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A history of the national security state in Turkey

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Citation

Sarlak, Z. (2020, August 25). *A history of the national security state in Turkey*. Retrieved from <https://hdl.handle.net/1887/135947>

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Title: A history of the national security state in Turkey

Issue Date: 2020-08-25

Chapter III

1. The Conceptual Framework of the Transition from National Defense to National Security in Turkey

The idea of bringing together the civilian and the military authorities to solve the defense problems of Turkey gained recognition during the first years of the Cold War. Previously, the political leaders of the single-party period had not felt the need for such an institution. Mustafa Kemal and İsmet İnönü, to prevent the Department of Chief of Staff from being wielded by their political rivals, had granted it an independent status and the post had been held by Marshal Fevzi Çakmak, for 21 years who was known for his loyalty to these two leaders.

The first step towards the formation of an intermediary institution between the government and the army was taken by the Office of the Chief of General Staff in 1946, and the foundation of this structure was built three years later (Özdemir, 1989, p.95) when the National Assembly unanimously passed Law No. 5399 (prepared by the Military Council), establishing the National Defense High Council (NDHC). According to the law, the NDHC chaired by the Prime Minister should be formed of ministers chosen by the Council of Ministers upon the proposal of the Prime Minister, the Minister of National Defense, and the Chief of General Staff. This institution, which was responsible only for assessing the country's defense challenges, was designed as an advisory body. The final word on national defense policies belonged to the administrative authority. Nevertheless, Bayramoğlu (2002) asserted that the NDHC had been disregarded by the governments and the prime minister had attended its meeting only once until the Council was dissolved (p. 37). During the same period, the Chief of Staff was allegedly unwilling to participate in such a council (cited in Özdemir, 1989, p. 110).

The NDHC was abrogated by the 1960 coup. As stated earlier, the same coup introduced the national security concept to the political mindset and institutional framework of Turkey. The debates on constitutional articles regulating civil-military relations that occurred in the House of Representatives of the Constituent Assembly⁷⁴ display the dynamics of this paradigm shift from national defense to national security. The 1960 coup was staged against the policies of the Democrat Party rule between 1950 and 1960, which contradicted the official ideology of the state.

⁷⁴ The Constituent Assembly consisted of the National Unity Committee (the members of the junta) and the House of Representatives. The election of members of the House of Representatives was held in accordance with the Law No. 158 of December 13, 1960. Accordingly the following institutions and organizations were authorized to send members to the House of Representatives: Head of State 10, National Unity Committee 18, Provinces 75, RPP 49, Republican Peasants' Nation Party 25, Barr 6, Press 12, Veterans' Association 2, artisan organizations 6, youth 1, trade unions 6, chambers 10, teacher organizations 6, , universities 12, judicial bodies 12. Article 18 of the law forbade those "who have supported the politics and practices contrary to the Constitution and human rights until the 27th May Revolution" from taking part in the House of Representatives. Thus, the DP, which had already been closed before the promulgation of the law, was prevented from sending any representative to the Constituent Assembly.

The National Unity Committee (NUC), except the RPP, "the political party of the Revolution," had no confidence in political formations that established clientelist relations with the masses and their traditionalist social base (Şen, 1996). The military government, as stated in the second chapter, wanted to establish a constitutional order where executive powers were relatively weak compared to those granted to the bureaucratic authority and ensure the power of the state elite on strategic fields. Accordingly, the NUC ordered a group of law professors at Istanbul University to write a draft constitution. Shortly named as "İstanbul draft," this document while curbing the power of the political parties, divided the state power between bureaucratic committees, and established various autonomous institutions and councils (Gözler, 2000, pp.77-92). One of these councils was the National Defense Advisory Council (NDAC) proposed to substitute the NDHC. The following statements were made about the NDAC in the preliminary draft (cited in Özdemir, 1989, p. 100):

“Article 123- The National Defense Advisory Council shall be composed of the Prime Minister, the Commander of the Armed Forces, ministers of Foreign Affairs, Internal Affairs, Finance, National Defense, and Transportation, Commanders-in-chief of Armed Forces and the Secretary of the National Defense High Council.

The National Defense Advisory Council is responsible for preparing the necessary plans to generate national power and providing military and civilian total defense of the country and submitting to the Council of Ministers the advisory decisions taken with regard to the necessary precautions in this regard.

The President of the Republic is the chairman of this council. In the absence of the President of the Republic, the Council shall convene under the chairmanship of the Prime Minister. The Commander of the Armed Forces is the deputy chairman.

The Council of the Ministers is responsible for total national defense and enforcing the necessary measures in this regard.”

A group in the House of Representatives objected to the new NDAC in the İstanbul Draft. "The Executive and Judiciary Subcommittee of the Constitutional Commission" criticized this newly drafted body for two reasons. These criticisms were significant because they highlighted the frailties that the establishment of such a council would create for democracy in Turkey in advance.

The first criticism emphasized the fact that such a council should be established with a mandate limited to "ensuring coordination and assistance" to the government, which is the supreme authority entrusted with the responsibility of making decisions regarding national defense (Ibid., p.101). The second criticism was related to the composition of the council. The report stated that the number of members should be kept to a minimum and the Chief of Staff should be the only military member of the council. It was also added that "there was no need for the commanders-in-chief of armed forces to be council members," since the participation of the Chief of Staff as the highest-ranking officer of the army would be sufficient to convey the

opinions of the military (Ibid.). Otherwise, the council could turn into a "superior organ" with powers to adjudicate on matters related to national defense rather than being an advisory body where the elected high-ranking members of the government work with the Chief of General Staff.

In the first round of the deliberations that occurred in the House of Representatives, some military members rejected these criticisms and insisted that the commanders-in-chief should be the members of the council. They justified their argument by stating that the Chief of Staff would be left alone during any voting phase or would be overburdened (Ibid., p. 103).⁷⁵ They also suggested that "in line with its name in other countries, "such a council should be named as "National Security High Council" and should be structured as a decision-making organ rather than an advisory body (Ibid., pp. 102-103).⁷⁶ However, the proposal of the military members was denied in the House of Representatives. This group then resorted to persuading the NUC, the upper wing of the Constituent Assembly and prevailed upon the junta to rewrite the related article as National Security Council, despite resistance from the House of Representatives (Ibid. pp.105-107).

Article 110/B established a National Security Council under the President of the Republic composed of the Prime Minister, the Chief of the General Staff, the ministers provided by law and the representatives of the armed forces. The Council was authorized to "communicate the requisite fundamental recommendations to the Council of Ministers with the purpose of assisting in making of decisions related to national security and coordination." The statements of Turhan Feyzioğlu (the President of the Constituent Assembly and Minister of Education in the military government) during the parliamentary consultations on NSC were clear indicators of the paradigm shift from "national defense" to "national security" in Turkey (cited in Bayramoğlu, 2002, p. 38):

"Today when it comes to national security policy, not only in our country but in every country, we do not only mean military or foreign policy matters; issues related to health, trade policy, industry, agriculture, transportation, public works will be discussed in this council.

Like those in the many U.S. backed national security states of the Cold War period; this new security structure was shaped around the concept of internal security which legitimized the

⁷⁵ The statements of the retired Lieutenant General Hüseyin Ataman on the composition of the council were as follows: "The only presence of the Chief of General Staff in this institution would not be enough. In addition to the Chief of General Staff, the Force Commanders should also be included in this committee. This is a kind of joint General Staff. Because all three forces - the Land, Sea and Air Forces - play a major role in defense of the entire country. It is not appropriate to deprive this important institution of their opinions. [...]In order to strike a balance, it is a requirement that the Force Commanders take part in the National Defense High Council."(cited in Özdemir, 1989, p.101). Rauf Gökçen, both member of the House of Representatives and the National Union Committee, suggested a similar view in this regard. Gökçen stated that the force commanders should serve in the High Council. Otherwise, Chief of General Staff would be overloaded (Ibid., p. 103).

⁷⁶ During the discussions, retired General Fahri Belen said the following: "There is a Ministry of National Defense. [It is] directly related to the Armed Forces. [National Defense Supreme Council] is a more comprehensive institution. Its name must be National Security Council. This is consistent with the nomenclature used in other countries (cited in Özdemir, 1989 pp.102-103).

military's tendency to share state authority with elected politicians. The statements that Haydar Tunçkanat, a member of the NUC and later senator in the Parliament, made to a daily newspaper in 1966 support this argument (*Akşam*, 1966, Septembre 22):

“In order to prevent political parties that gain power through elections from corrupting the second republic to be founded with our new Constitution and cause a new military coup, the Committee has created the National Security Council via the new Constitution as a preventive measure and has clearly defined its duties, granting the President of the Republic and the military members of the Council both the duty and the responsibility to present to the Council their fundamental views on all issues concerning our national security.”

The NSC mainly focused on issues related to internal politics from 1962 to the 1971 memorandum. In his memoirs, Muhsin Batur, the Chief of the Air Staff of the 1971 junta, stated that a series of topics including the pardoning of the DP deputies, the supervision of the Justice Party government, and the military's demands for constitutional amendments were discussed in this Council (Batur, 1985).

Contrary to Tunçkanat's expectations, however, this structure did not prevent the coup d'état of March 12, 1971, and the military cadre that staged the coup signed the memorandum as the "National Security Council." Thus, the assumption that the NSC would favor a civil-military dialogue and prevent the coups failed. As far as the legal status of the NSC was concerned, there were two different usurpations of power by the military elite. First, the command echelon that was staging an in-house coup appropriated the NSC as its own and declared its control over issues related to national security. The military hierarchy then bestowed authority on the NSC beyond its advisory role that was indicated in the Constitution. The military members of the NSC, who until then had imposed their supremacy over politics on a perceptual basis, legitimized their power through new legal regulations.

As mentioned above, the constitutional amendments that were made between 1971 and 1973 increased the NSC's influence over the executive power. The expression "assists the Cabinet of Ministers," found in the first version of the 111 articles of the Constitution of 1961, was changed to "advises the Cabinet of Ministers." Besides, the amendment concerning the NSC's structure (Law No. 129, December 1, 1962) was included in the Constitution as a new article. The reference to "force representatives" in the first version of the article was replaced with "force commanders." Thus, both the number and responsibility of military authorities were increased within the council. The most fundamental regulations regarding the NSC's status were implemented during the military regime established by the military coup of September 12, 1980. These amendments made in the NSC's constitutional status during this period resulted in the institutionalization of the political role of the military hierarchy such that it eliminated the need for a new coup.

2. National Security Apparatus of the State

2.1. National Security Council as the Central Security Actor

The key regulation related to the NSC was outlined in Article 118 of the Constitution of 1982. This article ended the civilian majority within the NSC and increased its influence by making its decisions binding. Article 118 included the following statements:

- “The National Security Council shall be composed of the Prime Minister; the Chief of the General Staff; the Minister of National Defense; Internal Affairs; Foreign Affairs; the Commanders of the Army, Navy, and Air Force; and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic. Depending on the details of the Agenda, Ministers and other concerned persons could be invited to meetings of the Council and their views could be heard.
- The National Security Council shall submit to the Council of Ministers, its views on making decisions and ensuring necessary coordination with regard to the formulation, establishment, and implementation of the National Security policy of the State. The Council of Ministers shall give priority consideration to the decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the State, the integrity and indivisibility of the country, and the peace and security of society.
- The Agenda of the National Security Council shall be drawn up by the President of the Republic, accounting for the proposals of the Prime Minister and the Chief of the General Staff.
- In the absence of the President of the Republic, the National Security Council shall meet under the chairmanship of the Prime Minister.
- The organization and duties of the General Secretariat of the National Security Council shall be regulated by law.”

The new structure included the General Commander of the Gendarmerie among the military members of the Council. Hence, the numbers of military and civilian members (five each) were equalized. Given that decisions were made based on a majority of votes, once Kenan Evren was elected President of the Republic, it was evident that the five military members were supported by a sixth member, the President himself, as the head of the NSC. The civilians on the NSC were therefore outnumbered. More importantly, decisions went from being "advisory" to "declaratory," and the NSC ceased being a constitutional advisory committee. The country's national security decisions were "given priority by the cabinet of ministers." The Council thus acquired a legal status above the government.

The Chief of General Staff's power to determine the state's priority agenda became equal to that of the Prime Minister. The military authority, from then on, could command a security field that was broadened to include "ensuring public peace and security." The executive power, which should consist of the head of the state and the government, was thus transformed

into a de facto tripartite arrangement with the addition of the TAF. The NSC, where this trilateral structure merged, became the main decision-maker on all fundamental subjects related to the regime.

The transformation of Turkey into a national security state is more apparent in Law No. 2945 (dated November 9, 1983, on the National Security Council and its General Secretariat) than in the Constitution of 1982. It is possible to trace the dynamics of this process in the introduction of the draft law sent to the Advisory Board by the military government (cited in Özdemir 1989, p. 111):

"[...] By taking advantage of the knowledge gained from the evaluation of the experiences and practices obtained between the period of the establishment of the National Security Council by the Constitution of 1961 and the date of September 12, 1980, in the new democratic order, duties, powers, working procedures and principles and organization of the National Security Council and the General Secretariat of the Security Council were reorganized in line with the needs of the State. The measures [...] identified by the National Security Council on serious [...] internal threats and other threats against the state before 12 September 1980 were not taken into consideration by the executive, legislative and judicial bodies or were not adequately put into practice. (Therefore) to prevent any reoccurrence of the problems faced in the past, [...] the duties, authority and working methods of the Council and its General Secretariat are included in the new draft."

The main goal of the military government was to institutionalize the NSC and its Secretariat as an "inner state government" that would dominate legislative, executive, and judiciary organs. As İnsel (1997) stated, "instead of a military coup that could come at a heavy cost [in the future], seizing most of the power in an ordinary period right after such a coup" seemed functional for the military hierarchy (pp. 15-16). The military hierarchy chose to establish a second "institution of power" that would monopolize the issues it deemed strategic. Moreover, while doing so, it would not be accountable for the consequences of its decisions (Ibid). The definition of national security in Law No. 2945 helps clarify the NSC's expanded powers. It was defined as "the protection and safeguarding of the constitutional order, the national entity, and the unity of the state and all of its interests in the international arena, including its political, social, cultural, and economic interests, and of its conventional law, against all types of external and internal threats" and thus acquired official status.

The fact that this broad concept was formulated as "National Security Policy" in the same law constituted a more important development. National security policy was defined as "the politics comprising the principles behind domestic, foreign, and defense policies as specified by the Cabinet of Ministers, on the basis of views established by the National Security Council with the objective of ensuring national security and achieving national objectives." Since this definition could easily be interpreted as the transformation of all subjects dealt with by the NSC into state policies via NSC decisions, it acquired critical importance in Turkish political life.

These articles were a clear signal that the social and political demands in contradiction with the security policies of the state would be prevented. Moreover, such a broad definition of the national security concept not only resulted in the dominance of the military authority over the executives but also created an opportunity to officialize a political ideology through legal means, while guaranteeing immunity from potential challenges. Consequently, new ideological "thought crimes"⁷⁷ would be created and the State Security Courts that had been reactivated during the military government would be operationalized to prosecute any thought crime that contradicted the philosophy of the September 12 regime.

In the new constitutional order, the military coup declared its rule by placing the NSC at the top of the state authority organigram and defined it in such detail in Article 4 of Law No. 2945 as not to allow for any legal loopholes. The NSC's duties were as follows:

- a) Developing views on decision-making and the coordination required for the establishment, formation, and implementation of the state's national security policy;
- b) Establishing measures for the fulfillment of national objectives, national plans, and programs prepared in line with the state's national security policy;
- c) Continuously monitoring and evaluating national power elements and the country's political, social, economic, cultural, and technological situations and developments that may affect the state's national security policy, and determining core principles to ensure that they are strengthened in line with national objectives;
- d) Establishing measures that it considers necessary for the protection of the state's entity and independence, the country's unity and indivisibility, and society's peace and security;
- e) Establishing measures that it considers necessary to protect the constitutional order and achieve national unity and indivisibility, and that will gather the Turkish nation around national principles and values to steer it towards national objectives, which are congruent with Kemalist thought as well as the principles and reforms of Atatürk. It determines its views, needs and the measures it considers essential for the strategies and core principles necessary for fighting and neutralizes domestic and foreign threats against the above, as well as on planning and implementation services;
- f) Establishing its views on states of emergency, martial law, mobilization, and declaration of war;
- g) Determining the principles for services, responsibilities and plans to be carried out regarding the services and responsibilities that public and private sector bodies and organizations and citizens need to take on concerning total

⁷⁷ By thought crime, we mean political thoughts expressed orally or in written forms which are regarded as a criminal offense.

defense, national mobilization, and other matters, in the event of a state of emergency, war, situations that require war, and that follow law;

h) Establishing the necessary principles for financial, economic, social, and cultural measures and funds required by public services, as well as total defense services and issues prescribed by the state's national security policy to include in development plans, programs, and yearly budgets;

i) Establishing its views on international treaties acceded and to be acceded in areas included within the scope of national security.

j) Conveying the views, measures, and principles it establishes to the Cabinet of Ministers in the form of council decisions and fulfilling other duties assigned by law.

With this law, the state model institutionalized by the September 12 regime granted the military the right to rule an immense area on the basis of a final policy imposed by its security choices. It allowed the military not only to establish targets, but to determine threats to security policy and to take measures against these threats inside and outside of the country. Moreover, the military hierarchy acquired the power to intervene directly in choices concerning the use of resources and to issue directives on the use of budgets without being held accountable for the consequences.

It is not possible to learn the negotiation processes of the council's decisions since it is obligatory to maintain confidentiality in NSC meetings under all circumstances. According to its law (Law no: 2945, Art. 10), the NSC's decisions would be publicized only by the permission of the council. An advisory body is typically expected to disseminate information to the related institution through written reports. In practice, however, the council's decisions were presented to the Council of ministers through a public announcement made by its General Secretariat whose members were from the military cadre. It seems that this method of communication was adopted to exert a form of psychological pressure on the politicians. As explained in the fourth chapter, between 1984 and the mid-2000s, there was no single example of a government decision that was made against the council's "recommendations." The military elite ensured the transformation of the council's recommendations into government policies and follow-up with their applications by way of its General Secretariat. Secretarial services of the General Secretariat were just the tip of the iceberg compared to its other duties and authorities.

2.1.1. The General Secretariat of the National Security Council (GSNSC): The Shadow Government

The duties and powers of the General Secretariat were also regulated via Law No. 2945. According to the provisions of this law, although the GSNSC appeared on paper to be a civilian institution under the Prime Minister, its General Secretary was appointed from among the armed forces at the rank of full general or admiral; its members, kept confidential by law, were appointed at the suggestion of the General Secretary and with the approval of the Prime Minister. The General Secretary's duties (prior to the reform process in 2000s) are summarized

as follows (Art. 13): to conduct all kinds of necessary work, examinations, investigations, and assessments and to convey them and their consequences to the President of the Republic, the Prime Minister, and the NSC; to monitor and supervise the implementation of decisions made by the Cabinet of Ministers in parallel with decisions by the NSC; apart from defense policy, to conduct research on the determination, establishment, implementation, and, when necessary amendment of national security policy and to prepare plans on these subjects; to plan and implement the necessary services and activities for steering “the Turkish nation towards Kemalist thought” and related “national objectives”, and for the protection of “the state’s existence and independence, the country’s unity and indivisibility, and public peace and security;” to plan and coordinate total defense services outside the jurisdiction of the armed forces; to establish the measures to be taken and the work and processes to be carried out in a state of emergency, to determine the necessary measures to achieve coordination in implementation; to conduct cooperation and coordination with the State Planning Organization Undersecretariat in order for the measures prescribed by national security policy to be undertaken and for services to be carried out; for financial, economic, social, cultural, and other measures and funds required by public services and total defense services to be included in development plans and programs; and for allocations to be made in yearly budgets.

The “monitoring and supervision, steering, coordination and oversight” of all the duties listed above were included in the General Secretariat’s job definition (Art. 14). The General Secretariat was also granted the power to conduct all these duties “in conjunction with other ministries, bodies, and organizations when necessary” (Art. 18). All ministries, public bodies and organizations, and private legal entities were responsible for providing the GSNSC, continuously or when requested, with information and documents of public knowledge and all degrees of confidentiality (Art. 19). A separate allocation was created for the confidential expenditures of the General Secretariat (Art. 20).

The fact that the General Secretariat, contrary to the constitutional status of the NSC on whose behalf it acted, was organized as an "executive administrative" institution. Thus, the NSC could be defined as a "shadow government" of Turkey from a legal perspective. From its establishment until the constitutional amendments realized in the context of the EU harmonization process, which curbed most of its powers, the GSNC was the main institution that followed and controlled state practices. The powers of the General Secretariat, which was structured as a sub-institution to ensure that the NSC's decisions were transformed into sanctions, occasionally surpassed the influence of the upper-council, and became more politically significant.

Law No. 2945 stated that the internal work arrangements of the council, its work and relationships with ministries (Art. 18), bodies, and organizations, and the foundation, duties, and powers of the units (Art. 12) within it would be organized by a top-secret regulation (Art. 12). Its provisions would be prepared by the General Secretariat and it “*would be accepted* [emphasis added] by the Cabinet of Ministers after being discussed in the National Security Council.” At that time, two things were unlikely to happen: the rejection of the regulation single-handedly prepared by the military in an NSC where the majority were in the military wing and its disapproval by a cabinet working under the threat of a permanent military regime.

The GSNSC regulation was presented to the government as a decision only two months after the transition to civilian rule. This occurred on February 8, 1984, during the second NSC meeting of the Özal administration, which was chaired by the President of the Republic, Kenan Evren (Press release of the NSC, February 8, 1984). It was in effect until the reforms brought by the Seventh EU harmonization package in 2004 (Law No 4963). Its covert duties and secret structure began to emerge in news reports (Zeyrek, 2003; Berkan, 2003). This regulation was very critical because it created public awareness of the unknown state structure of the Republic of Turkey, which had gradually been transformed into a national security state through a series of post-coup legal restructuring.

2.1.1.1. The GSNSC's Regulation: The Constitution of the Internal Government Mechanism

This regulation, which can be regarded as a secret constitution, gave the GSNSC draconian powers that are not compatible with parliamentary democracy. It was thus discovered that along with the duties stated above, the GSNSC also held responsibilities of critical importance, such as "establishing the need for nationwide psychological operations of all types" and preparing and implementing psychological operation plans; "continuously monitoring the situation of domestic and foreign threats by evaluating all documents, information, and intelligence" that it collected concerning national security; establishing "elements that may turn into threats;" "when necessary, sending representatives to the Office of the Prime Minister, to the Cabinet of Ministers, and to relevant commissions in the TBMM;" "preparing the National Security Policy Document" and, following its "acceptance," carrying out the necessary activity for its implementation; preparing directives for the implementation of ministries; monitoring, overseeing, and coordinating the work that would be conducted in line with these directives; and informing the General Secretary of a deviation from policy principles or delay in implementation.

In addition to a legal affairs office, personnel department, and secretariat known to the public, the GSNSC included four central service units founded on the basis of the secret regulation. These were the National Security Policy Department, the Information Gathering and Assessment Group Department, the Community Relations Department (CRD), and the Total Defense Civil Services Department. Based on information provided by Bayramoğlu (2003), as of 1999, every one of the 116 personnel working for these four units as president, deputy president, chief consultants, or consultants were current or former members of the military.

The first of these four units, the National Security Policy Department, was composed of three boards (Plan Coordination and Implementation Follow-up, Defense Politics, and Foreign Policy) and two group presidencies (Internal Security-Public Administration-Education and Culture Politics, and Economy and Social Politics). This structure was divided into sub-units that were parallel to the vectors included in the definition of national security, and it provided data on security policy to the military wing in the NSC.

The task of the Information Gathering and Assessment Group Department was to present intelligence on existing internal and external enemies and priority threats, and the

information needed to identify possible threats to the Secretary-General. The department was collecting intelligence from the General Staff, Ministry of Foreign Affairs and Internal Affairs, General Command of Gendarmerie, and Undersecretariat of the National Intelligence Organization. It also had the authority to prepare intelligence-gathering plans within the context of the intelligence needs of the General Secretariat, to make requests from relevant ministries, government institutions, and organizations, and to direct all the intelligence units within these needs.

The Community Relations Department was formed to penetrate security politics into all spheres of social life. As a coordination unit, the CRD consisted of the following group presidencies: The Directorate of Communication and Special Operations Branches, Review and Research, Planning and Orientation, and Relations with Institutions and Organizations. In addition to these sub-units, provisional service units; specialization and research commissions; and special training, planning, and implementation units could be established with the proposal of the Secretary-General and the approval of the Prime Minister. The CRD was responsible for determining different kinds of psychological operations necessitated by the state. Its duties included developing long, medium, and short-term psychological operation plans that were aligned with national policy objectives, carrying out approved plans and controlling, coordinating, and directing the practices realized by the administrative units. The functions of the CRD also included monitoring and controlling activities related to the psychological operations, implementing actions to realize the tasks in accordance with the decisions, and determining whether the expected results of the decisions were reached. In addition, the CRD was authorized to contribute actively to the process of national security policymaking and to identify the needs related to possible psychological threats. Within this framework, it had the power to direct all of the public broadcasters, including the Turkish Radio and Television Corporation, in matters that fall within its sphere of responsibility.

It was affiliated with the Prime Minister on paper. Therefore, it would be the governments which would be held accountable for the political consequences of its uninterrupted psychological operations. The traces of the mentality structure mentioned above are clearly seen in an interview with the founder of the CRD during the military regime, Ertuğrul Zekai Ökte, on psychological operations (Dinç, 2002):

“We do politics on or talk about any subject related to the family. There are four fundamental rights that we defend: Security, health, education, and judiciary services. We want to warn, enlighten the public on these subjects. We want to purge and mobilize the family, youth and the surrounding; the minds are dirty. (*Against whom are you going to mobilize?*) Against the threat. (*Whose threat?*) Everyone’s. (*Who is everyone? Are our four fronts covered with the enemy?*) Not our four fronts but everywhere is covered with the enemy. I wish it were only the four fronts. (*Do we have them inside, these enemies?*) Inside, outside, they are everywhere. (*Are organizations such as Gladio, Ergenekon, and Counter-guerrilla necessary for a State?*) Counter-guerrilla is a thing of the past. Many things were written about me on this subject. There are even books. I was staging a coup without tanks,

cannons⁷⁸ so and so. [...] So, what happens if I do or I don't? I do, or I don't. [...] I started the psychological warfare. (*Who employs psychologic warfare in Turkey?*) Public Relations Department under the NSC does it. The clandestine ones are carried out by the National Intelligence Agency. Noone else does it. (*Was the psychological warfare unit within the army while you were working there?*) It was always the case. (*Is there a setting that necessitates an Independence War?*) There is even worse. Today, the situation in Turkey is far worse than the conditions in 1919. (*Why?*) We are under threats coming from everywhere. Also, the threat is unclear. Maybe you are a threat! (*Can we concretize these threats?*) No, you cannot list them. Maybe you are the threat. Who knows? (*But what you do, is a sort of McCarthyism?*) I don't know what it is."

The structure of the security state and political system that were institutionalized by the September 12 regime can be summarized as follows: While defense policy was prepared directly by the Office of the Chief of General Staff, the general principles of national security policy, which included a broad area encompassing economy, culture, education, and social and foreign policy, were established by the NSC General Secretary. Within this framework, the General Secretary outranked all other public institutions, including ministries, and the armed forces were the only institution that is free from the NSC General Secretary's interference. The NSCGS's authority to intervene was not limited to executive and administrative organs but extended to legislative bodies as well via the presence of General Secretariat members in parliamentary commissions and budgetary planning processes. Psychological operations were conducted among civil society; the intelligence network was also restructured on the basis of this reasoning, and a new institution was created where the intelligence originating from all units of the state was gathered by military authorities.

Practical matters are also handled in the same hierarchical order. As discussed in detail in the next section, the national security policies determined by an institution that was headed by a full general were turned into an official document that was renewed every five years according to the conjuncture under the name of the National Security Policy Document. After its submission to the NSC and its forced approval by the prime minister, it entered into force. This set of instructions was used to remind the governments of their duties, as well as the "red lines" of the military regarding their course of action.

When security policies are nationalized, those who object these policies can easily be declared as traitors. As explained in the following chapter, many dissident democrats, journalists, and social scientists were labeled as such in the 1990s. The secret structure designed as "State within State" (i.e., the real State within the official, constitutional State) contradicted the universal principles of the rule of law. The rule of law refers to a state order which provides legal safety to citizens. It is defined as one in which the following four universal principles are upheld (<http://worldjusticeproject.org/what-rule-law>):

⁷⁸ Ökte is referring to the book written by Fatih Güllapoğlu called *Tanksız Topsuz Harekat (Operation without Tank or Cannon)*. (Istanbul: Tekin Yayınevi, 1991)

1. "The government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals that are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve."

This regulation reversed all these principles and even contradicted the 1982 Constitution, which the military itself had shaped. First, the existence of a secret regulation is a contradiction for a state that defines itself as a "democratic, secular and social State governed by the rule of law" in its Constitution (Art. 2). Moreover, in Article 124 of the 1982 Constitution, the terms and conditions of the regulations are explained in detail. In this arrangement, there was no mention of the possibility that the regulations might be secret. Second, the secret regulation gave the General Secretariat the authority to direct the Ministries and supervise them under these directives. However, in the 1982 Constitution, only the president and prime minister were called to supervise all public administrations. Its law stated that the secretariat would use all its powers "on behalf of the prime minister." However, what could not be explained in the legal grounds was that the prime minister was transferring his constitutional supervisory authority (1982 Constitution, Art. 112/3) to a secretariat, which was seemingly a consultative institution among hundreds of public institutions. This occurred because, constitutionally, the part of the supervisory authority related to the ministries belongs to the Prime Minister and not the Prime Ministry.

In the law no. 2945, the scope of the matters to be arranged by regulations is wide and vague. Any actions of an institution that had the power to make regulatory decisions on almost every aspect of social life were excluded from judicial review. Thus, Article 125 of the constitution, which stated that recourse to judicial review, must be available against all actions and acts of the administration were violated. This regulation was contrary to the existing system of domestic law and the principles of the rule of law.

The 1982 Constitution, while being highly problematic regarding the principles of the current democratic state of law, does not explicitly or exclusively reject universal political values on paper. On the other hand, the internal state mechanism established during the military regime hindered the effective and permanent use of certain rights of the citizens specified in the constitution. In summary, Turkey had been governed by a second-de facto-constitution in the form of a secret regulation for nearly 20 years. The practices of this regime were primarily determined by security concerns and managed by the NSC through its General Secretariat. Therefore, the NSC and the GSNAC can be defined as institutions in which the boundaries of this dual structure intertwined. Both have enjoyed constitutional protection, and by secret

regulations, deepened their already large field of intervention while establishing an internal power mechanism free from judicial supervision.

In the context of this state structure, the administrative institutions that were not under direct control of the military were confined to "to obey the requirements of the national security policy" by law enacted during and after the 1980 coup and they functioned as the centralist mechanisms of the security state. Thus, all the layers of the executives and their range of action were surrounded by the national security taboo.

2.2. National Security and the Limits of Politics and Rights

2.2.1. National Security as a Legal Tool for Military Control of Administration

According to the 1982 Constitution, "the formation, abolition, functions, powers, and organization of the ministries shall be regulated by law" (Art.113). In this context, the military government issued Decree No. 174 dated December 13, 1983, called the "Decree Law on the Establishment and Duties of Ministries." This decree is important for two reasons: First, the decree appointed the Presidencies of the Research Planning and Coordination Council, which is responsible for determining the working principles and main service policies of the ministers and the ministry, to produce policy within the framework of national security policy. According to Article 21 of this decree law, "the ministers are responsible for carrying out the ministry's services so that they comply with legislation, the general policy of the government, the national security policy, and they have to answer to the Prime Minister." Among the duties of the Research, Planning and Coordination Board of the Ministry were "determining the working principles of the Ministry for the fulfillment of the orders and duties defined within the framework of national security policy" and "assisting the preparation of the ministry's main service policy and plans in accordance with these principles." Yet, the 1961 Constitution, referred to as the reference text of the 1982 Constitution, only held the Council of Ministers accountable for the general policy of the government. In the 1961 Constitution, no official policy is mentioned under national security politics.

The second important point in relation to the Decree Law is that the above-mentioned articles would be "cut-and-paste" in the decrees and laws which would be issued after this date to regulate the structures and duties of the individual ministries (Decree-Law No. 180 on Organization and Duties of Ministry of Public Works and Housing, December 14, 1983; Decree-Law No. 181 on Organization and Duties of Ministry of Health, December 14, 1983; Decree-Law No. 441 on Organization and Duties of Ministry of Agriculture and Rural Areas, August 9, 1991; Decree-Law No.178 on Organization and Duties of Ministry of Finance, December 14, 1983; Law No. 2992 for Amendments of Decree-Law on Organization and Duties of Ministry of Justice, March 29, 1984; Law No. 4856 on Organization and Duties of Ministry of Environment and Forestry, May 8, 2003; Act. No. 3154 on Organization and Duties of Ministry of Energy and Natural Resources, March 1, 1985; Act. No. 3152 on Organization and Duties of Ministry of Internal Affairs, February 23, 1985; Law No. 179 on Organization and Duties of Ministry of Education, June 8, 1984; Law No. 3143 on Organization and Duties

of Ministry of Industry and Commerce, January 18, 1985; Law No. 3348 on Organization and Duties of Ministry of Transport, April 17, 1987).

Both during the presidency of Kenan Evren, when the entire September 12th Coup cadre took over the government, and later during the presidency of Turgut Özal as the first civilian president in the post-coup period, the laws and decrees concerning the ministries had the above-mentioned articles in them verbatim. The same job definition is reported in the laws regarding the undersecretaries of the prime minister's office: "The undersecretaries, as the highest rank personnel of their organization, are responsible for carrying out their services in compliance with the general politics of the government, the national security, development plans, and annual programs. Furthermore, they are responsible for maintaining coordination and collaboration in their field of operation with other related governmental institutions."

The Research, Planning and Coordination Department Presidencies reporting to the Undersecretariats were given the task of "determining the working principles for the fulfillment of orders and duties given within the framework of national security policy, and assisting with the preparation of the main service policy and plans of the Undersecretariat in accordance with these principles" (Decree-Law No. 491 on Organization and Duties of Undersecretariat for Maritime Affairs, August 19, 1993; Decree-Law No. 485 on Organization and Duties of Undersecretariat of Customs, July 13, 1993; Decree-Law No. 188 on Organization and Duties of Undersecretariat of Treasury and Foreign Trade, December 13, 1983)

Prime Minister's Office had six undersecretariats during the period that this dissertation covers: The Undersecretariat of Treasury, the Undersecretariat of Foreign Trade⁷⁹, the Undersecretariat of Maritime, the Undersecretariat of Customs, the Undersecretariat of State Planning Organization, and the Undersecretariat of the National Intelligence Organization. Since it has a decisive role in the subject matter of this dissertation, there is a separate chapter on the Undersecretariat of the National Intelligence Organization. For the remaining five undersecretariats, except for the Undersecretariat of State Planning Organization, the task definition was to fulfill the requirements of the national security policy. As mentioned above, the GSNSC worked independently with the State Planning Organization to ensure that the financial, economic, and social measures required by the national security policy are included in the development plans and budget of the GSNSC. In summary, ministries and all undersecretariats affiliated with the Prime Ministry are legally obligated to act in accordance with the national security policy.

The same picture emerges in the legislation of the general directorates affiliated with the Prime Ministry and ministries. The seven directorates of various ministries share a common article titled "The Duties of the General Director," which states that "the General Director [...] is responsible to the Minister for carrying out the services of the administration [...] in accordance with [...] the legislation and decisions of the Board of Directors and *national security policy*" (Decree-Law No. 231 on Organization and Duties of Directorate General of

⁷⁹ The Undersecretariat of Treasury and the Undersecretariat of Foreign Trade were separated 11 years after their establishment by the Law No.4056 on Organization and Duties of Undersecretariat of the Treasury and Undersecretariat Foreign Trade issued on December 20, 1994.

Press and Information, June 18, 1984; Decree-Law No. 227 on Organization and Duties of Directorate General of Foundations, April 18, 1984; Law No. 3289 on Organization and Duties of General Directorate of Youth and Sports, May 28, 1986; Law No. 3234 on Organization and Duties of General Directorate of Forestry, November 8, 1985; Law No. 3202 on Organization and Duties of General Directorate of General Directorate of Rural Services, May 22, 1985; Decree-Law No. 320 on Organization and Duties of Directorate General of National Lottery Administration, June 6, 1986; Law No. 3254 on General Directorate of State Meteorological Services, January 14, 1986). Even the Presidencies of the Research Planning and Coordination Department working under the General Directorate are bound by the same task of determining "the working principles to fulfill the orders and duties given in the framework of national security policy." The seven administrative units under the Prime Ministry were the General Directorate of Press and Information, General Directorate of Foundations, General Directorate of Youth and Sports, General Directorate of Rural Services working under Ministry of Agriculture and Rural Affairs, General Directorate of Forestry working under the Ministry of Environment and Forestry, General Directorate of State Meteorological Works, and General Directorate of National Lottery working under the Ministry of State Finances.

The regulation that was brought to the National Lottery Administration is another example of how the national security obsession crept into the quotidian realms, seemingly far from the domain of politics. The fact that 95 % of the net revenue of the National Lottery was allocated to the Defense Industry Support Fund established in 1985 was likely the underlying reasons for this reflex.

Abiding by the rules of national security politics or the obligation to serve the power that shapes these politics is not limited to the above-mentioned administrative institutions. It appears that these stereotypes were introduced into the legislation of many institutions that the September 12th regime created or rearranged within the framework of security ideology. For example, the legal regulation made in 1984 regarding the State Institute of Statistics, obliged the chairman of the Institute to act in accordance with the national security policy (Decree-Law No. 219 on Organization and Duties of Presidency of State Institute of Statistics, June 18, 1984). The expectation that the head of an institution, which compiles and assess "independent, objective and reliable" statistical data and information (as stated in its official website) in Turkey, should behave in accordance with the national security policy, shows that the autonomy of this institution was undermined.

Similarly, among the principles to be applied in the services and activities of Atatürk Supreme Council of Culture, Language, and History (also mentioned in the second chapter) there is one that declares its goal as "being the guardian and the protector of the *requirements of the national unity and security*, national moral values and national traditions" (Law No. 2876 on Organization and Duties of Atatürk Supreme Council for Culture, Language and History, August 17, 1983). This council, in one of its reports published in 1986 (Turkish Culture Planning Organization Report) makes this critical statement: "The cultural policy is part of the national security politics of the state."

The concept of national security is also found in the Supreme Council for Science and Technology, which was established during the military government period. In the first article

of the related decree law (Decree-Law No. 77 on Organization and Duties of Supreme Council for Science and Technology, October 4, 1983), the goal of this council was explained as “establishing that the research and development policies within the fields of science and technology are in line with economic development, social improvement and *national security goals* and giving direction to them to ensure they are coordinated.”⁸⁰ As a result, the state mechanism that emerged from the relational chain between the constitution, provisions of code, and regulatory articles of the September 12th regime was as follows: The national security policy was determined by a seemingly civil security secretary under the supervision of the General Staff, employees of which were soldiers but were working under the prime ministry. The military hierarchy, in the form of the NSC and through its decisions, presented the policies to the government. These decisions were reviewed as a "priority" by the cabinet, and after they were smoothly approved in the context of national security politics, the executive organs which were composed of ministers and their administrative units were all mobilized by the military bureaucracy.

2.2.2. National Security as the Restrictive Criterion of Rights and Liberties

Chapter 2 argues that the 1980 regime established a constitutional system that accepts exceptions and limitations as rules, rather than defining individual rights and liberties as the fundamental means of social life and the state as a regulatory–supervisory entity. The criteria Article 13 of the 1982 Constitution declares that fundamental rights and freedoms may be restricted by law, "with the aim of safeguarding the indivisible integrity of the State with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest, public morals and public health, which are mentioned both in the 1982 Constitution and in the legal statues passed during that period, are highly ambiguous and legally problematic. However, due to the limitations of this dissertation, the analysis is confined to the national security criterion. Restrictions based on national security are of great importance, as the concept constitutes the legal basis for the actions of the institutions at the top of the state hierarchy. Although it dominates a vast field, there is no clear definition of this phenomenon. In the context of the state-individual and state-society relations, it is used as a trump card in favor of the former.

The national security concern entered the stream of policy through the legislative and constitutional amendments of the 1971 interim government, and it quickly became one of the restriction criteria on the rights and liberties in the Turkish judicial system. The Constitutional Amendment Law No. 1488 of September 20, 1971, interfered with most of the libertarian elements of the 1961 Constitution. The 1961 Constitution stated that the fundamental rights and freedoms could not be touched, even for “public morality, public order, social justice and

⁸⁰ However, it should be noted that, the "fears" of those importing security paradigms in Turkey have not allowed them to support academic and scientific work, especially in social sciences. It was stated at the 2005 council meeting that no support was provided to those working in social sciences until the 2000s, the period when integration efforts with the EU accelerated. The fundamental reason for this lack of support was explained in the same meeting as the deep-rooted "prejudiced approach" to social sciences "coming from the past" (TÜBİTAK, 2005, pp. 2-4).

national security" reasons. With the amendment made in 1971 to the related article, however, the "protection of national security" was considered one of the pillars that could restrict basic rights and liberties by "law" (Art. 11\Par. 1). This clause was passed on to the 1982 Constitution, with an additional provision stating that "the general restriction terms apply to all basic rights and liberties" (Art. 13).

The national security concerns also created an opportunity for interventions into the freedom of information and freedom of the press. The 1961 Constitution declared that the freedom of press and information could be restricted by law "to protect national security"(Art. 22). In the 1971 amendment, a new article gave the administrative authority to confiscate, shut down and charge newspapers and magazines "in cases where there was a delay in the protection of "national security," "indivisible integrity of the state and its nation," or "public order." The 1982 Constitution adopted this amendment with small changes in wording, and it included a new paragraph stating, "any publication which clearly bears the characteristics of being a continuation of a suspended periodical is prohibited" (Art. 28/Par. 9). Additionally, 'newspapers and magazines' were changed to 'periodicals and non-periodicals,' such that books were included in the sanction. Article 30, also made possible the seizure, confiscation, or barring from operation of the printing press or publishing houses "in cases where offenses against the indivisible integrity of the state with its territory and nation, against the fundamental principles of the Republic or national security leading to conviction, are involved."

One of the most important direct interventions made to the freedom of information was the Turkish Radio and Television (TRT) Act, issued during the military government (Law No. 2954, November 14, 1983). This law eliminated the principles of objectivity and impartiality of public broadcasting in the 1961 constitution and removed the autonomy of TRT. The new law included "the fulfillment of the requirements of the State's national security policy" as one of the broadcasting principles of TRT (Art. 5\c). Moreover, article 15 of this law authorized TRT to establish temporary advisory councils with the purpose of "benefitting from their special expertise," and made GSNCS solely responsible for the issues related to national security. Given that the monopoly of TRT continued until the first half of the 1990s and a CRP, authorized to conduct psychological operations, it was almost impossible to receive news in Turkey that was not biased or manipulated on sensitive subjects for the state.

This legal framework also prevented the radios and TV networks that were set up after the state monopoly regulations in 1994 from developing a free and impartial broadcasting policy on the issues addressed by the NSC. The law of private radio and television issued in 1994 stipulated that broadcasts should comply with national security requirements (Law No. 3984 on the Establishment of Radio and Television Enterprises and their Broadcasts, April 20, 1994). Moreover, the same law established the Radio and Television Supreme Council (RTSC) to organize radio and television broadcasts and authorized the General Secretariat of the National Security Council to appoint one of the members of RTSC (Art.3/d). Thus, the Secretary-General had direct control over the compliance of the broadcasts with the security policy and, if necessary, held the authority to intervene.

Within the same framework, the freedom of association and the freedom of assembly were also restricted on a national security basis. While the 1961 Constitution limited the "right

to establish associations" only to protect public order and general morality, the 1971 amendments added the measures of "indivisible integrity of the state and nation" as well as the "protection of national security" to the provision (Art. 29). A supplementary provision was also added to the constitution, stating that the activities of associations may be terminated by order of an administrative authority in cases where a "delay endangers national security" (Art. 29/3). Not only were these amendments adopted by the 1982 Constitution, but with a new provision, the operations of the associations, classified as public institutions and professional organizations, could be terminated by an "an authority designated by law" if they posed a threat to national security (Art. 33/Par. 4). Similarly, the 1982 Constitution inserted "strong possibility of violation of national security requirements" as criteria that constituted the prohibition of meetings and demonstration marches. In the 1961 Constitution, the intervention to these rights had been limited only to the protection of public order.

The 1982 Constitution blocked off the voicing of the alternative views on the subjects, which the national security state kept in a status quo circle. This legal barrier based on security discourse was further enhanced with the passing of two laws after the adoption of the 1982 Constitution "Associations Law" (Law No. 2908, November 7, 1983) and "Meetings and Demonstration Marches Law" (Law No. 2911 of November 8, 1983).

Restrictions on trade union rights, collective bargaining agreements, and strike and lockout rights were legitimized by a similar logic. With the 1971 amendments, the protection of national security became a restrictive criterion in the legal system for the rights of those employees and employers who wanted to establish unions or to join or leave them. The related articles of the 1982 Constitution, did not give a reference to the national security. However, the 1983 Collective Agreement, Strike and Lock-out Law stipulated that the collective contracts could not contain any provisions in conflict with the national security. Likewise, strikes and lockouts could not pursue goals against [...] national security (Law no. 2822 on Collective Agreements, Strike and Lock-out, May 7, 1983). In the same law, it was also affirmed that an ongoing strike or lockout, or those about to begin, could be postponed for 60 days by the decisions of the Council of Ministers if they might affect national security (Art. 33).

As a result, the legal regulations of September 12 placed the highly ambiguous national security concept into the foundations of the administrative structure of the state, and it became the restrictive measure of rights and liberties ranging from freedom of the press to individual and social rights. This discourse created a legal (if not legitimate) ground to define any peaceful opposition against national security policies or challenges against the ideological positioning of the determining actors as a crime to be eliminated. Thus, the administrative mechanism reached a final form that constitutionally secured the hegemonic state structure rather than citizenship rights.

2.3. The Intelligence Unit of the National Security State: National Intelligence Organization

The first official intelligence organization of the Republic of Turkey was established under the name the Directorate of National Security Service (DNSS; Milli Emniyet Hizmetleri

Riyaseti) on January 6th, 1926. It was a secret unit that reported to the Intelligence Office of the General Staff (Erkan-ı Harbiye-i Umumiye Riyaseti'nin İstihbarat Dairesi), which is currently known as the headquarters of the Turkish Armed Forces (İlter, 2002). With the direct orders of Mustafa Kemal Atatürk for the cabinet, DNSS became an official unit and was housed under the Office of the Prime Minister. The regulation about DNSS's secret cadres was published in the official gazette of the parliament and was eliminated in 1943 (Ibid.). Loan personnel from military and law enforcement cadres primarily ran the DNSS, and its operations were limited to the domestic sphere (Tunçkanat, 1987 p. 93). With the beginning of the Cold War in the 1950s, the CIA started using the DNSS for its own purposes and interests (Ibid.). This continued to such an extent that some portion of the staff salaries at the organization was directly paid through the CIA.

Salih Korur, then counselor to the prime minister, made the following statement about the unit during his trials about slush fund corruption in the High Court (cited in Tunçkanat, pp. 93-94):

"There were a lot of rumors, Americans dominated our National Law Enforcement, due to their fiscal connections, [sic] they are exerting influence. All our cases are in the hands of the American National Security Service. We have heard these rumors. When I started my job, I realized that a school, Istanbul Police Department, and Yeşilkoy Investigation Unit were completely taking orders from the Americans. They were directly paying the salaries at that school to the school's principal. The Yeşilkoy Investigation Unit was also directly financed by the Americans; same was true for the Istanbul Police Department. [...] Americans were directly paying our officers, and since they were paying them, they took the liberty to use them as their own. Our staff at the interception services was also at their disposal."

Adnan Menderes, the prime minister at the time stated the followings on the subject (Ibid, pp. 94-95):

"[...] As the counselor clarified, we heard about the bugging of schools. As he also added, we wanted to prevent that from happening. In essence, the reason for my appointment of him into the service is about "going in and trying to understand what was going on." We said let's put an end to it after we achieve what we wanted. We did not want to be on bad terms with the Americans, we need their help indefinitely, and I just wanted to prevent our officers from being paid by them."

Tunçkanat recorded that after the coup d'état on May 27th in 1960, DNSS was largely cleared of the CIA influence. However, according to him, the CIA's was still partly involved in the organization since they could not identify the informants who continued to work for the Americans (p. 97).

In 1963, the secret service sent a new draft bill to the parliament to restructure the state according to the national security axis. Below is a quote from the speech of then Prime Minister

İsmet İnönü; it provides insight into the process of this secret service-related draft bill (cited in Özdemir, 1989, p. 165):

"The National Intelligence Organization is being established to address the security and the national policy of the state as a whole. It also aims to maintain its conduct. This organization will collect the most updated and reliable news to pass them onto the National Security Council, which is founded as a body of the Constitution. [...] Once this organization is founded, the institutions and state bodies, which collect information and news will not only have to think where to pass those on but they will also do better and well-planned intelligence service by knowing which information to acquire or means of getting them. At the very same time, they would be completing an updated intelligence work up to par with National Security Council standards."

Two important conclusions came from these hearings. First, like its American counterpart, the NIO was designed as an institution closely linked to the National Security Council. Second, unlike the CIA, the state gave the NIO the task of internal and external intelligence operations, such that national security could be maintained. The NIO's duties and tasks were summarized as follows in the scope of Law no. 644, which was adopted on July 6th, 1965 with almost a two-year delay: "NIO is entrusted with powers to collect military, political, commercial, economic, financial, industrial, scientific, technical, biographical, psychological and national security-related intelligence that would be essential in the preparation of national security plans of the state. It is also responsible for the dissemination and transfer of this information to the National Security Council and the Prime Minister and other related official bodies. Furthermore, it is expected to coordinate actions and intelligence among all the intelligence units and institutions of the State and to fulfill the necessities of psychological defense systems and to counteract external intelligence."

While the NSB of the September 12th coup strengthened the institutional structure of the security state, it also reorganized its main intelligence body. NIO achieved its current status with Law no. 2937, on the State Intelligence Services and the Law of National Intelligence Organization that was passed pursuant the approval of the 1982 Constitution. With this law, the NSC's sanctions on NIO increased considerably compared to the regulations of 1965. After analyzing the language and tone of this new law that regulates the task and duties of NIO, it is evident that the crucial administrative project of the September 12th regime was to restructure the state along the lines of national security.

The first task of NIO was defined as "establishing National Security Intelligence on the State level and transmitting this intelligence to the President, Prime Minister, Chief of Defense and the General Secretary of National Security Council respectively" (Art. 4\Par a). The second essential duty was "assisting the President, the Prime Minister, Chief of Defense, the General Secretary of National Security Council and other related ministers with the intelligence input and needs when they prepare the plans related to the national security agenda of the state" (Art. 4\ Par b). As such, parallel to the state perception of the September 12th coup generals, the hierarchical order of the state actors, i.e., the security protocol was reorganized by moving the

Chief of Defense and the General Secretary of the National Security Council ahead of the ministers. Furthermore, the new law made the ministries and other state bodies responsible for passing on any intelligence they collected on national security to NIO (Art. 5). As such, the ministers of an elected government were not only reduced to operational units of the security agenda defined by the military cadres; they were also assigned duties as the intelligence officers of the state status quo.

Moreover, according to its law, NIO would submit any proposals it prepared to guide the intelligence operations of the state enterprises first to the NSC and then to the Prime Minister (Art. 4/ Par. c). With the passing of this law, a new unit called the National Intelligence Coordination Council was established under the direction of the NIO Undersecretary. The goal of this council was to outline foundational ideas, such that intelligence topics could be identified, managed, and coordinated. The compositional structure of this council was in line with the conventional military-civil hierarchy of the state, which meant that the General Secretary of the National Security Council (or his deputy secretary) and the General Staff Intelligence Director (or his deputy director) were the first two members of the council succeeding the Counselor. The counselors of the various ministries and other civil public officers received lower ranks in the intelligence protocol.

The fact that the President and the Prime Minister were in the upper ranks of this hierarchy was not significant in this context because the election of the undersecretary of NIO was tied to the NSC's decision. In other words, it was impossible for a civilian to obtain this position if the military cadres did not approve of them. Regarding the practices of the State from the establishment of NIO until the coup d'état of September 12th, all NIO Undersecretaries were selected from the high-ranking military officers, and a significant number of NIO staff were either active military officers or retired ones.⁸¹ Until the beginning of the 1990s, military officers directed the operations of NIO and the army had direct domination over the organization (Özkan, 1996, Ünlü, 2005; Kılıç, 2009).

⁸¹ The list of undersecretaries who have served in NIO is as follows (<http://www.mit.gov.tr/mustesarlar.html>):

- 1- Avni Kantan (Military Officer) 14.07.1965-07.04.1966
- 2- Fuat Doğu (Military Officer) 02.03.1966-23.07. 1971
- 3- Nurettin Ersin (Military Officer) 02.08.1971-25.07.1973
- 4- Bülent Türker (Military Officer) 26.07.1973-27.02.1974
Bülent Türker (Military Officer) 26.09.1974-24.11.1974
- 5- Bahattin Özülkler (Military Officer) 28.02.1974-26.09.1974
- 6- Hamza Gürgüç (Military Officer) 25.11.1974-13.07.1978
- 7- Adnan Ersöz (Military Officer) 13.07.1979-19.11.1979
- 8- Bülent Türker (Military Officer) 19.11.1979-07.09.1981
- 9- Burhanettin Bigalı (Military Officer) 07.09.1981-14.08.1986
- 10- Hayri Ündül (Military Officer) 05.09.1986-29.08.1988
- 11- Teoman Koman (Military Officer) 29.08.1988-27.08.1992
- 12- Sönmez Köksal (Civilian) 09.11.1992-11.02.1998
- 13- Şenkal Atasagun (Civilian) 11.02.1998-11.06.2005
- 14- Emre Taner (Civilian) 15.06.2005-26.05.2010
- 15-Hakan Fidan (Civilian) 27.05.2010-10.02.2015

Given the military bureaucracy's deep and steady mistrust in civilians, it is not wrong to assume that NIO's true loyalty was with the military wing of the NSC rather than the president. An example of this can be found in the fact that NIO did not inform the civilian governments about the impending military coups in 1971 and 1980. İhsan Sabri Çağlayangil, the Minister of Foreign Affairs of the 1971 government, said that he had heard about the coup from the Iranian Shah on an official visit (cited in Arcayürek, 1989, p. 61). Demirel, when asked in a newspaper interview in 2005 if he had heard about the coup from NIO, he said "No, in Turkey these sorts of news don't come from official channels. It is the state tradition. NIO or the Police Departments do not warn you about this. Even if they know, they would not" (Yetkin, 2005).

Özkan (1996) claimed that the military personnel from NIO participated in planning the September 12th coup (p.285). He also claimed that the NIO personnel who had infiltrated almost all of the ideological organizations from every political inclination before the 1980 coup played an essential role in escalating the terrorist acts, let alone prevented them. Many examples of such incidents were verified in the official reports sent to the military courts (Ibid). Before the coup, although the martial law declared in 13 cities gave the military the necessary authority to intervene in the situation, it refrained from action. With the September 12th coup, however, all the terror acts stopped suddenly.⁸² Immediately after the coup, all the organizations which were labelled as illegal were overthrown with the help of the intelligence that came from NIO. The fact that an intelligence service waited for the coup to occur to intervene into the situation proved the control of the military within the intelligence organization.

In the 1990s, due to the civilization efforts within the NIO, Hiram Abas, a notorious U.S. trained civilian intelligence agent of the 1970s, was appointed as deputy undersecretary. In his letter to president Özal, Abas revealed how the military still had extensive influence within the organization (Analiz 07: Gehlen ve İstihbarat, 1991):

“[...] In democracies, since the intelligence services do not take on the responsibility of safeguarding the regime against its own public, there is no need for the army to be in close contact with the intelligence service. In democracies, the main duty of the intelligence services is about foreign affairs and intelligence is considered to be an expert field. Because of this, highly competent and trained intelligence agents are preferred for top rank positions. In democracies, the relationship of the intelligence services and the military forces is limited to the sharing and passing on the intelligence of foreign states targeted by the army. The services operate under the governance and control of the democratic political authority. [...] In our state, it is not clear under which office the NIO operates.”

⁸² In an interview realized in 2010, Demirel said the followings on this subject: I said, "How come the bloodshed on September 11th stopped suddenly on September 13th?" They told me (referring to the junta) "We did not have the authority." I said "Where did your authority come from on September 13th? The authority you had on September 13 had existed on September 11th. You had every authority of the martial law." And I have to say with regret that September 12th is the collapse of the state. It is not vice versa. I mean, the state had collapsed, and someone is rising it up. We destroyed the state with our own hand. And after that in my opinion, Turkey's regime has suffered a great deal, and everything has been wounded. (Demirel'den Evren'e Kanlı Suçlama, *Radikal*, October 8, 2010)

The appointment of the first civilian Undersecretary to the NIO occurred in 1992 during the True Path Party and Social Democratic Populist Party coalition government. Based on the criticisms of İsmet Sezgin, the Minister of Internal Affairs of the coalition, against the military dominance in the organization, the government proposed the establishment of a new civilian Undersecretariat to fight against terrorism. The purpose of this new unit, which would be housed under the Ministry of Internal Affairs, was to ensure coordination among all the intelligence units of the state and to unify the intelligence apparatus. However, all the efforts towards this goal failed. The NIO refused to report to such a new establishment and conveyed this message to the ministry by saying "We would only loan personnel if it is established" (*İkibin'e Doğru*, 1992). The military circles also rejected the second plan of the government proposing that the NIO should only deal with the foreign intelligence while the domestic intelligence should be handled by a new establishment modeled after the FBI. The last military undersecretary, Lieutenant General Teoman Koman, warned the government through an announcement he made to the press stating that he was against any restructuring efforts at the NIO. Meanwhile, the Chief of Defense Güreş further reinforced the role of the army in the selection of the Undersecretary by saying that "Having my approval is a must" (Ibid).

In the light of these developments, it does not seem meaningful to argue that the appointment of a civilian undersecretary to NIO in 1992 was a critical step towards democratization or civilianization for two reasons: First, a substantial military intelligence network was already established. By 1990s, the General Secretary had already taken steps towards forming its own intelligence units with officers selected from the NIO. The new headquarters of the General Secretary was organized for this purpose (Özkan, 1996). The other reason is the military's definitive convictions of their influence within NIO. According to the NIO's law, the military personnel to be recruited into the NIO would be jointly chosen by the Department of the Chief of Staff and its Undersecretary. The decision of the Council of Ministers was not required for the appointment of officers and noncommissioned officers to the NIO (Art. 11). Therefore, the NIO cadres were all under the control of the military.

In summary, the national intelligence in Turkey was designed to be the intelligence unit of the army. However, as analyzed in the last chapter, the military would not be satisfied with the existing intelligence structure and establish new legal and illegal intelligence units to wage war against the "new" enemies of the state (Kurdish separatism and the political Islam) after the end of the Cold War.

2.4. The Judiciary Leg of the National Security State: State Security Courts

2.4.1. The Establishment, Development, and Powers of SSCs

The previous chapter explained how State Security Courts (SSCs) were first introduced through a constitutional amendment in 1973, during the interim regime of March 12th, for reviewing the offenses committed against the security of the state. However, in October 1976, the Constitutional Court of Turkey abolished these courts. However, the September 12th military regime re-established these courts by the 1982 Constitution with enlarged authority and mandate covering loosely defined offenses against the security of the state. From this time, until

their terminal closing through legal amendments in 2004 in the context of the EU membership process, these courts operated as agents to support the continuity of the hegemonic regime of September 12th and served to protect the state against individuals and oppositional fractions of society.

Under normal circumstances article no. 142 in the constitution states that "courts can only be established by law." The peculiar aspect of the SSCs' history is the fact that they were directly established by the 1982 Constitution and gained constitutional legitimacy. Article no. 143 of the 1982 Constitution defined the role of SSCs as follows: "State Security Courts shall be established to deal with offences against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the constitution, and offences directly involving the internal and external security of the State."

The related law proposed the establishment of SSCs throughout the country, in eight key cities (Adana, Ankara, Diyarbakır, Erzurum, İstanbul, İzmir, Malatya, and Van). While the courts were seated in these specific cities, their jurisdictional powers extended to the entire country (Art. 1 and 2). The NSC approved the law that resurrected SSCs (Law No. 2845 on the Establishment and Operation of State Security Courts, June 18, 1983) in 1983. These exceptional courts officially began their function on April 1st, 1984. Several features of the State Security Court system raised serious questions about the availability of a fair trial for defendants within the system. The first issue was regarding the nature of membership of the courts. SSCs consisted of a three-member panel of judges. The 1982 Constitution stated that the one principal and one reserve member of the SSC panels would be appointed from a pool of military judges. As such, in an anti-democratic and hybridized method, these courts paved the way to the trail of civilian defendants by the military judges.

According to the law of SSC, the military members of the courts and public prosecutor's assistants were to be selected by a council consisting of the Head of Personnel of the Chief of Staff, the Head of Personnel of the Force Command they are affiliated with and their legal advisors, and the President of the Military Justice Department of the Ministry of National Defense (additional Art. 8). Besides, the first and the second registry officers authorized to arrange and submit registry documents to military judges who serve in these courts were the Undersecretary of the Ministry of National Defense and the Minister of National Defense (Ibid). Military judges were obliged to participate in activities such as drills and maneuvers if their commanding officers deemed them necessary. Those who were appointed in foreign countries were chosen by the Chief of General Staff in line with the plan of the Ministry of National Defense. Their promotion to a higher rank was realized by the decision of the Supreme Military Council.

The General Staff and the Ministry of National Defense were primarily responsible for their employee personal rights. Given that the Chief of Staff was the de facto head of the Ministry of National Defense, the contradictory nature of these courts becomes more apparent

regarding the principle of independence of the judiciary.⁸³ The fundamental problem here was not about the military judges' ability to give objective and fair decisions but their military status. The foundational premises of the SSCs made it difficult for the judges to detach their consciences from the looming military authority.

Upon a request for review (22678/93) submitted to the European Court of Human Rights (HUDOC) on April 14th, 1997, HUDOC examined the SSCs in Turkey. On June 9th, 1998, the court declared that the foundation of SSCs was against the 6th article of the Human Rights Convention, which gives individuals the right to a fair trial. The main reason for this decision was based on the presence of the military judge which would jeopardize the possibility of a fair and objective trial process (Ankara Barosu İnsan Hakları Komisyonu, 1999).

Due to the internal criticism, new standards brought by EU Membership procedures, and a high number of the HUDOC convictions of the Turkish State, the article no. 143 of the constitution was amended in 1999. This amendment replaced all the military judges and other military members with civilian ones. A new regulation also required attorneys who worked in the SSCs to be appointed by Judges and the Attorneys High Council, as is the norm with general courts and judicial reconstitution. The main objective of this regulation, in the name of judiciary independence, was to sideline the government's executive powers over SSCs. However, these changes did not eliminate the problems caused by the exceptional status of the SSCs.

The SSCs and their applied methods while carrying out judiciary processes contradicted the international law standards. The SSCs were governed by special procedures that afforded fewer protections for defendants than procedures in Turkey's ordinary criminal courts (Report of the Joseph R. Crowley Program, 1998). Suspects accused of political crimes within the jurisdiction of SSCs were subject to extended periods of detention. The custody period was 48 hours according to the SSCs foundational statute. In the case of offenses committed collectively (3 or more persons) this period was extended to 15 days. According to the article no. 120 of the constitution, the custody period for individuals detained in places that were under the decree of a state of emergency was 30 days. For this reason, the torture and mistreatment allegations concentrated on cases reviewed by SSCs. One of the applications of this new law was the "officer in the court" rule, in which the accused individuals and their attorneys were asked to leave the courtroom. This situation would continue indefinitely if it were considered necessary. Also, the accused could be arrested due to alleged inappropriate language and behavior and were penalized without the right to appeal (İnanıcı 2011, pp. 44-45). Other applications of the

⁸³ Law No. 1324 on the Duties and Organization of the General Staff and Law No. 1325 on the Duties and Organization of Ministry of National Defense adopted both on July 31, 1970, granted the Chief of General Staff a significant political autonomy in determining "defense plans and strategies, military promotions and appointments, the defense budgets as well as weapons procurement" (Eldem, 2017, p. 174). The Ministry of National Defense was not more than a "support apparatus" and solely responsible for carrying out "administrative, financial, and procurement services" in various transactions (Ibid). The supremacy of the military bureaucracy over the Ministry was so much so that one of the "visions" which had been listed in the official site of the institution until the mid-2000s was expressed as "providing expert consultancy services to the Turkish Armed Forces" (http://www.msb.gov.tr/Birimler/MSBAnaSayfa/Fs_MSBMisyon.htm). Moreover, a large number of the staff of this ministry, including its undersecretary, was made up of soldiers. Between 1960 and 1987 the undersecretaries were appointed from among full generals and from 1987 onwards among lieutenant generals.

SSCs included the execution of the one third of a sentence of the convicted and arrested individuals in their cells, the finalization of trials in the absence of the accused persons, the continuation of trials during legal holidays, and the participation of the recused judges, in their own requisition appeals (Ibid).

The review powers of the SSCs, which are illustrated in the table below, were expanded with the 1991 Anti-Terrorism Act (ATA) (Law No. 3713 on the Fight Against Terrorism, April 12, 1991). The ATA took effect with the abolishment of articles 140, 141, 142, and 163 in Turkish Criminal Code no. 765. As stated earlier, these articles had been used against the perceived threats of communism, Kurdish nationalism, and the Islamist movements by the Turkish Republic. This process, which was deemed as a positive aspect of the democratization efforts, took a completely different turn when its contents were explored. ATA not only punished those who exerted brutal force or supported violence, but they also endorsed a political regime that prioritized national security and eliminated personal freedom, human security, and human rights in the name of the "fight against terrorism" (Hukukçular Derneği 2005).

Table 4: Political Crimes entered into force by Law No. 3713

| Article | Definition of crime | Penalty |
|---------|---|--|
| 7 | <ul style="list-style-type: none"> Establishing a terrorist organization and organizing its activities. Being a member of a terrorist organization. Aiding members of a terrorist organization and spreading propaganda for a terrorist organization. | <p>Heavy prison terms ranging from 5-10 years and a heavy fine</p> <p>Heavy prison terms ranging from 3-5 years and a heavy fine</p> <p>Heavy prison terms ranging from 1-5 years and a heavy fine.</p> |
| 8 | <ul style="list-style-type: none"> Spreading written or oral propaganda; organizing meetings, demonstration and holding a protest march with the aim of harming the indivisible integrity of the state and nation of the Republic of Turkey irrespective of the method, purpose, or thought. | <p>Heavy prison terms ranging from 2-5 years and a heavy fine. For owners and editors in chief of written press and news agencies, heavy prison terms ranging from 6 months-2 years and a heavy fine. For radios and televisions, broadcasting ban ranging from 1-15 days. For mass media, the punishment range can be increased to one third to half times.</p> |

The main problem arose from the definition of "terrorism" in the Law on Fight Against Terrorism. According to this definition, terrorism was "[...] any criminal act aiming to change; the principles of the Republic as stated in the constitution, to transform its political, legal, social, secular and economic conditions, to disrupt the indivisible integrity of the state and its people,

to jeopardize the presence of Turkish State and the Republic, to weaken the state authority, to destroy it or to seize it, to destroy the fundamental rights and liberties and finally to stage acts, as members of an oppositional group, to disrupt the internal and external security of the State or to disrupt the peace and order of the general public." Such a flexible and vague definition turned every dissident voice that disagreed with the security policy of the state through peaceful means into a potential terrorist. This terrorism definition combined with the exceptional powers of the SSCs further collided with the internationally set democratic and legal human rights standards and pulled the judiciary system into an unlawful domain. This definition stayed in use until the 6th EU Harmonization Package in 2003.⁸⁴

While ATA included some of the judiciary articles of the SSCs directly in the scope of terror acts, it regarded numerous other offenses as terror acts when they were committed with the aim of terrorism, as defined in article no.1. Also, article no. 145 from the Turkish Criminal Code, which lays out the legal sanctions for insulting the Turkish flag, and articles 6, 7, and eight from Law no. 3713 (as shown in the table above) were incorporated in the same scope. The ATA also increased the penalties that were given to these offenders by half. The act proposed that SSCs had to review the cases that were within its scope. As a result, most of the cases that were taken to SSCs after the law took full effect were considered acts of terrorism.

In its initial form, the ATA had rulings that protected the perpetrators of torture acts. The law stated that the offenses of civil servants and other staff members who were involved in the fight against terrorism and whose offenses occurred as a result of their jobs, would be trialed through a pending suit and would not be arrested (Art. 15. /Para 1). Moreover, except for crimes of murder and attempted murder, these public officials were put under the protection of the Law No. 4483 on Procedures for Prosecution and the Trials of Civil Servants and Other Public Servants for their acts, (Art. 15/Para. 3). As such, the trial of these accused would only be possible with the approval of their superiors. The two clauses of this article, no. 15, which granted privileges to civil servants, were later canceled, and repealed by the constitutional court. However, during the short time when the article was in effect, numerous torture cases were reviewed under Law No. 4483, which gave them an administrative leave option, and torture perpetrators were let go.

According to the Justice Department statistics, between 1994 and 2004, the number of persons who were arrested under ATA was 9083.

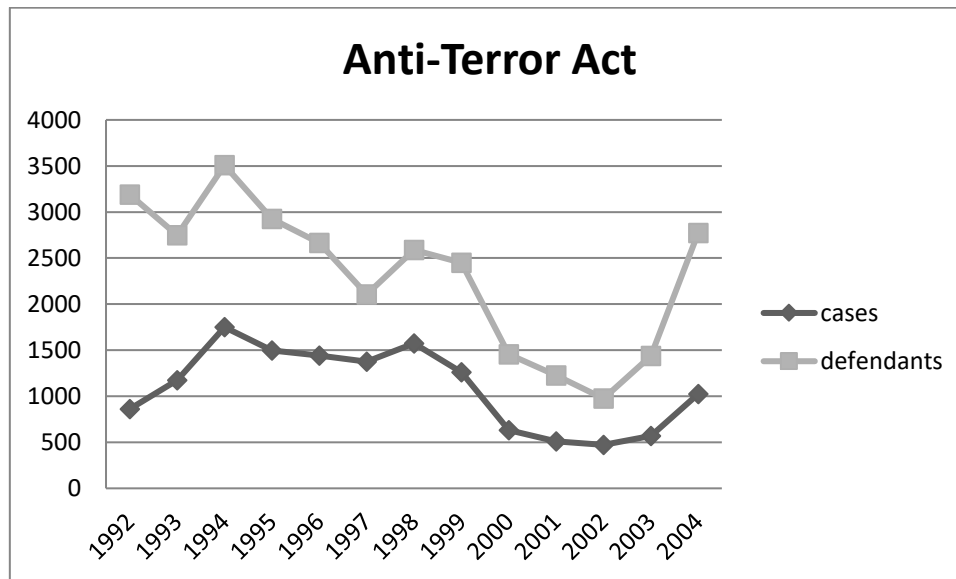
⁸⁴ With this package, the definition of terror was changed to approach its definition in international treaties. Further amendments were made in 2006 and 2010 and 2012. However as argued by the United Nations Human Rights Committee the legislation is still very problematic mainly in three areas: "the vagueness of the definition of a terrorist act", "the far-reaching restrictions imposed on the right to due process" and "the high number of cases in which human rights defenders, lawyers, journalists and even children are charged for the free expression of their opinions and ideas" (Turkey, United Nations: Criticism of Anti-Terrorism Laws, November 8, 2012).

Table 5: Yearly distribution of cases and number of defendants in the framework of ATA

| Years | Number of cases | Number of defendants |
|-------|-----------------|----------------------|
| 1992 | 860 | 3191 |
| 1993 | 1174 | 2750 |
| 1994 | 1750 | 3508 |
| 1995 | 1496 | 2924 |
| 1996 | 1440 | 2666 |
| 1997 | 1377 | 2104 |
| 1998 | 1572 | 2587 |
| 1999 | 1260 | 2451 |
| 2000 | 631 | 1455 |
| 2001 | 509 | 1226 |
| 2002 | 472 | 975 |
| 2003 | 569 | 1437 |
| 2004 | 1025 | 2773 |
| Total | 14135 | 30047 |

Source: Republic of Turkey, Ministry of Justice General Directorate of Judicial Record and Statistics, the official website, www.adli-sicil.gov.tr/Istatistikler/dgm.htm

Graph 1: Yearly distribution of cases and number of defendants in the framework of ATA



When these numbers are chronologically analyzed, it is evident that between 1993 and 2002, there was a decreasing trend in the number of cases and defendants. However, this trend was reversed between 2002 and 2004 (Graph 1).

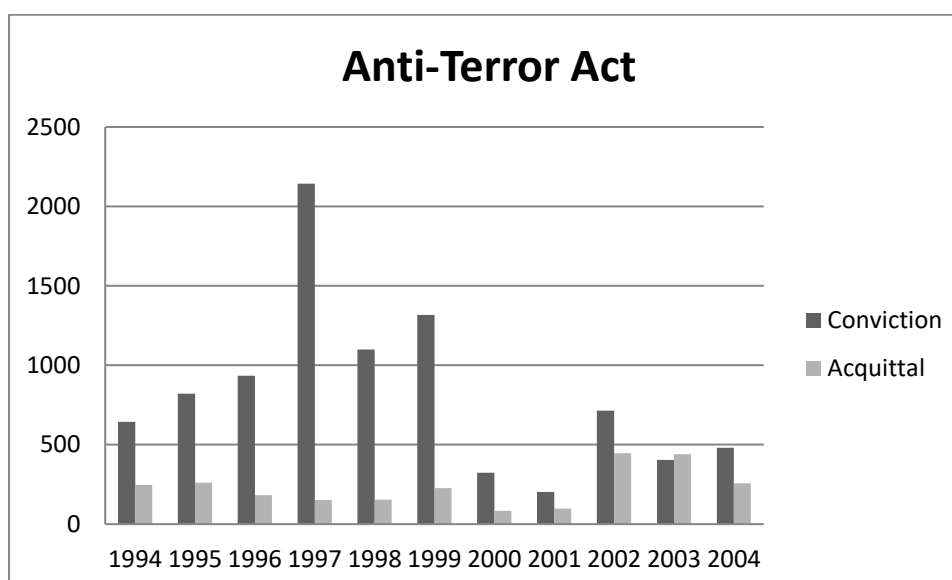
Table 6: The distribution of verdicts of the cases reviewed in the framework of ATA

| Years | Conviction | Acquittal |
|-------|------------|-----------|
| 1994 | 643 | 246 |
| 1995 | 821 | 261 |
| 1996 | 934 | 182 |
| 1997 | 2144 | 153 |
| 1998 | 1099 | 155 |
| 1999 | 1317 | 227 |
| 2000 | 324 | 83 |
| 2001 | 202 | 97 |
| 2002 | 714 | 446 |
| 2003 | 405 | 441 |
| 2004 | 480 | 256 |
| Total | 9083 | 2547 |

Source: Republic of Turkey, Ministry of Justice General Directorate of Judicial Record and Statistics, the official website, www.adli-sicil.gov.tr/Istatistikler/dgm.htm.

On the other hand, despite the increase in the overall number of defendants in the 2000s, there was a reverse trend in the number of cases that resulted in imprisonment and an increase in acquittal decisions (Graph 2).

Graph 2: Yearly distribution of verdicts of the cases reviewed in the framework of ATA



The main reason behind this relationship was the effect of EU Harmonization Process. The reforms that took place were not only at the political or legal levels; they were also directly projected onto the judiciary executions. The relationship between the political climate and the court decisions followed a directly proportional path, especially during the 2003-2004 reform years. Throughout this process, all the judges and attorneys were trained according to the

convictions of the European Convention on Human Rights and the European Court of Human Rights. The Ministry of Justice distributed seven guidebooks on the jurisprudence of the European Court of Human Rights, the right to fair trials, and the prevention of torture to the courts in Turkey, including the SSCs. These initiatives were successful to the point that courts started to implement these reforms, and high courts (such as the Supreme Court) began to make decisions that were compatible with these reform laws. Eventually, this change came to the SSC court cases that were based on contentious articles.⁸⁵

2.4.2. SSCs and Freedom of Expression and Thought

Due to its authoritarian and prohibitionist nature, the 1982 Constitution limited freedom of thought on both the general (Art. 13) and private (Art. 26) fronts. SSCs interpreted the existing and new articles of Turkish Criminal Code, which limited freedom of thought and freedom of expression, according to the tone and language of the 1982 Constitution. The two greatest obstacles to the freedom of expression in Turkey were Article no. 312 of Turkish Criminal Code (TCC) and Article no. 8 of ATA that was passed in 1991, at a time when PKK attacks intensified, and the Kurdish issue gained more visibility. In Sancar's words (2000), this last article titled "Propaganda against the Indivisibility of the State," "expanded the category of thought crime indefinitely" (p. 163).⁸⁶

While those who disagreed with how the Turkish State imagined its society were penalized with the former, individuals, who proposed alternative non-military solutions to the Kurdish issue were trialed within the scope of the latter. Making statements about ethnic differences was regarded as causing discrimination.

2.4.2.1. The Safeguarding of the Status Quo: TCC Article 312

Before the ATA was passed, the most contentious legal regulation on freedom of thought and freedom of expression, among other political offenses reviewed by SSCs, was paragraph 2 of article no.312. Before the founding of SSCs, penal courts reviewed and tried offenses that were defined by this article. In 1981, SSCs began to review the dossiers of these alleged offenses due to the changes made during the first year of the military regime. The main objective of this regulation was to penalize the oppositional thoughts and statements directed at the status quo.

⁸⁵ The 2004 Regular Report on Turkey's Progress Towards Accession stated that "as regards prosecutions brought under Articles 159, 169 and 312 of the Penal Code and Article 7 of the Anti-Terror Law, the courts have in many cases acquitted defendants prosecuted under these Articles" (p. 27).

⁸⁶ As a striking example of the ideological interpretation of Article 8, it is sufficient to look at the explanation of Ankara State Security Court prosecutor Talat Şalk following his indictment on the book of the sociologist İsmail Beşikçi titled *Bilim Yöntemi* (Scientific Methodology). Talk, in connection with the case, stated that there were no Kurds in Turkey in following words (*Gündem*, 1994, July 24): "It is scientifically proven by the historians that our citizens living in the South and the Southeast of Turkey, for various historical reasons have forgotten the Turkish language gradually, in decades and started to speak Kurdish."

Lawmakers worded article no. 312 in such a flexible way that the judiciary became vulnerable to the external political pressures of privileging the state against the individuals. Moreover, such a wording paved the way for contradictory interpretations. The scope of the freedom of expression could contract and expand according to the political climate of the day because the criteria of provoking the public were loosely defined in the law. The application followed suit. All the dissident voices led by the statements on the Kurdish issue and political Islam that crossed the 'red lines' of the state, ranging from radical left to extreme right, faced allegations put forward by the interpretation of this article. Many public intellectuals, journalists, writers, human rights advocates, and elected officials were tried in courts under this article.

On the other hand, the Supreme Court jurisprudence, which was formed by the decisions of lawmakers that interpreted the vague expressions of the article in the harshest way possible, treated nearly every stated opinion as an offense. The fact that those who were tried under Article no. 312 would lose their rights to be elected and to form political organizations, turned this article into a tool for a political witch hunt and caused the erasure of many rising political figures. For example, Akin Birdal, who was a well-known and well-respected human rights activist for his peaceful solutions to the Kurdish issue, was sentenced according to the article no. 312. After the court's decision, Birdal had to step down from his position as the general director of Human Rights Foundation. Besides, Necmettin Erbakan, the leader of the closed and allegedly unsecular Welfare Party, was put on trial in Diyarbakir SSC for a talk he gave in Bingöl in 1994, and he was given a one-year jail sentence. Since he was sentenced according to 312, he was banned from the political scene for the rest of his life. During this time, he lost his right to be a party founder and a candidate for parliamentary membership. Similarly, Recep Tayyip Erdogan, who was the mayor of the Istanbul Metropolitan Region, was also sentenced under article no.312 in 1988. His sentence was linked to a poem he read and a speech he gave in Siirt.

The Eighth Chamber of the State Council terminated the mayorship of Erdogan based on the finalized penalty under 312 and concluded that he lost his eligibility to be reelected. After the confirmation of his sentence by the Supreme Court, Erdogan was jailed for four months. The leader of the pro-Kurdish party HADEP, Murat Bozlak, and the former leader of the Rebirth Party (Yeniden Doğu Partisi), Hasan Celal Güzel, were also among the convicted political leaders. These examples can be multiplied for the leading public figures of Turkey. There was also a drastic rise in the number of other individuals who were tried under the scope of article no. 312 at the beginning of the 1990s, due to an increase in the oppositional views of different fractions in society, and the security state kept adding them to the list of potential threats. This trend became visible in the mid-1990s.

According to the statistics of the Ministry of Justice, between the years 1986 and 1989, a total of 108 cases under the scope of 312 were brought to court, and 175 were prosecuted in the courts. As seen in Table 7, there was a sharp increase in the number of cases opened based on article no. 312 in the 1990s. In 1999, an additional 1345 defendants were sent to SSCs. Also, 2638 cases were opened based on this article and 5212 defendants were prosecuted between

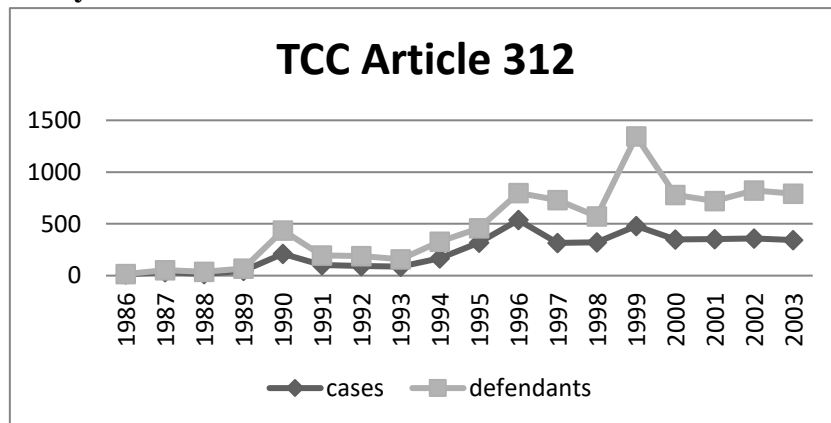
1990 and 1999. According to the same source, between 2000 and 2003, the same legal regulation tried 3115 people in 1405 new cases.

Table 7: Distribution of State Security Court cases according to types of crime

| Years | TCC Article 312 | | TCC Article 155 | |
|--------------|-----------------|----------------------|-----------------|----------------------|
| | Number of cases | Number of Defendants | Number of cases | Number of Defendants |
| 1986 | 13 | 15 | 4 | 4 |
| 1987 | 33 | 54 | - | - |
| 1988 | 16 | 39 | - | - |
| 1989 | 46 | 67 | - | - |
| 1990 | 210 | 435 | 3 | 8 |
| 1991 | 104 | 196 | 2 | 5 |
| 1992 | 94 | 190 | 11 | 21 |
| 1993 | 87 | 159 | 8 | 17 |
| 1994 | 167 | 328 | 14 | 24 |
| 1995 | 319 | 458 | 15 | 20 |
| 1996 | 537 | 797 | 14 | 15 |
| 1997 | 317 | 730 | 72 | 84 |
| 1998 | 323 | 574 | 1 | 3 |
| 1999 | 480 | 1345 | 1 | 5 |
| 2000 | 351 | 780 | 23 | 37 |
| 2001 | 352 | 722 | 5 | 10 |
| 2002 | 359 | 822 | 2 | 3 |
| 2003 | 343 | 791 | 16 | 44 |
| TOTAL | 4151 | 8502 | 191 | 300 |

Source: Republic of Turkey, Ministry of Justice General Directorate of Judicial Record and Statistics, the official website, www.adli-sicil.gov.tr/Istatistikler/dgm.htm.

Graph 3: Yearly distribution of cases and defendants in the framework of Art. 312



According to the official statistics (Table 7), 1705 people were charged between 1994 and 2001 based on article no. 312. During this period, the number of convictions was higher than the acquittals (Table 8).

During the post-modern coup period of February 28th, 1997, which is explored further in the following chapter, the number of convictions was more than double the average (Graph 4). It is crucial to determine whether the briefings given to judges and attorneys by General

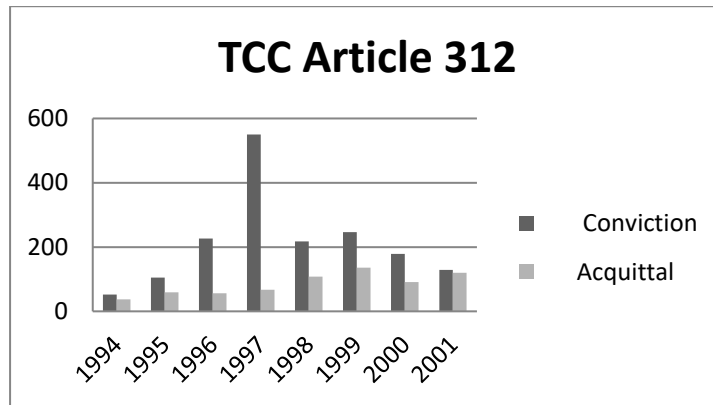
Staff during this period were influential in these decision processes. Similar to these briefings, which aimed to create publicity for these perceived threats, there were other initiatives for civil society as well.

Table 8: Distribution of State Security Court's cases according to verdicts

| Years | Type of verdict | | | |
|-----------|-----------------|-----------|-----------------|-----------|
| | TCC Article 312 | | TCC Article 155 | |
| | Conviction | Acquittal | Conviction | Acquittal |
| 1994 | 52 | 37 | 2 | 1 |
| 1995 | 105 | 59 | - | - |
| 1996 | 226 | 56 | 20 | 12 |
| 1997 | 550 | 67 | - | - |
| 1998 | 218 | 108 | - | - |
| 1999 | 246 | 136 | - | - |
| 2000 | 179 | 91 | - | - |
| 2001 | 129 | 120 | - | 1 |
| Sub Total | 1705 | 674 | 22 | 14 |
| 2002 | na | na | na | na |
| 2003 | 127 | 341 | 0 | 14 |

Source: Republic of Turkey, Ministry of Justice General Directorate of Judicial Record and Statistics, the official website, www.adli-sicil.gov.tr/Istatistikler/dgm.htm

Graph 4: Yearly distribution of verdicts in the framework of TCC Art. 312



During the EU Harmonization process, the state also made improvements to the scope of article no.312. During the coalition government of DLP-MP-NAP led by Ecevit, Mesut Yilmaz (the minister in charge of conducting negotiations with the EU) argued that article no.312 was criticized harshly inside and outside of the country and claimed that its presence jeopardized EU membership. However, there were many people inside the government and in the public, who did not agree with Yilmaz. According to the coalition partner NAP, article no.312 was securing the continuity of the state, and it opposed the abrogation or modification of it (http://www.belgenet.com/secim/anayasad_b07.html#2). The conservative circles in the press and judiciary also supported NAP's stance.

While NAP was resistant to the idea, the government managed to secure the support of the oppositional party, and within the framework of EU Harmonization process, it made softening changes to the article no. 312. Later, on April 1st, 2005, the new Turkish Criminal Code came into effect, and 312 took its final form. The new article in the new Code was numbered as 216 and it declared that "the persons, who provoke one segment of the society to show hostility and spite towards another segment of the society, based on ethnic, social class, racial, religious, sectarian and regional differences, will be sentenced to jail time from year up to 3 years if these provocations openly and imminently threaten public safety." With the help of the 'openly and imminently threaten' clause, the penalization of the accused based only on speech was eliminated.

2.4.2.2. The Intellectual Blockade Around the Kurdish Issue: ATA 8

As soon as the ATA came into effect in 1991, the pressures around freedom of expression and freedom of thought increased significantly. The first paragraph of article no. 8 stated that: "Whatever the reason, the means, and the ideology might be, one cannot organize meetings, put on protests or initiate marches that would aim to threaten the indivisible union of the Turkish Republic with its public."

The clause "whatever the reason, the means and the ideology," led to the prosecution of non-violent statements that were not related to terrorism. This provision was a typical legal regulation defining "crime of thought." Article no. 8 did not clarify what type of written and oral propaganda constituted a threat to the "indivisible union of the state with its public." Therefore, it became possible for the judiciary to penalize people arbitrarily based on written and oral statements. In other words, to prosecute and sentence someone, it was sufficient to assume that the accused aimed to disrupt peace and attack the union of the country. It was insignificant to investigate the real probability of this attack or to search for supporting evidence. As Erman (1996) stated, this legal framework was paving the way for penalizing the intention rather than the action itself (p.50).

As was the case with article no. 312, the interpretation of Article no. 8 depended on the political climate of the day. Many writers and publishers were prosecuted, and some were sentenced to jail in accordance with this article. Even the Supreme Court, which was the court of appeals for SSC judgments, did not look for evidence that pointed to assumed offenses; it accepted general intent as enough evidence for sentences (TÜSİAD 1997, pp. 115-116). In cases, where this article could not be used, article no.312 was implemented.

The first amendments to the article no. 8 were made on October 27th, 1995 through Law no. 4126. These amendments made it possible for people to ask for monetary penalization when they were sentenced to jail time, and the standard two-year to the five-year sentence was reduced to one to three years. Furthermore, the expression "whatever the reason, the means and the ideology" was removed from the article. In 1995, the courts reviewed all the cases based on the amendment and freed 143 people. On the other hand, some old cases that were predicated on article no.8 were reopened for a second assessment following the amendments made to the article (Human Rights Watch 1997).

The second major amendment came through the First EU Harmonization Law (Law no. 4744), resulting in adaptations to the monetary fines. In both amendments, no changes were made to the content of the offense that the article deemed as a threat. Finally, with the arrival of the Sixth EU Harmonization package (Law No. 4928), the article was rescinded. There are no official statistics on the number of cases, accusations, or sentences predicated upon article no. 8 from the ATA. However, the 1996 Turkey report of Human Rights Watch claimed that approximately 2,000 cases accrued in SSCs by mid-1995.

There was a significant increase in the press-related cases when the article came into effect. According to the data released in the TÜSİAD 1997 Report, in 1992, journalists and writers were sentenced to 25 years and 11 months in total, and they received monetary fines equaling 5 billion 976 million Turkish Liras. In 1993, jail sentences increased seven-fold, adding up to 165 years, and monetary fines increased eight-fold and reached 38 billion and 267 million Turkish Liras. This article was also used to ban and seize books and print sources. In 1991, the courts withdrew 121 newspapers and journals and 29 books from the market. The following year they banned and seized 189 newspapers and journals and 20 books, and in 1993, these figures boosted to 425 paper and journals and 29 books (TÜSİAD 1997, p. 124).

The Human Rights Association discovered that between 1994 and 2002, 2595 publications were either banned or withdrawn from the public domain. However, there is no information on the direct relationship between these decisions and article no.8. Regardless of the legal precondition, this action instilled fear of withdrawal into the press organs and caused self-censorship. The fact that it was legally possible and easy to prosecute the thinkers and their intellectual publications might have hindered the freedom of expression.

The only local political initiative was taken during the term of the 1991 TPP-SDP coalition government as a step towards democratization. While this coalition government was in power, a new legal framework was established in the Code of Criminal Procedure (CCP) to secure the right to legal defense and prevent torture practices. These changes to the legal framework, which included decreasing the duration of detention and improvement of the defense conditions, were due to the efforts of the SDP, the junior partner in the coalition. This draft bill that included the offenses reviewed by the SSCs, passed in the Parliament on May 21st, 1992. However, President Özal vetoed this draft bill due to the pressures exerted by the military cadres in the NSC and the governor of the state of exception at that time.

The military hierarchy suggested that the jurisdictional transfer of the offenses reviewed by SSCs to CCP would create a vacuum or a vulnerable spot in the fight against terrorism. Hereupon, the coalition parties tried to agree on a principle, which stated that these offenses would be subjected to this new legal framework with a two-year delay. However, when the nationalist faction in DYP also gave its support to the veto reasons, the law no. 3842 passed on November 18th, 1992 by accommodating the restrictive demands of the NSC. In the final analysis, the CCP provisions that incorporated the changes of the new law were not applied to the offenses that were reviewed by SSCs. Only those who were arrested for ordinary crimes could benefit from these changes.

This situation created two separate judiciary systems and attracted opposition from the bars. The heads of the bar associations defined the inapplicability of these amended provisions

to the offenses reviewed by the SSCs as unlawful (CMUK'um lütfen, *Hürriyet*, 1993, February 20). Furthermore, they claimed that the nature of the offense and the boundaries of the jurisdiction should not be left to the "arbitrary decisions of the law enforcement officers who had no expertise in the field" (Ibid.). However, due to the heavy pressure of the NSC on the government, the criticisms and objections of the legal circles remained futile.

Another draft bill that concerned SSCs was presented to the parliament on September 27th, 1996 during the "Refah-Yol" coalition government led by Necmettin Erbakan. One of the main goals of this bill was to remove article no.312 on thought crimes from the jurisdiction of SSCs, but this attempt also failed (U.S. Department of State, March 1996). The final amendment that ended discriminatory regulations and enabled the implementation of CCP provisions for all offenses came with the scope of the Sixth Harmonization Package (Law no. 4928) that was put into effect in 2003.

2.4.3. Crime of Thought after SSCs

SSCs were formally abolished, Article 8 was abrogated, and the scope of Article 312 was limited. However, those changes did not automatically lead to an improvement in the situation of thought crimes in Turkey. After the abolishment of the SSCs, the structure of these courts with its full staff and court cases continued to operate as 'Special Assize Courts' (Özel Yetkili Ağır Ceza Mahkemeleri). They were finally eliminated in 2014 with the passing of Law No. 6526.

But, as Sancar convincingly argued that, "the mindset that presents a direct relationship between the banning of ideas and the security of the state still dominates the political discourse whatever the institutional rearrangements might be (p. 164). The moment state ideology is questioned on various issues ranging from the Armenian genocide to the granting of ethnic rights, the nationalist reflexes harshly take center stage, and the prosecutors and courts start using various other articles in CPP against the freedom of thought. This chain reaction shows that the national security discourse, which in the past shaped the judiciary system in sync with political conjuncture, still survives not only on an intellectual level but also in physical form.

It can undoubtedly be argued that the majority of the political movements in Turkey which objected to the bans and pressures on freedom of thought in their past, have never adopted it as a core principle but defended it as a tool to get rid of their victimhood. This pragmatist and profoundly opportunist interpretation of the concept seems to be the main reason behind the deadlock of democracy. The way that Justice and Development Party (JDP) government whose leader, Recep Tayyip Erdogan, had been prosecuted under Article no. 312 in the past, addressed this issue constitutes an example of such an approach. In their new Turkish Criminal Code, as part of their democratization process, this government safeguarded Article no 159, which penalizes offenses that insult Turkishness and state organs, under item Article 301.⁸⁷ Judging

⁸⁷ Article 301 is as follows: "(1) A Person who publicly denigrates Turkish Nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey or the judicial bodies of the State, shall be sentenced a penalty of imprisonment for a term of six months and two years. (2) A person who publicly denigrates the military or security structures shall be punishable according to the first

from the wording of this article, the identification of the difference between criticism and insult is an ambiguous process that paves the way for the arbitrary decisions of the prosecutors and judges. It only created a public outcry and backlash when internationally well-known and respected intellectuals were prosecuted for these said offenses. Article no. 301 has constantly been operationalized in favor of the state taboos through the 2000s.⁸⁸

The improvement in the realm of freedom of thought has only been done on a cosmetic level to put up a false façade of democratization but permanent improvements never arrived to resolve the real deadlock.

When Human Rights Joint Platform⁸⁹ initiated a campaign on “Freedom to Thought”, AKP government's then Minister of Foreign Affairs Abdullah Gul made a declaration to the representatives of this campaign in October 2006. This declaration further supports what has been argued in the previous paragraphs. In his declaration, Gul stated that even if the said article was abolished, other articles in the same law could continue to be in effect because the real legal change would require a "mentality shift" (Keskin, November 24, 2006). Based on this official

paragraph. (3) Expression of thought intended to criticize shall not constitute a crime. (4) The prosecution under this article shall be subject to the approval of the Minister of Justice." The final paragraph is added to hinder public prosecutors in filing suits arbitrarily.

⁸⁸ Mazlum Der (The Association for Human Rights and Solidarity for the Oppressed) Vice President Şehmus Ülek was prosecuted under 301 of the new TPC due to his speech on 14 December 2004, in the conference titled 'Global Security, Terror and Human Rights, Multiculturalism, and Minorities.' Ülek faced prison sentence for criticizing the nation-building project of the Turkish Republic with reference to Kurdish issue. In May 2005, publisher Ragıp Zarakolu was charged under Article 301 for publishing two books, one referring to the mass deportations of Armenians in 1915 (*The Truth will Set Us Free* by George Jerjian) and another entitled *An Armenian Doctor in Turkey* by Dara Zakayan, carrying a seven and a half and a six-year sentence respectively. Similarly, around the same time Fatih Taş, the owner of the publishing house called Aram Yayınevi was charged under Article 301 for publishing the book of an academic, John Tirman entitled *Spoils of War: The Human Cost of America's Arms Trade*. The section of the book on human rights violations committed by the security forces against the Kurds in the 1980s and 1990s contained in the indictment as "denigration" of the Turkish military. Another example of the charges filed under Article 301 was that of Murat Pabuç, a retired military man. Pabuç was prosecuted for his book entitled *Boyalı Bank Nöbetini Terk Etmek*, (İstanbul: Nazım Kültürevi, 2005) criticising the corporatization of the army and its imperialist dependency relations. Journalist Birol Duru was accused of "denigrating the security forces" on November 17, 2005, on the grounds of broadcasting information given by the Human Rights Associations on forest burnings of the security forces in Bingöl and Tunceli, in Dicle News Agency. See Amnesty International Press releases for the details of the cases (AI Index: EUR 44/035/2005; <http://www.amnesty.org.tr/sindex.php3?sindex=vifois1312200501>). Many high-profile names were prosecuted under Article 301. Nobel laureate writer Orhan Pamuk, internationally acclaimed writer Elif Şafak, academic, and journalist Baskın Oran, writer, and journalist Perihan Mağden are just a few among these names. However, the criticisms against Article 301 became very public after the murder of Hrant Dink on the morning of January 19, 2007, editor of the bilingual Turkish-Armenian newspaper Agos, by an extreme rightist militant in front of the newspaper. Dink had been malevolently charged under Article 301 based on an article in his newspaper regarding relations between Armenians and Turks. There is a general consensus that Dink's assassination is the result of a chauvinist wave of the 2000s led by retired military men who are working hand in hand with certain ultranationalist civilian groups. The comment made by journalist Mehmet Ali Birand (Hürriyet, 2007, January 23) right after Dink's murder is very relevant: We caught the hand that pulled the trigger to Hrant. But the real killer will not be found again. Because we are the real killer of Hrant. We brought our killers into being in the mentality and environment that we created with Article 301."

⁸⁹ Human Rights Joint Platform is a national umbrella organization for Turkish human rights organizations. Its founding members were the Human Rights Association (İHD, 1986), Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı - TİHV, 1990), Organization of Human Rights and Solidarity for Oppressed People (İnsan Hakları ve Mazlumlar Derneği - Mazlumder, 1991), Helsinki Citizens' Assembly (Helsinki Yurttaşlar Derneği-HYD, 1993), Amnesty International - Turkey (Uluslararası Af Örgütü - UAÖ, 1995), and the Human Rights Research Association (İnsan Hakları Araştırmaları Derneği- İHAD, 2006).

statement, one can say that the state's national security shapers in the 1990s directly handed down their causal reading between the "societal depression," "terrorism" and "freedom of thought" to their successors in 2000s. As will be discussed in the conclusion this inclination would change for the worse during the JDP government in a way that blatantly violated human rights, annihilated democracy, and the rule of law.