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Motives for reforms on civil–military relations in Turkey

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ABSTRACT

This article examines the progress and shortcomings of democratic control of armed forces (DCAF) reforms in Turkey and seeks to question how Turkey might be further motivated to implement reforms. It questions official motives in each reform process and finds two main motives for progress: the prospect of EU accession and democratization. It finds the motive for the existing shortcomings as the goal for allowing a degree of authority for military within DCAF in order to prevent political abuse of military power. Thus it seems that Turkey might be motivated to overcome these shortcomings only when its understanding of DCAF details a full subordination of military to civilian authority.

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Introduction

In democracies, politicians normally have accountability to those who have elected them. Contrarily, the armed forces do not have a constitutional accountability to the society. That is why, it is agreed that the authority in charge of making defense and security policy should only be a democratically elected civilian authority, not the armed forces.¹ Accordingly, the notion of democratic control of armed forces (DCAF) aims to prevent military influence in politics and subordinate military to the interests of a democratic society.²

The European Union (EU) requires that candidate states fulfill certain criterion of political control over military within the context of Copenhagen political criteria, since DCAF is directly related to a sustained democracy and rule of law.³ Despite the lack of a single practice and defined standards, mainly because of EU's reluctance to interfere in its members' way of organizing

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their defense,⁴ it is still possible to find a general pattern for European understanding of DCAF. The Conference on Security and Cooperation in Europe (CSCE) Budapest Declaration had a prominent role in setting institutional standards of security in Europe.⁵ In its Code of Conduct on Politico-Military Aspects of Security, three norms are established. The first is on democratic political control over military, defined in terms of integration of the armed forces within civil society.⁶ The second is on constitutionally established authorities vested with democratic legitimacy;⁷ and the last is on legislative approval of defense expenditures, defined in terms of transparency and public access to information related to the armed forces.⁸

During the accession negotiations, the EU puts forth certain DCAF requirements to all candidate states, including Turkey. Turkey has shown a considerable degree of progress on DCAF since 2001. In the literature, there are several arguments for motives of DCAF reform process in the country. The most widely accepted motive for progress is the “EU factor,” namely the prospect of Turkey’s accession to the union, and the efforts to fulfill the EU requirements for DCAF accordingly.⁹ Other arguments include discussions on certain domestic factors in limiting military influence on politics, besides the EU accession, such as an effective government, stronger public opinion and progress of NGOs.¹⁰ There are also studies that focus on the role of coup plots and the de-legitimizing influence they have had in curbing the power of the military in Turkish politics.¹¹ However, literature mainly lacks a systematic analysis of the motives for progress in DCAF reforms. This article aims to examine systematically the official motives for reforms by tracing relevant parliamentary minutes of the Turkish Grand National Assembly (TGNA) during the legislative procedure and the reasoned decisions of the legislative proposals. Despite the progress in DCAF reform process, Turkey still has shortcomings considering the EU requirements. Also, reasons for those shortcomings have not been systematically examined in the literature. Thus, besides the motives for progress, this article aims to question the motives for the shortcomings in Turkey’s DCAF reform process. This way, shortcomings of DCAF in Turkey can be identified.

The article first identifies the EU requirements and criticisms as put forth in the Commission reports and progress reports. Second, it categorizes them based on the three norms emphasized in CSCE Budapest Declaration, namely democratic political control over military, constitutional and legislative structure to control and guide military and legislative approval of defense expenditures. Third, it examines Turkey’s reform process for the points of EU requirements and criticisms on Turkey. Last, the article identifies progresses and shortcomings of the DCAF reform process in Turkey in accordance with the EU definitions while questioning the official motives systematically. In conclusion, the article categorizes the DCAF reforms in progresses and shortcomings together with their official motives. Also, it seeks to answer

how to initiate a reform process for the existing shortcomings as it has been done in the progress areas.

By examining relevant parliamentary minutes and reasoned decisions for legislative proposals, two official motives for progress in DCAF reform process were identified. The primary motive, as widely argued in the literature, is the prospect of EU accession. The secondary is the strengthening of democratic principles such as rule of law and equality before law. Since DCAF, by definition, is directly related with democratization, the latter motive appears only natural. Thus, considering that Turkey also has this “natural” motive besides the “EU factor” seems to be an encouragement for further progress. Analysis of parliamentary minutes shows that the main motive for shortcomings in DCAF reforms, which the EU still continues to criticize, is the goal of protecting authority for military within DCAF. Occupying a central place in Turkish politics, the military has a historical guardian role for the unitary and secular characteristics of the Republic. This special role enabled Turkish Armed Forces (TAF) to enjoy an autonomous position such as setting agenda and enlisting mechanisms accordingly.¹² Considering this historical heritage, notion of DCAF in Turkey has the objective of not only preventing military intervention to political structures but also protecting military power from the political abuse of insecure and incompetent politicians.¹³ According to this understanding, civilian control over military should allow military “to have a degree of rightful and vested authority over its internal matters, strategic issues and military doctrine.”¹⁴ Thus, existing shortcomings in DCAF reform process in Turkey is a reflection of the goal of preserving authority for military while increasing civilian control at the same time. In other words, Turkey’s understanding of DCAF justifies the existence of these shortcomings. Analyses of the motives for the shortcomings seem to support this finding.

In the following sections, this article first examines progresses and shortcomings of DCAF reforms in Turkey. Then it questions official motives in each reform process from two perspectives: First, identifying the motives for progress and shortcomings and second providing an answer how Turkey might be motivated to conduct reforms for the shortcomings as it has done in other progress areas.

Democratic political control over military

The EU requirements and criticisms on democratic political control over military as emphasized in CSCE Budapest Declaration can be analyzed under four categories. First, the Chief of General Staff (CGS) shall be responsible to Ministry of Defense instead of Prime Minister. Second, military representatives shall withdraw from civilian bodies. Third, decisions of Supreme Military

Council (SMC) shall be open to judicial review and last, an institution of Ombudsman with a military oversight mechanism shall be established.

In Turkey, the General Staff and Ministry of Defense are two separate institutions, assumed to work in coordination. The CGS is appointed by the President and reports to the Prime Minister in the exercise of duties and powers.¹⁵ This has constituted the EU's first criticism to Turkey:

Civilian control over the military still needs to be improved (...) Contrary to EU, NATO and OSCE standards, instead of being answerable to the Defense Minister, [CGS] the Chief of General Staff is still accountable to the Prime Minister.¹⁶

Despite the agreement reached by political parties in Turkey in principle on the drafting of a new constitution that will make CGS accountable to Defense Minister in 2013,¹⁷ the EU continued its criticism in 2014 by stating "[CGS] continued to report to the Prime Minister rather than the Ministry of Defence."¹⁸ The motive for the agreement on this progress is stated by the Vice Prime Minister at the time Bekir Bozdağ as "a necessity of democracy."¹⁹

The second area of criticism was the existence of a military representative, nominated by the CGS, in the Council of Higher Education (CHE).²⁰ The EU urged Turkey to implement reforms to effectively withdraw military representations from civilian bodies.²¹ In May 2004, Turkey removed the phrase, "selected by General Staff," from Article 131 of the Constitution by Act No. 5170.²² In the reasoned decision of legislative proposal, the motive for the progress of deciding to remove CGS-selected member from CHE was stated as demilitarizing the administration by preventing any military representative in civilian institutions as recommended in the EU 2003 progress report.²³ Thus, the motive for this progress is clearly stated as fulfilling the EU requirements for DCAF.

Regarding the third area, the EU has criticized the SMC decisions for being outside the scope of judicial review. The SMC is an administrative and advisory board in Turkey, established by Law No. 1612 of 1972 to function during peacetime. Its members include the Prime Minister, the CGS, the defense minister, commanders of the ground and air forces and the navy, army commanders, the gendarmerie general commander, the fleet admiral and all generals and admirals in the TAF.²⁴ The Council has considerable duties in making defense and security policy, such as providing feedback on the main program and objectives of TAF and reviewing draft bills, by laws and regulations related to the TAF.²⁵ By TAF Personnel Law No. 926, SMC was also given authority and responsibility for promoting and appointing generals and admirals and dealing with the retirement of military officers.²⁶ In this way, SMC played a role in the formation of cadres in the TAF and in ensuring ideological uniformity within the army.²⁷ Actually, it was the only authority to

expel the military personnel from the army. There was no second instance to appeal and its decisions were outside the scope of judicial review.²⁸

To address the concerns in this field, Turkey amended Article 125 of the Constitution in 2010 by adding the phrase “recourse to judicial review shall be available against all decisions taken by the Supreme Military Council regarding expulsion from the armed forces except acts regarding promotion and retiring due to lack of tenure.”²⁹ The reasoned decision of the Article 12 of the legislative proposal 2/656 stated that the Council decisions being outside the scope of judicial review were against the principle of equality, defined in Article 10³⁰ of the Constitution. Thus, Article 125 was amended to strengthen democratic principles of equality by taking into consideration comparative law enforcement and international conventions to which Turkey is a signatory.³¹ The EU welcomed the constitutional amendment on SMC as a step toward greater transparency:

Further to the 2010 constitutional amendments, decisions by the Supreme Military Council concerning dismissals of military personnel have been opened to civilian judicial review. Military officers dismissed from the army now have the right to appeal against their dismissals and retire with benefits or to obtain employment at a state institution.³²

However, the SMC decisions regarding the promotions and retirements due to lack of tenure are still outside the scope of judicial review and remain as a major concern for the EU.³³ In fact, decisions of the SMC, including decisions regarding promotion and retirements, were open to judicial review in pre-1982 period in Turkey. However, with the 1982 Constitution, this provision was retreated arguing that it was stranding the hierarchical structure of the army’ upper stage, especially when administrative jurisdiction stayed an order on promotion decisions.³⁴ The TAF might have also supported the argument that judicial review on decisions regarding promotion and retirements would weaken the military discipline of the armed forces.³⁵ Thus, the motive of 1982 spirit to leave the decisions of the Council outside the scope of judicial review remained until today to prevent the hierarchical structure and military discipline of the armed forces. In other words, despite the progress in DCAF, not all SMC decisions are opened to civilian judicial review and the main motive for this shortcoming is stated as preventing the weakening of military discipline and its hierarchical structure. Here, the second objective of DCAF in Turkey, namely protecting military power from political abuse, is observed. Thus, the motive for this shortcoming is mainly the goal of preserving a degree of authority for military despite the reforms on DCAF, especially over internal matters such as promotions and retirements.

Regarding the last criticism, the EU required Turkey to establish an Ombudsmanship to increase the democratic political control over military.

As a progress, Turkey established the institution of Ombudsman in 2012. However, as a shortcoming, the acts of TAF, which are purely of military nature has remained outside the competence of the Institution.³⁶ In 2012 progress report, not surprisingly, the EU criticized the Law on the Ombudsman as covering only administrative acts of the TAF and excluding their military acts.³⁷

The motive in establishing an Ombudsman was clearly stated in the reasoned decision as the EU requirements and Turkey's harmonization efforts.³⁸ On the other hand, the motive for the shortcoming of limiting its military competence is found in the relevant parliamentary minutes. According to the CGS, services like training, maneuver, military exercises and guard duty are acts of purely military nature and an ombudsman with a full competence over all military issues would cause serious disciplinary problems.³⁹ In their opinion on the law, representatives from TAF and Defense Ministry argued that the problems experienced in administrative justice do not usually occur in military justice and a full military competence for Institution of Ombudsman including purely military issues is not necessary because armed forces can solve many problems within its own mechanisms quite fast.⁴⁰ The news also supported the argument that it was TAF who demanded the Constitutional sub-commission to leave the purely military issues outside the competence of the Ombudsman.

As relevant parliamentary minutes show, opposition parties also criticized the Law on the Ombudsman. Erol Dora Peace and Democracy Party (*Baris ve Demokrasi Partisi*) MP of Mardin criticized the above-mentioned arguments of TAF and Ministry of Defense as incompatible with the principles of a democratic state of law.⁴¹ The phrase of "purely military nature" was also criticized by Ali Özgündüz, Republican People's Party (*Cumhuriyet Halk Partisi*) MP of Istanbul, who emphasized its uncertain context.⁴² As a response, *Burhan Kuzu*, head of the parliamentary Constitution Commission stated that most of the democratic countries except Sweden and Finland put the military issues out of ombudsman competence as Turkey has also done.⁴³ In fact, one can observe different ombudsman mechanisms with changing oversight mechanisms in Europe, namely mechanisms of independent military oversight, integrated military oversight and civilian oversight.⁴⁴ Turkish model of ombudsman seems to be a mechanism of civilian oversight. The main problem with this model is that it "may lack the necessary expertise for dealing with the defense sector and may fail to focus attention on the particular problems facing military personnel."⁴⁵ Reminding the second objective of the understanding of DCAF in Turkey as preventing the political abuse of military power, Turkey might also have similar reservations towards a civilian ombudsman with a full military competence. Thus, similar to the reservations in SMC decisions regarding promotions and retirements, it was again the

motive of allowing military to have a degree of authority over its internal matters, strategic issues and military doctrine within the scope of DCAF.

Constitutional and legislative structure

Regarding the norm of constitutionally established authority vested with democratic legitimacy, the EU has provided criticisms in three areas, namely concerns on National Security Council (NSC), on the role and duties of TAF and on the duality in Turkish jurisdiction. As being predecessor of the NSC, Supreme Defense Assembly was founded for national mobilization issues. With the 1961 Constitution, the Assembly continued to operate under the name of NSC. According to the 1961 Constitution, the Council consisted of the Prime Minister, the CGS, the Ministers of National Defense, Internal Affairs, and Foreign Affairs, the Commanders of the Army, Navy, and the Air Force, and the General Commander of the Gendarmerie under the chairmanship of the President of the Republic.⁴⁶ Its duty was defined as to “communicate the requisite fundamental recommendations to the Council of Ministers with the purpose of assisting in the making of decisions related to national security and coordination.”⁴⁷ However Article 118 of the 1982 Constitution widened its scope of duty from “recommending” to “submitting views” and stated that its decisions shall be given “priority consideration.”⁴⁸

Regarding the concerns on NSC, the EU has criticized its existence as an undemocratic mechanism:

[t]he recommendations of the NSC are not legally binding, but have a strong influence on government policy. The existence of this body shows that, despite a basic democratic structure, the Turkish constitution allows the Army to play a civil role and to intervene in every area of political life. (...) [NSC] demonstrates the major role played by the army in political life. The army is not subject to civil control and sometimes even appears to act without the government’s knowledge when it carries out certain large-scale repressive military operations.⁴⁹

The regular reports in 1999⁵⁰ and 2000⁵¹ continued stressing the crucial role military played in Turkish politics through NSC decisions, statements or recommendations. As a response, Turkey amended Article 118 in October 2001, as a part of the constitutional reform package. The number of civilians in the formation of the Council was increased by the inclusion of deputy prime ministers and the minister of justice.⁵² The advisory nature of the body was also emphasized and its role was limited to giving recommendations, as it had been in the 1961 Constitution. In the general reasoned decision, the general motive for the constitutional reform package in 2001, in which progress on NSC was also included, is clearly stated as EU harmonization efforts.⁵³

According to European Parliament, despite all the reforms on the NSC, the real need for a civil democracy in Turkey is the total abolishment of NSC rather than reforming it:

In the context of state reform, it will be necessary in the long term to abolish the National Security Council in its current form and position in order to align civilian control of the military with practice in EU Member States; realizes that the desired structural change will be very hard to accept.⁵⁴

Regarding the second area of criticism, the EU has concerns regarding the role and duties of the TAF mainly because of the broad possibilities in interpreting the laws and regulations, especially TAF Internal Service Law, Internal Service Regulation and NSC Law that were regarded as potentially providing military a wide range of maneuver.⁵⁵ Article 35 of the TAF Internal Service Law states its duty as to “protect and preserve the Turkish motherland and the Republic, the characteristics of which are defined in the constitution.”⁵⁶ Article 85 of the Internal Service Regulation states that “[TAF] shall defend the country against the internal as well as the external threats, if necessary by force.”⁵⁷ Article 2a of the NSC Law defines the national security as:

The protection of the constitutional order of the State, its nation and integrity, all of its interests in the international sphere including political, social, cultural and economic interests, as well as the protection of its constitutional law against all internal and external threats.⁵⁸

While the provisions in Article 85 of the TAF Internal Service Regulation and Article 2a of the NSC Law remain unamended, Turkey amended the Article 35 of the TAF Internal Service Law in July 2013 and put greater emphasis on threats from outside:

The duty of the Armed Forces is to protect the Turkish homeland against threats and dangers to come from abroad, to ensure the preservation and strengthening of military power in a manner that will provide deterrence, to fulfill the duties abroad with the decision of the Parliament and help maintain international peace.⁵⁹

Another progress was the amendment of Article 43 of the Internal Service Law. Rather than emphasizing the nonpolitical role of military in an indirect way, the new text openly states, “the members of [TAF] can not engage in political activities.”⁶⁰ The motive for these reforms was stated in the general reasoned decision as preventing the possibility of interpreting duty of TAF in a way to justify for military interventions.⁶¹ Thus, it might be argued that the main motive for the amendments in Article 35 and Article 43 was strengthening democracy in Turkey.

Third area of criticism on the constitutional and legislative structure is duality in jurisdiction, namely the authority of military jurisdiction besides the civilian one. Regarding the concerns on the duality of jurisdiction, the

EU first criticized the trial of civilians before military courts.⁶² According to Article 145 of the Constitution, military courts had jurisdiction “to try non-military persons for military offences specified in the special law; and for offences committed while performing their duties specified by law, or against military personnel on military places specified by law.”⁶³ As a response, Turkey added the following phrase to Article 3 of the Criminal Procedure Code in 2009. “In peacetime, investigations of non-military persons are conducted by public prosecutors and prosecutions by the judicial courts”⁶⁴ Turkey continued to make progress on the trial of non-military persons by the civilian courts through amending Article 145 of the Constitution in 2010.⁶⁵ The new text reads as “non-military persons shall not be tried in military courts, except during a state of war.”⁶⁶

Meanwhile the EU also required a limitation of “the jurisdiction of military courts to military duties of military personnel.”⁶⁷ To that end, Turkey amended Article 250 of the Criminal Procedure Code in 2009 as “the provisions relating to the person under the Constitutional Court and the Supreme Court’s judgment and provisions relating to the duties of military court **in case of war** [before amendment: including war] and martial military court are reserved.”⁶⁸ Thus, the new text empowered criminal courts for military personnel and limited the jurisdiction of military courts only to the situations of war and martial law. However, the Constitutional Court *annulled* and *stopped the execution of Article 7* on the basis that it conflicted with the constitutional provisions at that time.⁶⁹ As a further progress, the Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) government amended Article 145 of the Constitution by adding in 2010 the following phrase: “Cases regarding crimes against the security of the State, constitutional order and its functioning shall be heard before the civil courts in any case.”⁷⁰ In 2012, Article 105(6) of Act No 6352 repealed Article 250 completely and removed the provision for the exceptional situations of war and martial law that gave jurisdiction to military courts.⁷¹ Reasoned decision of the legislative proposal 2/64 shows that the motive for the progress of prohibition of civilian trials before military courts and of limiting the jurisdiction of military courts to the military duties of military personnel was clearly the prospect of EU accession and Turkey’s attempts to fulfill the EU requirements regarding the DCAF.⁷²

The last EU criticism regarding the duality in jurisdiction is the existence of military judges and their age qualification in the composition of Constitutional Court.⁷³ As a part of the 2010 constitutional reform package, Turkey amended the composition of the Constitutional Court. According to Article 146 of the original text, the Court shall be composed of 11 regular and 4 substitute members, all to be appointed by the President of the Republic and 2 regular members to be selected from the Military High Court of Appeals and from the High Military Administrative Court.⁷⁴ With

the inclusion of 2010 amendments, the Court is now composed of seventeen regular members, of which 14 members to be appointed by the President of the Republic and three of them by the TGNA. But two of the judges have still to be selected from the Military High Court of Appeals and from the High Military Administrative Court.⁷⁵

The EU also criticized the continuing presence of military judges in the Constitutional Court by stating that “[a]s constitutional jurisprudence in a democratic system is a civilian matter, the presence of military judges is questionable.”⁷⁶ Parliamentary minutes show that Burhan Kuzu, the head of the parliamentary Constitution Commission, responded to the criticism by arguing that members of the Court varied since the scope of the Court jurisdiction included various issues and top-level individuals, both from civilian and military realms.⁷⁷ Again, it might be argued that this shortcoming is motivated by the goal of allowing military to preserve a degree of authority over its internal matters through the existence of military judges in the Constitutional Court in order to protect military power from political abuse of insecure and incompetent politicians.

Regarding the second criticism on the duality in jurisdiction, the EU has concerns on the age qualification of the Constitutional Court military judges. Before the reforms on the formation of the Court, there was no term limit for the judges; they were supposed to serve until their retirements of age grounds. However, the amended Constitution provides termination of the membership after 12 years. Considering the age qualification of at least 45 years when elected, the EU officials argue that, “military judges might return to the military justice system when their term in the Constitutional Court expires, which could raise questions about their impartiality as Constitutional Court judges.”⁷⁸

Reasoned decision of the legislative proposal shows that the motive to issue a non-renewable term of 12 years is to renew the profile of Court judges in accordance with the new social conditions and understandings.⁷⁹ Thus, the motive for this shortcoming is that it should have a better functioning constitutional court, which should also be closely related with the efforts of strengthening the democracy in Turkey.

Legislative approval of defense expenditures

Regarding the norm of legislative approval of defense expenditures, the EU has had concerns on the full parliamentary control over the military defense budget and expenditures since the TAF has little accountability to the parliament in terms of defense and security matters.⁸⁰ In Turkey, armed forces has held financial autonomy since the beginning of the 1970s. Following the 1971 military intervention, a constitutional amendment limited the procedure of auditing defense expenditures by regulating it

according to the principles of secrecy necessitated by national defense services.⁸¹ As a further limitation, an amendment in the Article 30 of the Law on the Court of Auditors following the 1980 coup excluded the military purchase abroad and their contracts from the procedure of auditing.⁸² Article 160 of the 1982 Constitution continued the principle of secrecy for defense expenditures, by stating that “the procedure for auditing, on behalf of the [TGNA], 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.”⁸³

In 2003, a new harmonization package was introduced, adding the following provision by a new article to the Act. 832 of 1967 Law on the Courts of Auditors:⁸⁴

Auditing state property in the possession of the Armed Forces shall be observed in accordance with the principles of secrecy required by National Defense. The principles and procedures related to this auditing shall be regulated by bylaw with “SECRET” secrecy level, prepared by the Ministry of National Defense receiving opinion of General Staff and Court of Auditors and approved by the [TGNA].

In fact, no significant amendment was brought out by the seventh harmonization package with regards to the auditing of state properties possessed by the TAF. Since the principles of secrecy and the necessity of regulating the procedure of auditing according to the requirements for national defense services continued. The only positive step was to regulate the audit by a bylaw instead of a law. However, during the preparation of the bylaw, the Court of Auditors would give its opinion, together with the opinion of General Staff. In other words, the procedure of auditing became dependent on the request from the legislative body, not *ipso facto* and permanently.

The EU concerns on the restrictions provided by the Constitution for auditing procedure of defense expenditure were finally addresses by the amendment in Article 160 in 2004. The last paragraph of the article, “the principle of secrecy required by National Defense,” was removed.⁸⁵ Reasoned decision of the legislative proposal openly stated that the motive for this progress is the EU requirement for providing transparency in auditing state expenditures.⁸⁶

The EU welcomed the constitutional amendment of 2004 as a greater governmental control over military.⁸⁷ However, it also stressed the importance of full ex-ante parliamentary oversight over military expenditures and reminded the need for adopting and implementing appropriate secondary legislation.⁸⁸ As a response, in 2008, Court of Auditors in Turkey examined the question of whether it has the mandate to audit the Defense Industry Support Fund (DISF) and decided that there was legally no doubt that auditing DISF was under the mandate of Court of Auditors.⁸⁹ In 2010, the TGNA approved Law No. 6085 on the Turkish Court of Auditors and expanded the auditing scope of the military expenditure. Further, Article 4/ç of the law enabled

the auditing of military tenders, military assets and expenditure as in the other public institutions by Article 4/ç: “[Court of Auditors] audits all public funds, resources and accounts, including special budgets, regardless of whether or not they rank among the public administration budgets.”⁹⁰ In other words, since the Undersecretariat for Defense Industries is an agency with special budgets attached to the Ministry of Defense and DISF is under its disposal, Law No. 6085 has taken the DISF into the scope of auditing.⁹¹ The same law also states that Foundation for Strengthening the Armed Forces may also be audited by the Court of Auditors based upon the request of TGNA.⁹²

Reasoned decision of the legislative proposal shows that the motive for this progress is again the EU requirement of getting institutions that use public resources but have not come under the competence of Court of Auditors audited.⁹³ However, in its progress report in 2014, the EU has still criticisms on the lack of a specialized committee within Parliament with technical expertise to follow-up reports from the Court of Auditors and on the weakness of the Court’s legal framework that prevents further progress on improving parliamentary oversight of military expenditure.⁹⁴

Conclusion

The degree and type of political control over military might change depending on the system of government, historical traditions and cultural values.⁹⁵ Since the EU does not have a definitive guideline for DCAF, based on similar reasons, the article accepts three norms stated in the CSCE Budapest Declaration as the EU standards for DCAF. These assumed standards are also in parallel with the EU requirements on Turkey for DCAF, namely democratic political control over military, constitutional and legislative structure and legislative approval of defense expenditures. Thus, this article categorized the EU requirements and criticisms on DCAF in Turkey according to these three norms.

By questioning the main motives for Turkey’s progress and shortcomings in DCAF reforms, this article first identified the EU requirements and criticisms regarding Turkey and then examined Turkey’s reforms in each category of norms. Further, the article sought to find out the official motives for the progress and shortcomings of the DCAF reform process by tracing the parliamentary minutes and reasoned decisions of the legislative proposals for reforms. Last, the article aimed to answer how to enable a reform process for the shortcomings as it has been achieved in other progress areas.

The article found out two official motives for Turkey’s progress in DCAF: First, the “EU factor” as widely argued in the literature and second, Turkey’s democratization efforts. Regarding the first norm of CSCE Budapest Declaration, democratic political control over military, four progress areas were identified. Above-mentioned two motives equally shared the influence on

the progress areas. Two were motivated by the “EU factor” and while the others by democratization. In terms of the second norm, constitutional and legislative structure, the “EU factor” motivated four of the seven progress areas. Regarding the last norm of the Declaration, legislative approval of defense expenditures, the only motive appeared as the “EU factor” for the two progress areas. In sum, the article identified 13 progress areas, of which 8 were motivated by the “EU factor.” Thus, it might be argued that EU accession prospect and Turkey’s harmonization efforts on EU requirements primarily motivated Turkey to conduct reforms on DCAF and democratization remained as secondary motive.

The article identified one main motive for the shortcomings on DCAF reform process in Turkey, namely the need of allowing a degree of authority for military within DCAF in order to prevent political abuse of military power. In other words, the primary motive “EU factor” has not sufficiently motivated Turkey to overcome the shortcomings, which have been justified by Turkey’s understanding of DCAF, despite the existence of the secondary motive, namely democratization.

The reasoned decisions of legislative proposals and parliamentary minutes of the legislative proposals show that the main motive for the following progresses in DCAF reforms was the prospect of EU accession and Turkey’s efforts to fulfill the requirements:

- Change in the NSC composition in favor of civilians in 2001 (second norm).
- Limitation of the NSC role to recommendations in 2001 (second norm).
- Removal of military representatives in CHE in 2004 (first norm).
- Provision of transparency in auditing state spending by removing the principle of secrecy required by National Defense in 2004 (third norm).
- Prevention of military jurisdiction to civilians in 2009 (second norm).
- Limiting the jurisdiction of military courts to the military duties of military personnel in 2010 (second norm).
- Expansion of the auditing scope of military by including special budgets in 2010 (third norm).
- Establishment of the Institution of Ombudsman in 2012 (first norm).

The following reforms were motivated by the secondary motive of strengthening of democratic principles in Turkish politics such as rule of law and principle of equality:

- Opening of the SMC decisions to judicial review in 2010 (first norm).
- Age qualification for appointment and termination of the Constitutional Court membership after 12 years (second norm-Turkey defines it as a progress while the EU regards it as a shortcoming).

- Agreement among political parties in principle on accountability of CGS to Ministry of Defense in draft constitution in 2013 (first norm).
- Amendment in duty of armed forces in 2013 (second norm).
- Prevention of TAF members engaging in political activities in 2013 (second norm).

Though secondary, the existence of the motive of democratization is an encouragement for Turkey's reform process on DCAF, since the natural motive for DCAF reforms seems to be democratization. In other words, its existence as a second motive provides a prospect for further reforms on DCAF process.

Besides those mentioned above, Turkey still has several shortcomings despite the motives of "EU factor" and strengthening of democratic principles. Tracing of parliamentary minutes and reasoned decisions of legislative proposals shows that there is one major motive for the shortcomings in Turkey's DCAF reforms, namely the goal of allowing military to have authority over its internal matters, strategic issues and military doctrine. This is mainly supported by the objective of protecting military from the political abuse as it might be observed in the following shortcomings:

- Leaving SMC decisions on promotion and retirements due to lack of tenure outside the scope of judicial review (first norm).
- Putting purely military issues outside the military competence of the Ombudsman (first norm).
- Continuing existence of two military judges in the Constitutional Court (second norm).

It might be observed that all shortcomings reflect the goal of preventing military from political abuse, which is a part of the DCAF understanding of Turkey. Regarding the first shortcoming, it is found that both lawmakers in Turkey and the TAF argued that judicial review of SMC decisions regarding promotion and retirements would weaken the military discipline of the armed forces. For the second shortcoming, the parliamentary minutes of the relevant legislative proposals show that the establishment of ombudsman mechanism without military competence on purely military issues is justified by the need of preserving military discipline and protecting military from political abuse of incompetent civilians. Last, the existence of two military judges in the Constitutional Court is justified by the need of protecting military from political abuse of incompetent civilians, as stated by Burhan Kuzu, head of the Parliamentary Constitution Commission in 2010.

Through the analysis of reasoned decisions of related legislative proposals and tracing of parliamentary minutes of the reform processes, the article identified two official motives for progress in DCAF: the "EU factor" and

democratization. However, none of these has motivated Turkey to overcome the shortcomings in DCAF. The main reason for this failure is identified as the goal of protecting authority for military within DCAF. It might be well argued that Turkey justifies the coexistence of shortcomings within DCAF and its motive of democratization since its understanding of DCAF has two objectives. First, preventing military intervention to the political agenda and second, preventing the political abuse of military power. Thus, it seems that Turkey might be motivated to overcome these shortcomings only when its understanding of DCAF details a full subordination of military to civilian authority.

Disclosure statement

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Notes

1. Joò, "The Democratic Control of Armed Forces," para.7.
2. European Commission, *Report on the Democratic Control*, 2.
3. Karaosmanoğlu and Gökakın, "Türkiye'de sivil-asker ilişkisinin," 33.
4. Faltas and Jansen, "Introduction," 1.
5. Lambert, "Implementation of Democratic Control," 6.
6. Organization for Security and Co-operation in Europe, *Code of Conduct*, para.20.
7. *Ibid.*, para.21.
8. *Ibid.*, para.22.
9. Narlı, "Aligning Civil-Military Relations"; Heper, "The European Union, the Turkish Military"; Müftüler-Baç, "Turkey's Political Reforms"; Öniş, "Domestic Politics, International Norms"; Güney and Karatekelioğlu, "Turkey's EU Candidacy"; Şatana, "Civil-Military Relations"; Gürsoy, "The Impact of EU-Driven Reforms"; Bilgiç, "The Military and Europeanization."
10. Kaya, "Changing Civil Military Relations"; Varol, "The Turkish Model"; Tocci, "Europeanization in Turkey."
11. Gürsoy, "The Changing Role of the Military"; Bardakçı, "Coup Plots and the Transformation"; Aydınlı, "Ergenekon, New Pacts"; Cizre, "Disentangling the Threads."
12. Toktaş and Kurt, "The Impact of EU Reform," 1.
13. Cizre, "Problems of democratic governance," 118.
14. *Ibid.*
15. T.B.M.M., *Constitution of the Republic of Turkey*, Article 117.
16. European Commission, *2000 Regular Report on Turkey's Progress*, 12.
17. *Radikal*, February 21, 2013.
18. European Commission, *Turkey 2014 Progress Report*, 12.
19. *Mynet Haber*, November 26, 2012.
20. European Commission, *2000 Regular Report on Turkey's Progress*, 12.
21. European Commission, *Turkey 2003 Progress Report*, 19.
22. T.B.M.M., *Türkiye Cumhuriyeti Anayasasının Bazı, 5170*, Article 131.
23. T.B.M.M., *Türkiye Cumhuriyeti Anayasasının Bazı (2/278)*, Article 8.
24. "Yüksek Askeri Şûranın Kuruluş ve Görevleri Hakkında Kanun," Article 2.

25. *Ibid.*, Article 3.
26. “Türk Silahlı Kuvvetleri Personel Kanunu,” Article 49 and 54.
27. Turkish Review. *Interview 20Q&20A*, question 1.
28. T.B.M.M., *Constitution of the Republic of Turkey*, Article 125.
29. *Ibid.*
30. Article 10 reads as follows: “(...) No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”
31. T.B.M.M., *7/11/1982 Tarihli ve 2709 Sayılı*, 13.
32. European Commission, *Turkey 2011 Progress Report*, 12.
33. *Ibid.*, 14.
34. Cited by Eyüp Fatsa, Justice and Development Party Ordu MP in “93’üncü Birleşim,” Session 2.
35. Can, “Yüksek Askeri Şura Kararlarının,” 691.
36. “Law on the Ombudsman Institution,” Article 5(ç).
37. European Commission, *Turkey 2012 Progress Report*, 11.
38. T.B.M.M., *7/11/1982 Tarihli ve 2709 Sayılı*, 12.
39. Cited by Ali Özgündüz, Republican People’s Party İstanbul MP in “119’uncu Birleşim,” Session 5.
40. Cited by Erol Dora, Peace and Democracy Party Mardin MP in “120’nci Birleşim,” Session 8.
41. “120’nci Birleşim,” Session 8.
42. “119’uncu Birleşim,” Session 5.
43. *Ibid.*
44. Geneva Centre for the Democratic Control of Armed Forces. “Military Ombudsman,” 2.
45. *Ibid.*, 4.
46. T.B.M.M., *Constitution of the Republic of Turkey*, 1961, Article 111.
47. *Ibid.*
48. T.B.M.M., *Constitution of the Republic of Turkey*, 1982. Original version, Article 118.
49. *European Commission, 1998 Regular Report on Turkey’s Progress*, 14.
50. *Ibid.*, 10.
51. *Ibid.*, 14.
52. TBMM., *Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin* (4709), Article 32.
53. TBMM., *Türkiye Cumhuriyeti Anayasasının Bazı* (2/803)
54. European Parliament, *European Parliament resolution*, para.8.
55. European Commission, *2004 Regular Report on Turkey’s Progress*, 23; European Commission, *Turkey 2005 Progress Report*, 14; European Commission, *Turkey 2006 Progress Report*, 7; European Commission, *Turkey 2007 Progress Report*, 9; European Commission, *Turkey 2008 Progress Report*, 8; European Commission, *Turkey 2009 Progress Report*, 10; European Commission, *Turkey 2010 Progress Report*, 11–12; European Commission, *Turkey 2011 Progress Report*, 14; European Commission, *Turkey 2012 Progress Report*, 13.
56. Kuloğlu and Şahin, “The Past and the Future of the Civil-Military,” 99–100.
Article 2 of the 1982 Constitution reads these characteristics as follows:

The Republic of Turkey is a democratic, secular and social State governed by the rule of law; bearing in mind the concepts of public peace, national

solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.

57. "Türk Silahlı Kuvvetleri İç Hizmet Yönetmeliği," Article 85.
58. "MGK ve MGK Genel Sekreterliği Kanunu," Article 2a.
59. "Türk Silahlı Kuvvetleri İç Hizmet Kanunu," Article 35.
60. *Ibid.*, Article 43.
61. TBMM, *Sözleşmeli Erbaş ve Er Kanunu*, 9.
62. European Commission, *Turkey 2005 Progress Report*, 14; The Council of the European Union, "Council Decision of 23 January 2006," 36.
63. T.B.M.M., *Constitution of the Republic of Turkey*, 1982. Original version, Article 145.
64. Türk Ceza Kanunu ile Bazı Kanunlarda Değişiklik, Article 6.
65. Halkoyuna Sunulan Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinde Değişiklik Yapılması Hakkında Kanun, Article 15.
66. T.B.M.M., *Constitution of the Republic of Turkey*, Article 145.
67. The Council of the European Union, "Council Decision of 18 February 2008," 5.
68. "Türk Ceza Kanunu ile Bazı Kanunlarda Değişiklik," Article 7 (my emphasis).
69. "Türk Hukuk Enstitüsü. Askere Sivil Yargı Anayasaya Aykırı."
70. T.B.M.M., *Constitution of the Republic of Turkey*, Article 145.
71. "Yargı Hizmetlerinin Etkinleştirilmesi Amacıyla ...," Article 105(6).
72. TBMM, *Sözleşmeli Erbaş ve Er Kanunu*, 14.
73. European Commission, *Turkey 2010 Progress Report*, 13.
74. T.B.M.M., *Constitution of the Republic of Turkey*, 1982. Original version, Article 146.
75. For amended version: T.B.M.M., *Constitution of the Republic of Turkey*, Article 146.
76. European Commission, *Turkey 2010 Progress Report*, 13.
77. "94'üncü Birleşim," Session 7.
78. European Commission, *Turkey 2010 Progress Report*, 13. In Turkey, military judges shall serve until the age of 65. Thus, EU concern is that a military judge might return to the military justice system after the age of 47 for about eight years.
79. TBMM, *Sözleşmeli Erbaş ve Er Kanunu*, Article 18.
80. European Commission, *2002 Regular Report on Turkey's Progress*, 25; European Commission, *2003 Regular Report on Turkey's Progress*, 19.
81. European Commission, *Turkey 2013 Progress Report*, 14–15.
82. "21.2.1967 Tarih ve 832 Sayılı Sayıştay Kanununda Değişiklik Yapılması ve Bu Kanuna Üç Ek Madde Eklenmesi Hakkında Kanun," Article 3.
83. T.B.M.M., *Constitution of the Republic of Turkey*, 1982. Original version, Article 160.
84. T.C. Başbakanlık Avrupa Birliği Genel Sekreterliği, *Avrupa Birliği Uyum Yasa*, 7. Uyum Paketi, Article 7.
85. Ministry of Justice, *1982 Türkiye Cumhuriyeti Anayasasının*, Article 160.
86. T.B.M.M., *Türkiye Cumhuriyeti Anayasasının Bazı*, Article 10.
87. European Commission, *2004 Regular Report on Turkey's Progress*, 15.
88. European Commission, *Turkey 2005 Progress Report*, 13.
89. Sayıştay Başkanlığı, "Genel Kurul Kararları," 8–12.
90. "Sayıştay Kanunu," Article 4/ç.
91. Altay, "Türkiye'de Askeri Harcamaların Denetiminde," 301.
92. "Sayıştay Kanunu," Article 45/1.

93. TBMM, *Sayıştay Kanunu Teklifi*, 2.
94. European Commission, *Turkey 2014 Progress Report*, 8.
95. European Commission, *Report on the Democratic Control*, 2.

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