article 10 of the Anti-Terrorism Law is another significant problem to be addressed. It makes infliction of torture within the first 24 hours possible. In addition, with the amendment made to the Code of Criminal Procedure by Law No. 5560 in 2006, the right to a compulsory defense lawyer has been further limited to those who are suspected of committing crimes carrying a prison sentence of, at least, five years. However, studies show that many of those who are detained for petty crimes, such as theft, which carry lighter sentences, are subject to police violence.[107] Granting all suspects the right to a compulsory defense lawyer as soon as they are brought into custody could very well lead to a reduction in the instances of police violence in apprehension and detention processes.

POLICE SUB-CULTURE, NEW STRATEGIES OF POLICING AND POLICE-SOCIETY RELATIONS

How the authority granted by the legal regulations will crystallize in everyday life, depends on policing strategies introduced systematically into the police organization. However, the strategies implemented cannot be an unmediated part of police practices; it is not only the content of strategies which determines against whom and in what way power is exercised, but also the ways in which police sub-culture effects their interpretation and implementation. [108]

In another study, the author of this report addressed the dominant police sub-culture in the post-1980 police organization and pointed out that the main discourses at play could be considered conservative nationalist, consisting of racist and militarist undertones, with the primary goal of ensuring the prevalence of the state. In this context, the dominant police sub-culture criminalizes social struggles and creates "internal enemies" against whom it must guard the state apparatus. Those who are reduced to the position of "internal enemies" comprise the ethnic-sectarian groups seeking official recognition of their identities and cultures, political leftists and trade unions, and those who live below the poverty line due to the fact that they cannot adapt to the new economic rationality while having an ethnic/religious identity other than "Sunni Turk".[109]

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107 See Human Rights Watch. (2008). "Closing Ranks against Accountability Barriers against Tackling Police Violence in Turkey." Retrieved 14.11.2012, from http://www.hrw.org/sites/default/files/related_material/turkey1208tuweb.pdf, p. 24.

108 Police sub-culture can be defined as dominant values, norms and social codes which are dominant in the police forces and which civil servants reflect on their practices in order to socialize and non-formal rules regarding the policing developed according to these values. See Reiner, R. (2010). *The Politics of the Police*. Toronto: University of Toronto Press, p. 115-137.

109 A certain number of volumes of the monthly magazine *Polis* published in the 1980s by the Turkey Retired Police Officers Association and Social Assistance, a certain number of the volumes of *Polis Dergisi* which was first published in 1995 by the General Directorate of Security, and interviews conducted by the author with the members of the police force in 2005 were evaluated for the research. See Berksoy, B. (2009). "Devlet Stratejilerinin Bir Tezahürü Olarak Polis Alt-kültürü: 1960 Sonrası Türkiye'de The Polis Teşkilatında Hâkim Olan Söylemlere Dair Bir Değerlendirme" [Police Sub-culture as a Manifestation of State Strategies: An Evaluation of the Dominant Discourses of The Police Organization in Turkey After 1960]. *Society and Science*, vol. 114, p. 99.

These sub-cultural characteristics have combined towards the mid-2000s with "pre-crime" policing strategies based on the prevention of "risks" -a process which began with the Public Financial Management and Control Law adopted in 2003. Following the adoption of this law, from 2005 onwards, the General Directorate of Security along with all other public institutions started to prepare a "strategic plan" that aimed to increase productivity and efficiency and reduce costs.[110] This plan, that was proposed to be put in action between 2009 and 2013, argues that the public expects the police to prevent incidents/crimes before they are materialized. The plan further suggests that greed and selfishness, in theory, are sufficient to cause individuals to commit crimes, and that "potential criminals" become "criminals" when they seize the opportunity. This rationality brings with it a new policing approach that focuses on intervention in settings and "opportunities" which facilitate the actualization of criminal impulses.[111]

According to the plan, in order to render such prevention possible, it is necessary to dominate the streets, to adapt the concept of intelligence-oriented policing to the realm of public order, to institutionalize the "community policing" approach across the country, to create a new model of technology-supported information system infrastructure which is compatible with applications of deterrent nature, and to develop systems of cooperation with various institutions and individuals.[112] The legal grounds provided for the Law No. 5681 amending the PVSK, which was adopted on 2 June 2007, also contain traces of this understanding:

> Within the framework of the necessity to protect the public order, *threats against public security must be prevented and eliminated*... It is obvious that the legislation that determines the preventive tasks and authorities of the police is complementary to the basic regulations adopted in the field of crime prevention and therefore, the former should also be re-addressed ... [t]he police need new and modern powers in the pre-crime realm... The concept of security that changes according to economic and social developments brings forth the necessity of *prevention of threats*.[113]

What is in question here is dominant position granted to the notion of "dangerousness" in the punitive area which makes possible the penalization of a person not on the basis of his/her commission of a crime but of his/her potential to do so.

Therefore, what is in question here is the dominant position granted to the notion of "dangerousness"[114] in the punitive area which makes possible the penalization of a person not on the basis of his/her commission of a crime but of his/her potential to do so.

In accordance with this strategy, legal and structural changes have been carried out in the police organization. The most important of these are as follows: the above-mentioned additions that were made to the legal regulations in order to facilitate the collection of intelligence; after 2005, MOBESE surveillance cameras have been installed and crime

110 General Directorate of Security. (2008). "Strategic Plan 2009-2013." Retrieved 25.09.2012, from http://www.egm.gov.tr/indirilendosyalar/emniyet_genel_mudurlugu_Stratejik_Plani.pdf, p. 15, 16.

111 General Directorate of Security, *ibid.*, p. 40, 41.

112 General Directorate of Security, *ibid*, p. 41.

113 See "The bill on the Law on Police Duties and Powers of TBMM by Sivas MP Selami Uzun and 3 other MPs and the Justice Commission Report", 2/1037: http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1437m.htm. (*emphasis added*).

114 See Bora, T. (2011). "Avukat Oya Aydın'la Öğrencilere Yönelik Polis Şiddeti ve Hukuki Baskılar Üzerine Söyleşi: Oransız Şiddet, Oransız Hukuk" [A Talk with Lawyer Oya Aydın on Police Violence against Students and Legal Coercion: A Disproportionate Violence, A Disproportionate Law]. B*irikim*, 261, p. 55, 56; Bora, T. (2012). "Çağdaş Hukukçular Derneği Genel Başkanı Selçuk Kozağaçlı ile Söyleşi: Olağanüstü Yargı Rejimi ve Polis-'Elastik ve Yapışkan Bir Ağ'" [An Interview with the President of the Contemporary Lawyers Association Selcuk Kozağaçlı: Exceptional Judicial Regime and the Police - 'Flexible and Sticky Network']. B*irikim*, 273, p.35.

maps have been prepared; and a database called POL-NET, into which all personal information is uploaded, has been put into operation. Likewise, the number of police officers has been increased in short time, allowing the police to achieve more visible "authority" over the streets; the "Public Order Project" and the "Crime Analysis Center Project" have come into effect (also since 2005). These projects have accelerated the construction of a numerical inventory of crimes, making crime analyses of the incidents that take place across the country and the establishment of "criminal profiles". The "community policing" strategy, which aims to ensure a consistent flow of intelligence to the police from "ideal" citizens by developing good relations with them, has come to the forefront during this period.

Article 220 of the new Turkish Penal Code and the amendments made to Article 7 of the Anti-Terrorism Law in 2006 rendered it legal for the police to intervene in social protests in particular and initiate a long criminal process for individuals in the opposition on the grounds of "making propaganda for an [terrorist, B.B.] organization without being a member of that organization." In order to implement intelligence-based "preventive policing" strategies and to deter "potential criminals" from taking advantage of "opportunities," Trust (*Güven*) and the Lightning (*Yıldırım*) Teams were deployed in 2007 under the "Project for the Development and Empowerment of the Strategy of the Police against Public Order Crimes."[115] Performance criteria, which increase the frequency of police interventions in everyday life, have been implemented within the organization in general but particularly through these recently established units.[116]

These structural and strategic changes have made it possible to easily record and access personal information of each and every citizen. In this way, each individual is reduced to the position of a "potential criminal" and faced with being pacified. As a result of the combination of these strategies with the existing police sub-culture, social protests have turned into, on the one hand, incidents where police violence, committed to establish control through "deterrence," frequently occurs and on the other hand, a means whereby individuals deemed a "risk" can be blacklisted and drawn to the punitive area. Additionally, some neighborhoods of people living below the poverty line have been blacklisted and blockaded by the police, accused of being the source of terrorism and public order crimes.

These neighborhoods, which consist mostly of Kurds who came to the city as a result of forced migration, Roma people, Alevi people, politically dissident and activist groups, have been subject to intensive police intervention within the framework of "crime maps"

115 General Directorate of Security, *ibid*, p. 42. For a review of the structural and strategic transformation of the police force, see Berksoy, B. (2012). "'Güvenlik Devleti'nin Ortaya Çıkışı, 'Güvenlik' Eksenli Yönetim Tekniğinin Polis Teşkilatındaki Tezahürleri ve Süreklileşen 'Olağanüstü Hal': AKP'nin Polis Politikaları" ['The Emergence Security State,' Manifestations of the 'Security' Axis within the Police Force and a Constant 'State of Emergency': The Police Policies of AKP]. *Birikim*, 276, p.75-88.

116 According to the application of the performance criteria, the success of the police would be dependent on a material motivation (gold, concert tickets, holidays, promotions, appointments, etc.) not on their circumstances through bonus (or performance). See İnsel A. (2012, June 10). "Polisin Molotof Puanları" [Molotov Ratings of the Police]. *Radikal*. Retrieved from, http://www.radikal.com.tr/radikal2/polisin_molotof_puanlari-1090827; Gönen, Z. (2012). "Suçla Mücadele ve Neo-liberal Türkiye'de Yoksulluğun Zaptiyesi" [Fight against Crime and the Policing of Poverty in Neo-liberal Turkey], *Birikim*, 273, p. 55. According to this system, the police receive points depending on the alleged crime of the suspect apprehended and remain in the same position or receive a promotion based on this scoring. For the scoring system, which increases the likelihood of the police resorting to aggressive policing techniques in order to earn points, see Gendarmerie General Command. (2010). "2010 yılı Faaliyet Raporu" [2010 Annual Report]. Retrieved 16.09.2012, from http://istifhane.files.wordpress.com/2012/01/jgk-2010.pdf. Also see, General Directorate of Security. (2008). "Strategic Plan 2009-2013." Retrieved 25.09.2012, from http://www.egm.gov.tr/indirilendosyalar/emniyet_genel_mudurlugu_Stratejik_Plani.pdf, p. 72-77.

and "criminal profiles."[117] According to the reports of human rights organizations, in this context, the number of deaths as a result of police-use of firearms has increased, while torture and mistreatment implemented mostly as beating has continued, especially outside police stations. The key to preventing such results and the numerous, consequent human rights violations associated lies in transforming not only the strategies being implemented by the police but also the police sub-culture. "Preventive policing strategies", which justify their focus on "risk prevention" and the "elimination of threat" by emphasizing early detection, lead to intrusive police intervention. Construction of "crime maps" and "criminal profiles" in accordance with macro policies of the government leads to criminalization and subjection to intense police control of certain groups. Since criminalized individuals are reduced to the position of a "threat," eliminating them by any means becomes a legitimate policing strategy. Festus Okey's murder as a result of police fire in the Beyoğlu Preventive Services Bureau Authority (*Beyoğlu Önleyici Hizmetler Büro Amirliği*) can be regarded as a case in point.[118] Therefore, the performance-based and "preventive" policing strategies should be abolished and the principles of these strategies should be excised from police training.

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Transformation of the police sub-culture is likewise essential. In this respect, police training in general[119] and the "human rights" courses, which have been given in police schools since 1992, have a particularly significant role. Ethnic nationalist and discriminatory discourses focusing on the perpetuity of the state and legitimizing the militaristic rhetoric should be removed from police training. In this vein, speakers in seminars and conferences held in the Police Academy and Police Vocational Schools should be selected with great care, and the discourse used in human rights courses should be structured in such a way that it does not contain excuses frequently voiced by the police such as "Turkey's unique conditions" and the existence of a "terror problem."

Human rights courses should be given by representatives of non-governmental organizations that have recognition at both national and international scale, or by faculty members of academic institutions working in the field of human

117 See Gönen, Z. (ibid). p. 48-56; Gönen, Z. (2011). "Neoliberal Politics of Crime: The Izmir Public Order Police and Criminalization of the Urban Poor in Turkey since the Late 1990s", Unpublished PhD Thesis, Binghamton University; Berksoy, B. (2009). "Devlet Stratejilerinin Bir Tezahürü Olarak Polis Alt-kültürü: 1960 Sonrası Türkiye'de The Polis Teşkilatında Hâkim Olan Söylemlere Dair Bir Değerlendirme" [Police Sub-culture as a Manifestation of State Strategies: An Evaluation of the Dominant Discourses of The Police Organization in Turkey After 1960]. ***Society and Science*****, vol. 114, p. 98-130.**

118 Cengiz Yıldız, who killed Okey, stated in his prosecution testimony that "Black people and citizens from the east stand out among criminals." See ***Radikal*****. (2011, Dec. 13). "Festus Okey'in Katiline 4 Yıl Hapis Cezası" [4-Year Sentence to the killer of Festus Okey]. Retrieved from, http://www.radikal.com.tr/turkiye/festus_okeyin_katiline_4_yil_hapis_cezasi-1072364.; Korkmaz, S. (2011, Dec. 17). "Festus Okey Davası ve Adalet" [Festus Okey case and Justice].** ***Bianet*****. Retrieved from, http://bianet.org/bianet/biamag/134802-festus-okey-davasi-ve-adalet.**

119 For the relationship between the violence resorted to by the police in social protests and the training of the police regarding mass movements, see Uysal, A. (2012). "Bir Psikolog olarak Polis: Polisin Toplumsal Olaylar Eğitimi ya da 'Kalabalık Yönetimi'" [Police as a Psychologist: Training of the Police for Social Protests or 'Crowd Management'], ***Birikim*****, 273, p.41-47. Uysal wrote the following: "Le Bon's Crowds approach reflected the elitist and power-based viewpoint of the rulers' of the time which approached the masses with suspicion and even with a sense of disgust. Today, training the police based on this theoretical approach means that the dominant point of view still sees the mass movements as outside the usual form of political participation, activists as devoid of intellect and as enemies of the police" (p. 47).**

rights; that is, the courses should be run by independent persons who are involved in the struggle for human rights. This will establish confidence that the content of these courses is determined in a way which does not justify human rights violations. Ethnic and religious discrimination biases in the mindset of individual police officers should be overcome through these courses, and decisions of the ECtHR on Turkey should comprise part of the curriculum. Finally, the principles of human rights should be extended to shape all relationships in the organization, including the supervisor-officer relationship.

POLICE VIOLENCE, THE POLICY OF IMPUNITY, AND INADEQUATE OVERSIGHT

Recurring violations of human rights and high levels of violence frequently committed by the police can also be traced to the fact that officers accused of committing crimes are either not prosecuted or prosecuted inadequately. This has become so systemic that one may speak of a "policy of impunity"[120] with regard to police infractions, in which "impunity" is understood in accordance with international law:

> Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.[121]

The first element that makes possible the policy of impunity is the system of "permission."

The first element that makes possible the policy of impunity is the system of "permission." Law No. 4483, enacted in 1999, on the Prosecution of Public Officials and Other Public Employees, stipulates that for the prosecution of public officers for the crimes they commit in the course of their duties, the highest administrative chief of the institution under which they serve should grant permission. As a result of the amendments introduced in 2003 to Law No. 4778, a further provision was added to the law, stipulating that "permission for prosecution" will not be sought for the investigation and prosecution of torture and mistreatment cases initiated against public officials. However, police violence, abuse of power and practices of misconduct are committed in various ways and at various levels. The system of permission which prevents the investigation and prosecution of these incidents is still in effect. Moreover, as will be discussed below, the prosecution carries out the investigation of torture and mistreatment cases based on Article 86 of TCK, which defines "intentional injury", rather than on Articles 94 and 95, which define the crime of torture. This preference of the prosecution necessitates administrative authorization for investigation and prosecution of human rights violations, enabling an interruption of the judicial process in favor of the accused police officers.

Moreover, according to Articles 137 and 138 of Law No. 657 on State Officials, the permission for the dismissal

120 See Atılgan, M. and Işık, S. (2011). "Overcoming Impunity in Turkey and Violations of Security Forces." Istanbul: TESEV Publications; Human Rights Watch. (2008). "Closing Ranks against Accountability Barriers against Tackling Police Violence in Turkey." Retrieved 14.11.2012, from http://www.hrw.org/sites/default/files/related_material/turkey1208tuweb.pdf.

121 Atılgan, M. and Işık, S., *ibid*, p. 9. See United Nations Commission on Human Rights (UNCHR). (2005, Feb. 8). *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, Retrieved 27.09.2012, from http://www.derechos.org/nizkor/impu/principles.html.

of public officials in the process of prosecution should be granted by administrative chiefs. The fact that the police officers accused of serious human rights violations hold their posts during the process of investigation and prosecution has been proven, in many cases, to exacerbate the problem of impunity.* The system of permission in question should be eliminated by making amendments to Law No. 4483 and Law No. 657 on State Officials and the dismissal of the police officer during the investigation/prosecution process should be made possible.

Other important factors that make possible the policy of impunity are comprised of flawed investigations and trial proceedings, and the biased attitudes of judges and public prosecutors. The report of the Human Rights Watch entitled "Closing Ranks against Justice" tackles this issue.[122] According to the report, the European Commission of Human Rights investigated 50 cases in 1999 and concluded that investigations into deaths or alleged mistreatment involving the police have frequently been superficial and inadequate, with no evidence or witnesses sought in the prosecutions; they found that flawed forensic and medical examinations had been conducted and there had been a reluctance to pursue any meaningful lines of investigation. The Human Rights Watch determined based on current examplary cases that these practices are still prevalent.

According to this evaluation, in many cases, prosecutors today still do not interrogate officers who are subject to allegations, do not take their statements or investigate contradictions in detention records; they do not pursue witness accounts or crime

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scene forensic evidence, they fail to get the statements of victims or witnesses in a timely manner, and disregard visible signs of mistreatment or complaints. Instead of properly investigating, prosecutors initiate lawsuits or cases against victims of incidents on the grounds of "using violence or threats against a public official to prevent them from carrying out a duty" in Article 265 of the new TCK; they show no interest in whether detainees are examined by appropriately qualified medical professionals, and judges often declare mistrial before viewing all the evidence.[123]

In addition, prosecutors often charge accused police officers with relatively minor crimes (not preferring Articles 94, 95, 256 of the TCK) which carry the lowest penalty possible and require permission to carry out investigation. For example, prosecutors may choose not to apply Article 94 in torture cases in favor of Article 86 which specifies "intentional injury" and carries the lower penalty of a 1.5 year prison sentence and the possibility of a suspended sentence.[124] In light of these facts, the measures of highest priority are as follows: both investigations and prosecutions should be pursued to the fullest extent of the law; flawed procedures of prosecutions should be detected and consequent criminal prosecutions should be commenced; legal regulations that ensure (a) that prosecutors are not able to impose the lowest penalties on the police officers and (b) that prevent police officers from intimidating victims by arbitrarily charging them with "resisting public officials." In torture cases, independent medical reports should be recognized by the courts. Lastly, amendments should

*** Atılgan, M. and Işık, S. *ibid***

122 Human Rights Watch. (2008). "Closing Ranks against Accountability Barriers against Tackling Police Violence in Turkey." Retrieved 14.11.2012, from http://www.hrw.org/sites/default/files/related_material/turkey1208tuweb.pdf. Turkey 2012 Progress Report of the European Commission drew attention to the continuation of the policy of impunity for human rights violations by the security forces. See European Commission. (2012). *Turkey 2012 Progress Report*. p. 19.

123 Human Rights Watch, *ibid.*, p. 27.

124 Human Rights Watch, *ibid.*, p. 14-15.

be made to Article 66 of the TCK to repeal the statute of limitations retrospectively for crimes of torture and mistreatment.[125] Another immediate concern is the lack of an effective oversight mechanism regarding the police organization. Although many human rights units[126] already exist within the administration, there is very clearly inadequate oversight of policing practices. What is required is an independent and sufficiently powerful institution to counter the practices discussed above. The UN has developed various norms under the umbrella term "Paris Principles" to make sure that such institutions are effective in the protection and promotion of human rights, which we can make use of to further clarify the necessary attributes for an institution to provide sufficient oversight. According to the Paris Principles, such institutions should be fully independent in terms of both membership and funding, they should have a pluralistic membership structure, be in charge of and accountable for the promotion and protection of human rights, have a broad authority defined by a legal text, including the authority to scrutinize any issue under its jurisdiction freely and without being itself the subject of any investigation and prosecution. It should also have the authority to request any information and documents necessary for evaluating issues falling within its jurisdiction.[127] Unsurprisingly, analysis of the institutions already present indicates that they do not meet the requirement of full independence as defined by the UN Paris Principles.

The newly established "Turkey's Human Rights Institution" has been criticized since its inception by human rights organizations such as the IHD, TIHV, and Human Rights Watch, for not fulfilling the requirement of independence.[128] These criticisms have drawn attention to the importance of the process of determining the members in order to ensure, in particular, the independence and pluralism of the

125 There was an important development that took place in the preparation of the publication of this report. The draft law "Freedom of Expression in the Context of Human Rights and the Law on the Amendment of Certain Laws," known as "The Fourth Judicial Reform Package," was submitted to the Parliament on March 7, 2013. This draft law addresses the statute of limitations and stipulates the elimination of the statute of limitations for the crime of torture regarding human rights violations. In other words, the enactment of the draft law means that the statute of limitations will not be implemented for the crimes of torture and mistreatment commited by law enforcement officers. Of course, this draft bill, if enacted, will be a very important step for the fight against the problem of impunity. However, since the implementation of such a law does not cover the 1980s and 1990s, the time when the human rights violations committed by law enforcement officers in Turkey were at their peak, it will be quite insufficient to solve the problem. In this regard, whether the statute of limitations will be lifted retroactively or not is of great importance.

126 These institutions are as follows: The Parliamentary Human Rights Investigation Commission, Provincial and Sub-provincial Human Rights Boards, Supreme Council for Human Rights, The Human Rights Advisory Board, Committee for Human Rights Infringement Claims Review the National Committee of Human Rights Education, Monitoring Boards on Prisons and Detention Houses, the Gendarmerie Human Rights Violations Investigation and Assessment Center. For information on these Councils, see, Altıparmak K. (2008). "Türkiye'de İnsan Hakları İdari Yapılanması" [The Administrative Structure of Human Rights in Turkey]. Retrieved 27.09.2012, from http://www.ihop.org.tr/dosya/uihk/yapilanma_tablo.pdf; Altıparmak, K. (2008). "Türkiye'de İnsan Haklarında Kurumsallaş(ama)ma" [(Un) Institutionalization of Human Rights in Turkey]. Retrieved 27.09.2012, from http://e-kutuphane.ihop.org.tr/pdf/kutuphane/107_1293624912_2008-01-01.pdf..

127 See United Nations General Assembly Resolution (1993, Dec. 20). "National Institutions for the Promotion and Protection of Human Rights." No. 48/134. Retrieved 27.09.2012, from http://www.ihop.org.tr/dosya/uihk/paris_ilkeleri.pdf.

128 See Türkiye İnsan Hakları V [Human Rights Foundation of Turkey]. (2009). "'Türkiye İnsan Hakları Kurumu Kurulmasına Dair Kanun Tasarısı' Derhal Geri Çekilmelidir!" ['The Draft Law on the Establishment of the Human Rights Council of Turkey' must be withdrawn immediately!]. Retrieved 28.09.2012, from http://tihv.org.tr/index.php?aEoeTArkiye-AEnsan-HaklarAE-Kurumu-KurulmasAEna-Dair-Kanun-TasarAEsAEaE-Derhal-Geri-Aekilmelidir,; Helsinki Citizens' Assembly - Human Rights Association - Association for Human Rights and Solidarity for Oppressed Peoples Human Rights Foundation of Turkey - Amnesty International Turkey (2011) "Mandatory disclosure of the Human Rights Institutions regarding the attempts to create wrong impressions in the public opinion about Draft Law on the Human Rights Council of Turkey in recent days." Retrieved 28.09.2012, from http://www.tihv.org.tr/index.php?oba_20100114,; Human Rights Watch (2012) "Turkey: Give up the Erroneous Plan Regarding the Human Rights Institution." Retrieved 28.09.2012, from http://www.hrw.org/es/node/108118.

national institution, and have further emphasized that the election of the members by the executive bodies puts the independence of an institution in jeopardy. Significantly, the government's request for the opinions of various organizations during the preparation of the law was insufficient to ensure the institution's independence.

> *The newly established "Turkey's Human Rights Institution" has been criticized since its inception for not fulfilling the requirement of independence. The criticism has drawn attention to the importance of the process of determining the members in order to ensure, in particular, the independence and pluralism of the national institution, and have further emphasized that the election of the members by the executive bodies puts the independence of an institution in jeopardy.*

Despite all the criticism, the necessary amendments to ensure the institution's independence were not introduced in the draft law enacted on 21 June 2012. According to Article 5/4 of Law No. 6332, two members are to be appointed by the President, seven by the Council of Ministers, one by the Higher Education Council (*Yüksek Öğretim Kurulu*, YÖK), and one by the heads of Bar Associations.[129] Thus, ten of the eleven members will be appointed by executive bodies, rendering the institution dependent on each of the appointing entities for the maintenance of their position.

After the law was adopted, human rights organizations both reiterated their criticism of the election of membership and pointed out that the financial autonomy of the institution was also not sufficiently guaranteed.[130] Further criticism came from the 2012 Progress Report of the European Commission for Turkey, which also emphasized that the law is incompatible with the UN Paris Principles in terms of the independence of the institution.[131] In order for "Turkey's Human Rights Institution" to function as an effective institution in line with the international standards for the protection of human rights, the election of members should be carried out by a unit consisting of people independent of the executive body and the elected members should be appointed by an institution of the state. The process should be open and transparent in all respects.

The "Police Oversight Commission" is another institution which is in the process of being established to receive and investigate complaints of human rights violations committed by the policing personnel of the General Directorate of Security, GCG and CGC. This institution is being established in the context of the EU pre-accession program. The tasks of the commission listed in Article 4 of the draft for the law include: laying down the general principles concerning the policing complaints system and making related recommendations to the Ministry; requesting competent authorities to launch disciplinary proceedings in response to crimes allegedly committed by members of the policing agencies or against their offenses, attitude or behavior punishable by disciplinary action; preparing annual reports containing evaluations, comments and suggestions regarding the issues under its authority; monitoring the implementation of ethical principles in policing agencies; making recommendations to the competent authorities for effective implementation of these principles; submission to the Commission of notifications and complaints regarding the offenses, attitudes or behavior of law enforcement officials

129 Official Gazette. (2012). "Türkiye İnsan Hakları Kurumu Kanunu" [Turkey's Human Rights Institution Act]. No. 28339, 30 June 2012.

130 Helsinki Citizens' Assembly - Human Rights Association - Association for Human Rights and Solidarity for Oppressed Peoples Human Rights Foundation of Turkey - Amnesty International Turkey Branch (2012). "Joint Statement." Retrieved 28.09.2012, from http://www.ihop.org.tr/index.php?option=com_content&view=article&id=585:tuerkiye-nsan-haklar-kurumu-kanunu-tasars-uezerine-ortak-basn-acklamas&catid=36:ulusal-nsan-haklar-kurumu&Itemid=46.

131 The report also reminds that independent supervisory bodies which have to be established under the Optional Protocol to the Convention against Torture are yet to be established. See the European Commission. (2012). *Turkey 2012 Progress Report*. Retrieved 25.09.2012, from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf, p. 19.

Financial auditing of the police force is also inadequate. Like in all other institutions, an audit of the budget of the General Directorate of Security must be possible in accordance with the principles of transparency and accountability.

punishable by disciplinary action, or in case of a notification or a complaint being found out by the Commission on its own initiative, requesting competent authorities to launch disciplinary proceedings within 30 days of receipt by the Ministry of the Interior Directorate Board of Inspection; the Presidency of the Board will be expected to take action on this request, in accordance with the provisions of the general discipline.[132]

The institution is being established within the Ministry of the Interior. According to Article 3 of the draft law, the Commission is composed of the Undersecretary of the Ministry of the Interior (the Chairman of the Commission), the President of Prime Ministry Human Rights Presidency (*Başbakanlık İnsan Hakları Başkanlığı*), the Chairman of the Board of Inspection in the Ministry of the Interior, the Ministry First Legal Advisor, the General Directorate of Penal Affairs in the Ministry of Justice, one candidate to be selected by the Council of Ministers from each of the two sets: a) three candidates to be proposed by the Ministery of the Interior from among faculty members holding positions in the branches of criminal law and criminal procedure law and b) three candidates proposed by the Ministry of Justice from self-employed lawyers qualified to be president of the bar association. Within the current framework, the institution is structured in such as way that it functions completely under the initiative of the government and lacks the crucial membership and financial autonomy.

According to the report prepared by the EU Harmonization Commission, similar institutions such as those in the United Kingdom and Portugal are taken as models in the establishment of the Commission.[133] However, the necessary international standards for an efficiently operating institution that have been set by the UN and the Commission, at the time of this writing, does not comply with the "Composition and Guarantees of Independence and Pluralism" principle of the Paris Principles. The Commission, first of all, should consist of members of the organizations which represent the groups whose rights and freedoms have been violated; further, members should have the guarantee of position and the institution should have financial autonomy. The institution also should have the authority to visit detention centers and prisons unannounced and unimpeded, and its decisions should be binding.

Finally, financial auditing of the police force is also inadequate. Like in all other institutions, an audit of the budget of the General Directorate of Security must be possible in accordance with the principles of transparency and accountability. The Law on the Court of Auditors and its regulations should be amended in order to eliminate the problems discussed in detail above. With these amendments, the Court of Auditors should be authorized to conduct propriety inspections and in the context of the principle of transparency, the reports prepared, including the ones related to the "discretionary fund," should be made public without disclosing any portion of them.

132 See General Directorate of Laws and Regulations, Office of Prime Ministry (2012)."Kolluk Gözetim Komisyonu Kanunu Tasarısı ve Gerekçesi" [The Draft and Preamble to the Enforcement Oversight Commission Law]. 28 September 2012. http://www2.tbmm.gov.tr/d24/1/1-0584.pdf.

133 See TBMM European Union Compliance Commission. (2012 Apr. 11). No. 1/584. Retrieved 09.28.2012, from http://www.tbmm.gov.tr/komisyon/abuyum/belge/faaliyet/donem24/1_584.pdf.

The National Intelligence Agency and Other Intelligence Agencies

The National Intelligence Agency (*Milli İstihbarat Teşkilatı*, MIT) was established as a replacement for its predecessor, the National Security Service, under Law No. 644 which was put into effect on 22 July 1965. Following the 12 September coup, the agency's current structure was established with the adoption of Law No. 2937, dated 1 November 1983. The agency is far from being transparent, as indicated by the scarcity of the studies conducted on it.[134] This chapter will address the primary legal and structural amendments necessary to make the MIT and other intelligence agencies more transparent and accountable institutions.

In the studies made on the organization, it is argued that the army ran MIT until the beginning of the 1990s.[135] While the first civilian secretary of the MIT was appointed in 1992, according to Kılıç, significant changes did not take place in the operational system of the MIT until after 2002 when the government and the agency started working in close collaboration.[136] The MIT operates in an extremely wide arena and exercises an extensive authority in accordance with Law No. 2937 on the State Intelligence Services and the Establishment of the National Intelligence Agency. Its duties, which are defined vaguely in Article 4, include:

The agency is far from being transparent, as indicated by the scarcity of the studies conducted on it.

> …to procure national security intelligence throughout the State on immediate and potential activities carried out in or outside the country with the intention of targeting the indivisible integrity of the Republic of Turkey with its territory and its national, existence, independence, security, its Constitutional order and all elements that constitute its national strength and to deliver this intelligence to the President, the Prime Minister, the Secretary General of the National Security Council and to the relevant institutions,… to carry out counter-intelligence activities.

It is not clear what constitutes "activities carried out to target the existence, independence, security, and all elements that constitute the national strength of the Republic of Turkey," and these phrases should be defined explicitly to allow the people legal recourse should the MIT over-reach their authority. Paragraph 3 of Article 6 defines MIT's authority to detect, intercept and record telecommunications: "Telecommunications can be detected, intercepted [and] recorded with a judge's permission or, when postponement is detrimental, upon the written order of the Undersecretary or Deputy Undersecretary of the MIT in case of a serious threat against the fundamental features of the state referred to in Article 2 of the

134 For example, see, Ünlü, F. (2006). "National Intelligence Service." In Ü. Cizre (ed.), *Almanac Turkey 2005: Security Sector and Democratic Oversight*, Istanbul: TESEV Publications, p. 158-171; Kılıç, E. (2010). "The National Intelligence Agency." In A. Bayramoglu, A. Insel (eds.), *Almanac Turkey 2006-2008: Security Sector and Democratic Oversight*. Istanbul: TESEV Publications, p. 243-250; İlter, E. (2002). *Milli İstihbarat Teşkilatı Tarihçesi: Milli Emniyet Hizmetleri Riyaseti MEH-MAH, 1927-1965* [The National Intelligence Organization History: the leadership of the National Security Services 1927-1965]. *Ankara: MİT Publications*; Özkan, T. (1996). "Bir Gizli Servisin Tarihi: MIT" [A Secret Service History MIT]. Istanbul: Milliyet Yayınları.

135 Ünlü, F., ibid, p. 161-163, p. 244 -245.

136 Kılıç, E., *ibid*., p. 245.

Current oversight of the organization can only be carried out through its own internal inspection boards and is at the disposal of the Prime Minister. The extent to which this degree of oversight is insufficient became evident with the crisis that broke out early in February 2012.

Constitution and the democratic rule of law with the aim of ensuring the security of the State, revealing spying activities, detecting the disclosure of State secrets and preventing terrorist activities." The statement "in case of a serious threat against the fundamental features of the state referred to in Article 2 of the Constitution and the democratic rule of law" likewise carries no clarity and extends the discretionary power of the organization. This broad mandate requires democratic oversight of the organization to ensure the prevention of human rights violations.

Current oversight of the organization can only be carried out through its own internal inspection boards and is at the disposal of the Prime Minister.[137] The extent to which this degree of oversight is insufficient became evident with the crisis that broke out early in February 2012. On 7 February, 2012, the Undersecretary and four members of the MIT were summoned as suspects to testify in the investigation of the Kurdish Communities Union (*Koma Civakên Kurdistan,* KCK), carried out by the Istanbul Chief Public Prosecutor's Office on the grounds of allegations that the intelligence of some of the activities of the PKK was delivered in advance to the MIT. Immediately afterwards, the government intervened, dismissing Sadrettin Sarıkaya, the prosecutor of the investigation, and dismissing or reassigning many officials in the Istanbul Security Directorate including senior officials.[138]

Article 26 of Law No. 2937 on the State Intelligence Services and The National Intelligence Agency was speedily amended and the investigation was terminated. Article 26 of the Law was amended by Law No. 6278, dated 17 February, 2012 as: "Investigation of an MIT member or any public official assigned by the Prime Minister to perform a specific duty due to crimes derived from the nature of their duty or that are alleged to have been committed during the conduct of their duty or due to allegations of crimes that fall under the mandate of high criminal courts in accordance with paragraph 1 of Article 250 of Law no. 5271, requires the permission of the Prime Minister." The new amendment extends the impunity granted to MIT members to public officials appointed by the Prime Minister to fulfill a specific task. Similarly, the last section of the Article, the exemption, which is not granted to any official in terms of the crimes defined in Article 1 of Article 250 of the CMK, grants to MIT members, and officials appointed by the Prime Minister in case the Prime Minister does not grant permission to prosecute.[139] As a result, the amendment reinforced the legal framework that leaves MIT free from oversight. At the same time however, the prosecution's decision has also been regarded as a political interference by the judiciary to hamper the government's attempts to find a solution to Turkey's Kurdish Question.[140] In both

137 Yetkin, M. (2012, Feb. 23). "İstihbarat Örgütlerinin Demokratik Denetimi" [Democratic Oversight of the Intelligence Organizations]. *Radikal*. Retrieved from, http://www.radikal.com.tr/yazarlar/murat_yetkin/istihbarat_orgutlerinin_demokratik_denetimi-1079635.

138 *Radikal*. (2012, Feb. 11). "Savcı Sarıkaya soruşturmadan alındı" [Prosecutor Sarıkaya was removed from the investigation]. Retrieved from, http://www.radikal.com.tr/turkiye/savci_sarikaya_sorusturmadan_alindi-1078437.

139 The European Commission's Turkey 2012 Progress Report pointed out that this amendment to the law regarding MIT provides arbitrary immunity to some civil servants and warned that it is open to inconsistent interpretations and excludes legal oversight. See European Commission. (2012). *Turkey 2012 Progress Report*. Retrieved 25.09.2012, from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf, p. 13.

140 See Çandar, C. (2012, Feb. 15). "Akıl Tutulması, Saptırma, Çarpıtma" [The Abdication of Reason, Deflection, Distortion]. *Radikal*. Retrieved from, http://www.radikal.com.tr/yazarlar/cengiz_candar/akil_tutulmasi_saptirma_carpitma-1078779,; *Habertürk*. (2012, Feb. 14). "Hasan Cemal: MİT de sütten çıkmış ak kaşık değil" [Hasan Cemal: MIT is not as pure as the driven snow either]. Retrieved from, http://www.haberturk.com/polemik/

cases, these experiences make it crucial to reconsider the MIT-related legal regulations and descriptions of duty and to establish accountability mechanisms to ensure transparency and minimize or negate the possibility of abuse.

Studies conducted on intelligence agencies have established that such institutions have modes of operation based heavily on confidentiality. As stated by Aytar, when this confidentiality-based mode of operation is combined with increased authority, the possibility of intelligence activities running counter to human rights and the rule of law increases.[141] He further states that "the possibility of abuse of the information obtained might make intelligence activities, which should not be used against the political opposition, unfavorable and dangerous."[142] Therefore, as a requirement of a democratic regime, mechanisms of oversight of intelligence agencies incorporating the legislative, executive, and judicial bodies should be established. In addition, civil society and the media should be involved in these oversight mechanisms. Not only do the same principles and requirements apply to the Gendarmerie Intelligence Agency, Intelligence Department of the General Directorate of Security and its affiliates, but they also apply to the Telecommunications Authority established to carry out interventions related to communications from a single center and to the Undersecretariat of Public Order and Security whose tasks involve the collection, evaluation and sharing of intelligence.[143] Seen in this light, the properties of the democratic oversight mechanism which needs to be established are as follows.[144]

First of all, the mandates of the MIT and intelligence agencies should be clearly delineated. For example, in addition to unrealized "potential" activities, statements such as "to protect the security of the State" or "activities carried out to target the existence, independence, security and all elements that constitute the national strength of the Republic of Turkey" are too broad and open to interpretation to provide legal recourse to individuals and groups whose liberties may be infringed upon. Based on these statements, it is possible to criminalize political opposition movements at any time. Empowered by these vague definitions, intelligence services might be used to exert pressure on groups in these opposition movements.

Legal and institutional guarantees should be introduced to prevent the abuse of these powers against political dissidents. For example, the second paragraph of Article 4 of the "National Intelligence Act" of Argentina states the following: "No intelligence body may obtain information, produce intelligence or store data about persons, due solely to the fact of their race, religious belief, private actions or political opinion, or to the fact that they have joined or belong to parties, social bodies, trade unions, communities, cooperatives, charities, cultural or labor organizations, or because of the lawful activities they

haber/715847-askeredokununca- iyi-de-mite-dokununca-kotu-mu.

141 Aytar, V. (2008). "İstihbarat Servisleri ve Demokratik Gözetim" [Intelligence Services and Democratic Oversight]. In Born, H. and Leigh, I. (eds.), İstihbaratı Hesap Verebilir Hale Getirmek: İstihbarat Teşkilatlarının Gözetiminde Hukuki Standartlar ve En İyi Uygulamalar [Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies]. Istanbul: TESEV Publications, p. 13.

142 Aytar, V. *ibid*.

143 Aytar, V. *ibid*. p. 14.

144 The necessary features of the control mechanism mentioned here are compiled from the work of Hans Born and Ian Leigh entitled *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*. This study, emphasized legal guarantees were as necessities, pointed out that the executive legislative and judicial authorities should be involved in the control mechanisms and alternatives were suggested for the institutional structures which could be established. The institutional structures suggested here are chosen from among these alternatives. See Born, H. and Leigh, I. (2005). "Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies." Oslo: Publishing House of the Parliament of Norway, Oslo.

The protection of personal data should be considered as a basic human right. In this regard, a law delimiting, rather than protecting, the powers of the MIT and other intelligence agencies should be introduced.

pursue in any sphere of action."[145] Although such an amendment would not impede all possible violations of the intelligence agencies, it would, at least, provide grounds for legal and judicial proceedings of these violations.[146] In addition, practices such as "torture" which the agencies cannot resort to under any circumstances should, nevertheless, be explicitly forbidden in the law and attached to a suitable punishment. In order to reduce the likelihood of such practices, units that analyze information and those which operate on the basis of this information must be distinct from one another. This distinction does not currently exist within the police organization and gendarmerie, and as such the necessary legal amendments should be carried out in this respect.[147]

The protection of personal data should be considered as a basic human right. In this regard, a law delimiting, rather than protecting, the powers of the MIT and other intelligence agencies should be introduced. The "Bill on the Protection of Personal Data" which was sent to the Presidency of the Parliament in 2008, but did not pass into law and has since become obsolete, was heavily criticized for not including these properties and for protecting the powers of the institutions authorized to collect data.[148] In place of the previous bill, the new law should be based on the protection of the privacy of personal data and contain regulations in this regard. Moreover, the statement added to Article 20 of the Constitution in 2010, "All individuals have the right to request the protection of their personal data" contains an amendment not aimed at the *protection of privacy* but only at the *protection of personal data*, rendering it inadequate and in need of replacement.[149] An oversight mechanism involving independent external staff should be established in order to ensure that these regulations are implemented as they should be. In the proceedings initiated as a result of individual complaints, the courts or the independent legally established mechanism in question should have access to adequate data from the agencies in order to oversee the legality of practices relating to personal data.[150]

Both high-level and lower-level employees should be granted the right to refuse to execute unlawful instructions and the responsibility to give notice of such practices. Employees who report a violation of the law should be protected from both criminal and disciplinary prosecutions. A code of professional ethics that protect human rights should be organized and the staff should be provided all necessary training with regard to human rights issues in order to adopt these codes.[151] In addition, guarantees should be established to provide employees of the organization the right to refuse to comply with unreasonable instructions of the government such as the provision of information about political dissidents. Such guarantees should be a part of the legislation regulating MIT and other intelligence bodies.[152]

Oversight of the MIT and other intelligence agencies should be carried out by executive, legislative, and judicial authorities. To do this, first of all, the definition of "state secret" should be carefully defined. However, the bill currently before the Parliament does not do so. In the text referred to the

145 Born, H. and Leigh, I., *ibid. p.* 32.

146 Born, H. and Leigh, I., *ibid*, p. 29-33.

147 Eryılmaz, M. B. (2006). "Police Intelligence." In Ü. Cizre (ed.), *Almanac Turkey 2005: Security Sector and Democratic Oversight*. Istanbul: TESEV, p. 152.

148 See İlkiz, F. (2012, March 3). "Gazeteciler ve Kişisel Veriler" [Journalists and Personal Data]. *Bianet*. Retrieved from, http://www.bianet.org/bianet/ifade-ozgurlugu/137186-gazeteciler-ve-kisisel-veriler.

149 İlkiz, F., *ibid*.

150 Born, H. and Leigh, I., *ibid. p.* 43-45.

151 Born, H. and Leigh, I., *ibid. p.* 46-48.

152 Born, H. and Leigh, I., *ibid. p.* 68-71.

Oversight of the MIT and other intelligence agencies should be carried out by executive, legislative, and judicial authorities. To do this, first of all, the definition of "state secret" should be carefully defined.

General Assembly of the Parliament, a state secret is defined as "classified information, documents and records which, in case of their disclosure by unauthorized persons, could harm the national security or the international relations of the State."[153] The fact that the definition of "state secret" is based on "national security," which is in itself an extremely vague concept, makes it possible to classify any kind of information as a state secret. In addition, according to the bill, any information and document classified as a state secret can be treated as such for a period of 50 years. The authority to classify any information and document as a state secret is granted to the "State Secrets Review Board," which consists of the Ministries of Justice, National Defense, Interior and Foreign Affairs and is held under the chairmanship of the Prime Minister.[154]

Since the ministers are generally unwilling to oppose the Prime Minister, in practice the Prime Minister has monopolized the authority to classify any information and document as a state secret.[155] In addition, Article 8 includes the provision "in case information and documents classified as state secrets are requested by the courts, they can be withheld providing that the board provides the reason." The bill, as it is, provides dangerous exemption from judicial review for the state institutions. As proposed in the report on the freedom of the press prepared by the Organization for Security and Cooperation in Europe (OSCE), only the information and documents the disclosure of which may cause concrete and verifiable damage should be covered in the scope of this law, and these areas should be clearly stated and restricted. As also suggested in the same report, the information related to human rights violations, damage to public health and the environment, scientific knowledge, information on individuals and misgovernment should not be classified as a state secret and the confidentiality of information classified as a state secret should not exceed 15 years. An independent commission should monitor information determined to be a "state secret" such that the arbitrary classification of information as a "state secret" can be discovered and punished.[156] Judges and investigative committees of the parliament should be able to view all documents, to ensure as far as possible, that the concept of "state secret" does not constitute an impediment to the democratic oversight of the intelligence agencies.

Parliamentary oversight may help prevent the intelligence agencies from developing a partisan attitude that would affect how they fulfill their duties. Many countries, such as Argentina, Canada, Norway, United Kingdom, the United States, and Germany have committees within the Parliament that undertake this task. In Germany, a Parliamentary Control Panel has been authorized to scrutinize policies created for intelligence agencies and how they operate. Should the law of "state secrets" impede such boards' ability to make reports public, ad hoc

153 For the text adopted by the Commission of Justice, see Grand National Assembly of Turkey (TBMM). *Devlet Sırrı Kanunu Tasarısı ve Avrupa Birliği Uyum Komisyonu ile Adalet Komisyonu Raporları* [The Draft Law Amending the State Secrets, European Union Harmonization Commission and Judicial Commission Reports]. Retrieved 09.10.2012, from http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss287.pdf.

154 The bill includes the provision "The President of the Republic assesses the quality of the information, documents and records." See Akın, D. (2012, May 21). "20 Soruda Yeni 'Devlet Sırrı' Düzeni" [The New 'State Secret' Order in 20 Questions]. T24. Retrieved from, http://t24.com.tr/yazi/20-soruda-yeni-devlet-sirri-duzeni/5283.

155 Akın, D., *ibid*.

156 Haraszti, M. (2007, April 30). "Access to information by the media in the OSCE region: trends and recommendations-Summary of preliminary results of the survey." Retrieved 09.10.2012, from http://www.fas.org/sgp/library/osce-access.pdf.

"investigative commissions" should be established in conflict situations. Legal guarantees should be granted to the commissions in question so that agencies can provide them with full information. Both commissions and committees should be equipped with clear and broad authority, their members (even if they are independent experts) should be appointed by the parliament, and should represent a range of political parties. Their presidents should be elected by the parliament or by the committees themselves. Recommendations and reports compiled by the committees should be published, discussed in the parliament and their implementation by the parliament and the government should be independently monitored.[157]

"Specialized courts" can likewise be established to prevent "state secrets" from posing a challenge to oversight in the judiciary area. However, the following points should be noted: Job security should be granted to those working in courts to which complaints are submitted; a large part of the process should be completed publicly as far as possible; the court should have the authority to issue legally binding orders and propose an effective solution to those with a justified complaint; these orders may include the disposal of materials held by such organizations as well as compensation decisions. Further, the scope and rationale of any examination should be based on a clear legal regulation and address not only the procedures but also the principles of the activities of the organizations in question.[158] Non-judicial institutions (such as the *Ombudsman*) as well as the courts should have the authority to review the case and the evidence, and have the final authority to determine the scope of the decision.[159] In addition, in terms of judicial processes, employees of the intelligence agencies should not be provided with undue protection through the "permission system." Therefore, the law which contains the "permission system" for employees of policing agencies and the MIT (Law on the Prosecution of Public Officials and Other Public Employees and the Law on the State Intelligence Services and The National Intelligence Agency) should be amended and the "permission system" should be eliminated.

The above-mentioned requirements for other institutions related to the financial audit as a part of democratic oversight also apply to the National Intelligence Agency and the Undersecretariat of Public Order and Security. For the implementation of the principles of transparency and accountability, the Court of Auditors should be able to a conduct propriety inspection in these institutions and the reports prepared should be shared with the public without being subjected to confidentiality classification.

157 Born, H. and Leigh, I. (2005). "Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies." Oslo: Publishing House of the Parliament of Norway, Oslo, p. 77-87.

158 Born, H. and Leigh, I., *ibid*. p. 108, 109.

159 Born, H. and Leigh, I, *ibid*. p. 112.

In Lieu of a Conclusion: The Need for Democratization in the Area of "Security" in Considering Violations of Rights

This report has detailed the ongoing problems in terms of demilitarization, accountability and a dearth of civilian democratic oversight mechanisms within the framework of the military, the police force, the National Intelligence Organization (MIT) and other intelligence agencies; and has outlined a series of legal or institutional recommendations to address these problems. As previously underlined, the problems in question are not only contrary to the principles of parliamentary democracy; they also lead to severe human rights violations. This concluding chapter focuses on some current representative cases of human rights violations that have occurred in the context of these problems. Through a brief examination of these cases, the report seeks to draw further attention to the necessity of legal or institutional amendments that would democratize Turkey's security institutions.

The recent Roboski massacre (also known as "Uludere") is probably the most striking example of the relatively autonomous position of the military as well as the limitations of accountability and civilian democratic oversight mechanisms. On 28 December 2011 thirty-four Kurdish citizens of Turkey from the village of Roboski were killed by a Turkish military air strike near the Iraqi border. Following the massacre, the Uludere Chief Public Prosecutor's Office launched an investigation, and on 9 January 2012 a Parliamentary Commission was created to inquire into the killings. Immediately following the launch of the investigation, the Uludere Chief Public Prosecutor's Office issued a confidentiality decision regarding the case. Following the decision of non-jurisdiction in February 2012, the Prosecution sent the file to the Diyarbakır Deputy Office of Special Authority Prosecutor,[160] on the grounds that the issue fell under the latter's jurisdiction since it is the one with the authority to investigate organized crime. Both the Diyarbakir Special Authority Prosecutor and the Parliamentary Commission only received testimonies from the citizens of Roboski and no interviews were conducted with military personnel. In April, the Chief of Staff submitted a report to the Commission, which stated that no official documents would be shared with the Commission due to the confidentiality decision. In response, the Commission requested the documents from the specially authorized prosecutor's office in May; however, among the documents submitted by the prosecution office there were none that speculated or provided the identity of the perpetrators.[161] It has been more than a year since the massacre and in this time neither the judicial process nor the investigation of the Commission has yielded any conclusive results.

Another similarly striking example is the downing of a Turkish military reconnaissance jet on 22 June 2012 by Syria in which the two pilots were killed. Autopsies of the pilots were conducted in July, and the Chief of General Staff Communication Department announced that the autopsy reports were delivered to the Malatya public prosecutor's office. However, these

160 ***Birgün*. (2012, Feb. 29). "UCM Uludere Katliamı Başvurusunu İşleme Aldı" [UCM has put the Uludere massacre Appeal into Process]. Retrieved from, http://www.birgun.net/actuel_index.php?news_code=1330523200&year=2012&month=02&day=29.**

161 Başaran, E. (2012, Jul. 11). "Roboski'de Utancın ve Pişkinliğin Kronolojisi" [Chronology of Shame and Shiftiness in Roboski]. *Radikal Daily Newspaper*. Retrieved from, http://www.radikal.com.tr/yazarlar/ezgi_basaran/roboskide_utancin_ve_piskinligin_kronolojisi-1093796.

reports were neither shared with the public nor with the families of the deceased pilots, and the families involved have taken their outrage to the press. Furthermore, a series of contradictory statements about events have been voiced officially at the international level and the exact account of the incident is still unknown to the public. After these two incidents, on 28 November, 2012, Air Force Commander General Mehmet Erten was awarded the Medal of Honor by the Turkish Armed Forces on the grounds that he had served in the position for a year.[162] In other words, not only was the person in charge of the Air Force, who had been responsible for the incidents which led to the death of many people, not subjected to any accountability mechanism but was, to the contrary, rewarded.[163]

A large number of suspicious deaths among military recruits point to the fact that the military does not take the necessary measures to ensure the protection of individual rights and freedoms and it enjoys a space of unaccountability due to the existence of the military judiciary.[164] Murat Oktay Can was serving his time in the military police station in the rural mountain town of Dersim, Hozat in 2009 and was found shot dead in the forehead at his post. Developments in the investigation into his death are representative of unaccountability in the army.[165] Elazig 8th Corps Command Military Prosecutor's Office and 2nd Corps Command Military Prosecutor's Office of Malatya Land Forces Command ruled Murat Oktay Can's death a suicide and therefore there was no need for further investigation or prosecution. They also declined the demand that the forensic autopsy and ballistics be performed in civilian institutions.

However, the family objected to the court's ruling and appealed to the ECtHR because the weapon used could not have been responsible for the action in question, as its lock was on, it was fully loaded and there were further discrepancies between the pictures taken and the autopsy report. In the mean time, the voice recording of Işık Koşaner, the former Chief of Staff, was revealed and made headlines in 2011. In the recording he made statements regarding the death of a soldier shot in the forehead as a result of random gunfire; and these statements formed part of the evidence the family presented in arguing for a proper investigation.[166] However, their appeal was rejected by the Supreme Military Administrative Court. The family filed a criminal complaint to the Elazığ Chief Public Prosecutor's Office against the three doctors and the technician that prepared the autopsy report, but this effort likewise yielded no results, and the family

162 ***Milliyet*. (2012, Dec. 10). "TSK'dan Orgeneral Erten'e verilen şeref madalyasıyla ilgili açıklama" [TSK public statement regarding the Medal of Honor given to General Erten]. Retrieved from, http://siyaset.milliyet.com.tr/tsk-dan-madalya-aciklamasi/siyaset/siyasetdetay/10.12.2012/1639887/default.htm.**

163 **See Kemal, L. (2012, Dec. 11). "Komutan sorumluyken niye başına yıkılmak istensin?" [Why blame the commander as he is responsible].** ***Taraf*. Retrieved from, http://www.taraf.com.tr/lale-kemal/makale-komutan-sorumluyken-niye-basina-yikilmak-istensin.htm.**

164 **As mentioned earlier, according to the statement made by the National Defense Minister, Ismet Yilmaz, in the Parliament in May 2012, 2,221 people have "committed suicide" in the last 22 years and 1.602 people lost their lives for various reasons while "trying to make themselves unfit for military service." See** ***Bianet*. (2012, May 15). "22 Yılda 2221 Asker İntihar Etti" [2221 Soldiers have Committed Suicide in 22 Years]. Retrieved from, http://bianet.org/bianet/insan-haklari/138345-22-yilda-2221-asker-intihar-etti.**

165 ***Milliyet*. (2011, Aug. 25). "Koşaner'in söylediği asker Murat Oktay Can mı?" [Did Koşaner mean Private Murat Oktay Can?]. Retrieved from, http://gundem.milliyet.com.tr/kosaner-in-soyledigi-asker-murat-oktay-can-mi-/gundem/gundemdetay/25.08.2011/1431216/default.htm.**

166 ***Habertürk*. (2011, Aug. 24). "Işık Koşaner'den bomba itiraflar!" [Shocking Confessions from Işık Koşaner!]. Retrieved from, http://www.haberturk.com/gundem/haber/662478-isik-kosanerden-bomba-itiraflar. According to the news report, Işık Koşaner said: "Dilimin ucuna geliyor söylemek istemiyorum. Böyle timi mimi sahip olmazsa, orada bir karaltı görür tak diye ateş eder, başlar sesi duyan herkes ateş etmeye, basıldık diye. Bir masum erimizi alnından pat diye vururuz. Kabahatli biziz." [It is on the tip of my tongue but I do not want to say it. If the special team does not have control [over its soldiers], [one of the soldiers] sees a silhouette and starts shooting and others, thinking that they have been raided, follow suit. We end up shooting an innocent private in the forehead. We are culpable].**

turned to the Council of State (*Danıştay*) as a last resort. The First Department of the Council of State finally decided to conduct a more thorough investigation.[167]

This and other examples subject to verdicts of the ECtHR (Mustafa Metin, Lütfi Volkan Akıncı[168] and so on) raise strong suspicions that responsibility for the deaths of many soldiers has been ignored by the military courts by ruling them "death by suicide" or "accidental death." Each instance reveals the military to be a non-transparent and autonomous structure which does not accept responsibility for the crimes committed within its purview. Legal and institutional amendments should be made in order to ensure that those responsible for human rights violations are brought to account; the military court, which is neither impartial nor independent, should ultimately be removed. Likewise, compulsory military service, which brings with it the violation of individual rights and freedoms and contributes to the militarization of the social space, should be terminated.

Regarding the police force, the report draws attention to the fact that the legal regulations make possible police violence and allow certain groups to become the target of such violence as a result of their criminalization by the police sub-culture. In this sense, the incident that took place in Limontepe, an impoverished neighborhood of the town of Izmir, Karabağlar -and inhabited by Kurdish people who came to the city as a result of forced migration- is an important case.[169] On 12 August 2012, while Emrah Barlak, his brother Erhan Barlak and one of their relatives were in their vehicle, they hit a parked squad car and an argument broke out between them and two police officers regarding the payment of a fine. During the commotion, one of the police officers opened fire and wounded Emrah Barlak in the stomach, hitting the other two men in the leg and wounding a passer-by. Emrah Barlak died as a result of the incident.

Studies indicate that many poor neighborhoods of predominantly Kurdish people who are victims of forced migration and some other neighborhoods of certain groups are blacklisted as "neighborhoods of crime" by the police sub-culture; they form a part of the "crime maps" prepared by the police and residents of these neighborhoods are subject to aggressive policing techniques within the framework of new

167 ***Milliyet*. (2011, Aug. 25). "Koşaner'in söylediği asker Murat Oktay Can mı?" [Did Koşaner mean Private Murat Oktay Can?]. Retrieved from, http://gundem.milliyet.com.tr/kosaner-in-soyledigi-asker-murat-oktay-can-mi-/gundem/gundemdetay/25.08.2011/1431216/default.htm.; Öztürk, Ö. (2012, Jul. 2). "Danıştay'ın kararı sevindirdi" [We Are Pleased by the Decision of the Council of State]. *Doğan Haber Ajansı*. Retrieved from, http://www.dha.com.tr/danistayin-karari-sevindirdi_334508.html.**

168 Mustafa Metin lost his life while fulfilling his military duty in Adapazari, the 1st Army Command Infantry Brigade, in 2004. Military officials first said that he drowned and then stated that he committed suicide by hanging himself and delivered his body to his family for burial. However, there were bloodstains on the soldier's civilian clothing, leading ECtHR to decide that an effective investigation had not been not carried out. The court did not accept the verdict that he died as a result of "suicide" and ruled in favor of his mother and father, who claimed that their son was murdered. See *Bianet*. (2011, Jul. 7). "Ölen Askerin Anne-Babasına Tazminat" [Compensation to the dead soldier's Parents]. Retrieved from, http://www.bianet.org/bianet/insan-haklari/131286-olen-askerin-anne-babasina-tazminat.; European Court of Human Rights (ECtHR) (2011) *Metin v. Turkey*, No: 26773/05. The family of Lütfi Volkan Akıncı, who the Military claimed had committed suicide during military duty, applied to the ECtHR and the ECtHR decided in favor of "a violation of the right to life and to effective investigation" about the incident. See *Sabah*. (2012, Dec. 13). "AİHM'den asker intiharı kararı" [ECtHR Decision Regarding the Soldier's Suicide]. Retrieved from, http://www.sabah.com.tr/Gundem/2012/12/13/aihmden-asker-intihari-karari.; European Court of Human Rights (ECtHR) (2012) *Halil Yüksel Akıncı v. Turkey*, No: 39125/04. For the applications made to Askerhaklari.com site regarding the suspicious deaths of soldiers, see Asker Hakları Girişimi [Soldier's Rights Initiative]. (2012). "Asker Hakları Raporu-Zorunlu Askerlik Sırasında Yaşanan Hak İhlalleri" [2012 Soldier's Rights Report-Violations of Rights Experienced during Military Duty]. Retrieved 27.10.2012, from www.askerhaklari.com/rapor.pdf.

169 Yıldız, G. (2011, Jun. 11). "İzmir'de Etnik Kimlik ve Gerilim" [Ethnic Identity and Tension in Izmir]. *BBC Türkçe*. Retrieved from, http://www.bbc.co.uk/turkce/ozeldosyalar/2011/06/110611_elections_guney_blognot.shtml.

"preventive" strategies implemented in the organization.[170] In addition, the authority of the police to use firearms is not subject to such necessary restrictions as "imminent threat to life" and "not targeting vital areas." The sub-cultural characteristics of the police organization and its strategies pave the way for the arbitrary use of this unrestricted authority.

Those who participate in social demonstrations often become the target of police violence. Putting no physical or material restrictions on the authority of the police to use force, leaving a wide legal gap for gatherings and demonstrations to be declared unlawful, combined with policies aimed at oppressing and discouraging social opposition, turns into serious police violence at social protests. The latest example of such violence, which manifests especially in the Kurdish geography and at the annual Newroz celebrations, is the incident which took place in the Middle East Technical University (METU) on 18 December 2012. Three hundred people gathered to carry out a peaceful protest during Prime Minister Erdogan's visit to the METU campus. According to information collected from witnesses by Amnesty International, around 3,000 police and 100 armored vehicles were deployed on the campus. The police threw a sound bomb in the group without warning, and began to use pepper gas against the peaceful crowds. The clash between the police and the students lasted seven hours. After the clash, the residue of 2,000 pepper gas bombs and 70 sound bombs were found on the campus. Fifty demonstrators were injured, three seriously injured people were hospitalized, and one of them suffered a brain hemorrhage after a pepper gas bomb struck him in the head.[171]

The authority of the police to use force is not restricted by either the Rapid Action Units Regulations or any other legislation. Nor does the legislation in question contain regulations to protect the bodily integrity of individuals targeted by the police. Changes should be made to the repressive strategies devised by the government against social opposition, to review the policing strategies and make necessary amendments to the legal regulations in order to prevent the police practices which approach the level of torture in daily life and social protests and may violate the right to life. Accordingly, the government, in its policies, should prioritize human rights and freedoms rather than "security;" the police sub-culture should be transformed; "risk" prevention-based aggressive policing techniques which encompasses stereotyping by the police should be renounced; and the authority to use firearms and force should be restricted by legal regulations as far as possible. Officers who do not comply with the legal

170 See Gönen, Z. (2011). "Neoliberal Politics of Crime: The Izmir Public Order Police and Criminalization of the Urban Poor in Turkey since the Late 1990s", Unpublished PhD Thesis, Binghamton University; Berksoy, B. (2009). "Devlet Stratejilerinin Bir Tezahürü Olarak Polis Alt-kültürü: 1960 Sonrası Türkiye'de The Polis Teşkilatında Hâkim Olan Söylemlere Dair Bir Değerlendirme" [Police Sub-culture as a Manifestation of State Strategies: An Evaluation of the Dominant Discourses of The Police Organization in Turkey After 1960]. ***Society and Science*****, vol. 114, p.127; Yıldız, G. (2011, Jun. 11). "İzmir'de Etnik Kimlik ve Gerilim" [Ethnic Identity and Tension in Izmir].** ***BBC Türkçe*****. Retrieved from, http://www.bbc.co.uk/turkce/ozeldosyalar/2011/06/110611_elections_guney_blognot.shtml. Yıldız's observation regarding Limontepe and the quote from the person she interviewed in support of her observations seem to support this finding. "The Kurds are also aware of the fact that they are not welcome but they mainly complain about the police. Ümit who campaigned for the candidates of the left block of BDP while his entire family voted for AKP state that it is mostly the police who remind him that he is the "other", Kurdish. 'The police treat me in a normal way until they stop and see on my ID where I am from then their attitude changes. They search all over the car and treat me like a criminal.'"**

171 Amnesty International (AI). (2012). "ODTÜ'de Yaşanan Olaylar Hızlı, Kapsamlı ve Tarafsız bir Şekilde Soruşturulmalı" [The Events in METU Should Be Investigated Promptly, Comprehensively, and Impartially]. Retrieved 21.12.2012, from http://www.amnesty.org.tr/ai/node/2079. In addition, see ***Radikal*****. (2012, Dec. 19). "Öğrenciler yürüdü, polis ODTÜ'yü gaza boğdu" [Students Walked, The Police Smothered METU with Gas]. Retrieved from, http://www.radikal.com.tr/turkiye/ogrenciler_yurudu_polis_odtuyu_gaza_bogdu-1112746**

restrictions and commit human rights violations should, without exception, be subject to judicial review and receive the appropriate penalty.[172]

The most striking and recent example related to the MIT is the news that the phones of Mehmet Altan and some journalists working for *Taraf* newspaper were tapped and that Mehmet Baransu was followed by the agency. In 2009, the registered phones of Mehmet Altan, the editor-in-chief of *Star* newspaper, Yasemin Çongar of *Taraf*, her father Bekir Çongar, and Ahmet Altan, Markar Esayan and Amberin Zaman were wiretapped by the Istanbul Regional Directorate of MIT on the grounds that they were involved in "espionage." After this became known, Mehmet Altan filed a complaint and a lawsuit in the 5th Administrative Court. In their defense, representatives of the MIT stated that the journalists were wiretapped in the public interest and that this surveillance was not illegal. In February, 2012, some years after this incident, Mehmet Baransu, who also works for *Taraf* newspaper, called the police and claimed that he was being followed. Afterwards, the two people found to be following him were taken to the Bahçelievler Bureau of Public Order and turned out to be agents of the MIT. The Bakırköy Prosecutor General's Office launched an investigation based on Baransu's complaint, but the Prime Ministry did not grant permission for the investigation.[173]

All of these developments indicate that Law No. 2937 on State Intelligence Services and the National Intelligence Agency, which regulates the duties and authorities of the MIT, gives the organization far too much authority and effectively shields it and its agents from prosecution. As discussed above, the duties of the organization, as stated in Article 4 of the Law, are "to procure national security intelligence throughout the State on immediate and potential activities carried out in or outside the country with the intention of targeting the indivisible integrity of the Republic of Turkey with its territory and its national existence, independence, security, its Constitutional order and all elements that constitute its national strength."[174] Such broad statements open up an unlimited space for all manner of actions. In addition, the Prime Minister's permission is required to initiate an investigation into the members of the organization who are alleged to have committed crime in the course of their "duties." The above-mentioned wiretapping and following actions in dispute were defended on the basis of this legal background, and it is highly likely that any kind of unlawful intervention that might be brought on political and social opposition by the MIT will be exempt from investigation and prosecution. The duties and authority of the MIT and other intelligence agencies should be restricted as far as possible in order to make these institutions accountable and allow for civil democratic oversight. The "permission system" which constitutes an obstacle to the judicial review of these institutions' staff should be abolished.

172 The fact that the policemen who systematically commit violations of human rights are not punished or are sentenced very little prepares the ground for new violations. Baran Tursun's case is a striking example in this regard. Baran Tursun died of gunfire on the grounds that he did not obey the "stop" command on November 25, 2007 in Izmir. The police officer, Oral Emre Atar, pending trial, was sentenced to only two years and a month. Ten police officers were indicted on the grounds that they concealed evidence of the incident and did not report it, however, they were acquitted. See *Radikal*. (2009, May 20). "Baran Tursun davasında polisleri sevindiren karar" [A decision in Baran Tursun case which made the police happy]. Retrieved from, http://www.radikal.com.tr/turkiye/baran_tursun_davasinda_polisleri_sevindiren_karar-936801.

173 *T24*. (2012, Nov. 16). "Gazetecileri sahte isimle dinleyen MİT: Kamu yararına yaptık" [MIT which wiretapped journalists with alias: We have done it for public good]. Retrieved from, http://t24.com.tr/haber/gazetecileri-sahte-isimle-dinleyen-mit-kamu-yararina-yaptik/217518.; *Radikal*. (2012, Nov. 28). "Korumak için dinledik!" [We wiretapped to protect them!]. Retrieved from, http://www.radikal.com.tr/turkiye/korumak_icin_dinledik-1109676.

174 Official Gazette. (1983). "2937 sayılı Devlet İstihbarat Hizmetleri ve Milli İstihbarat Teşkilatı Kanunu" [Law No. 2937 on State Intelligence Services and Organization of the National Intelligence Services]. No. 18120, 3 November 1983.

It is clear that various legal and institutional amendments should be made to reduce the violations of human rights committed by various agencies as far as possible in the future. However, as mentioned earlier, it is essential that the government constructs "security" strategies by giving priority and importance to the protection of human rights so that the necessary amendments can be put into practice. When interpreting the laws, judges, prosecutors and police officers who are situated between the law *de jure* and law *de facto,* should use their discretionary power in such a way that it does not violate human rights. This will only be possible if the strategies in question are based on "human rights," if a rationality based on human rights dominates the social sphere and if there is the will to punish each and every officer who violates these rights without any exception.

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