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Introduction

The relationship between civilian political actors and the armed forces has often been a part of the debate on Turkey’s political regime. For decades, military tutelage over civilian politicians has influenced the Turkish political system and has made it variably named as “tutelary democracy” (Caliskan 2017: 100), “military democracy” (Kamrava 2000: 68-69), “protected democracy” (Bardakçı 2013: 411) or “popular praetorian state” (Sargil 2011: 269-270). The demise of military tutelage after the July 15, 2016 coup attempt concurrent to the establishment of civilian supremacy over Türk Silahlı Kuvvetleri (Turkish Armed Forces; TAF) in organizational, professional, judicial, and educational matters, however, did not coincide with the rise of a more democratic regime. The contemporary ruling mode, which is somewhat referred to as “Erdoğanism” (Yılmaz, Bashirov 2018), relies on personalized rule by the Adalet ve Kalkınma Partisi’s (Justice and Development Party; JDP) leader Recep Tayyip Erdoğan, establishing rule by expediency in place of the rule of law, and turns the elections into an approval of the leader (Yılmaz 2020: 275).

1 Sinan Erensii and Ayça Alemdaroğlu (2018: 20) incisively state that in this authoritarian transformation, more often than not, the state of emergency rule in the aftermath of the July 15 coup attempt is brought to the forefront to emphasize a process through which years-long rule of law order, and gradual reforms were abandoned for and replaced by repression. Against such a sequential depiction of questions of legality, reform, and/or repression, the authors assert that reform and repression were not mutually exclusive modes of governance under the JDP rule. The authors purport that Turkey’s authoritarian turn actually came as a result of an interplay between these two
modes. While the series of legislative reforms were mechanisms in transforming various aspects of bureaucracy, the coercive suppression of protests by the police and the prosecution of political opposition in the courts aided in persecuting the dissidents and lining up society behind the aforementioned leader.

3 This article addresses Erensü and Alemdaroğlu’s assertion and examines the concomitant and complementary nature of reform and repression in the transformation of civil-military relations under the JDP governments. Accordingly, in the last two decades, intermittent legal reforms scaled down the political power of military bureaucracy and brought it under the control of civilian administration. At the same time, the TAF was repressed through criminal prosecutions that affected scores of military personnel. These prosecutions started with the Ergenekon investigation, in which the former Chief of the General Staff İlker Başbuğ was accused of heading a terrorist organization. They continued with the coup plot investigations, the most known of which was the Balyoz (Sledgehammer) trial. Prosecution of military officers resumed after July 15, 2016 with coup attempt trials.

4 Judicialized repression had two facets, which manifested themselves in each prosecution in differing degrees and significance. First, the court cases involved intimidation of dismissal from the profession and incarceration; they directly interfered with military hierarchy and partly regulated the relation between civilians and the military. Second, terrorism accusations denigrated military officers, and as such, upset the balance of power in favor of the government by reshaping the public’s attitude negatively towards the army.

5 In sharp contrast to the abundance of analysis in the literature on legal reforms and their transformative effects, there is a limited number of scholarly studies on how the courts were used as a repressive instrument to recast the civil-military balance of power. On one hand, the Ergenekon, Sledgehammer and the July 15 attempted coup cases are well-recognized as political trials. Daniella Kuzmanovic (2012: 171) claims that the Ergenekon investigation was politicized from the onset. For the critics, both Ergenekon and Sledgehammer trials were not judicial processes at all but judicial manipulations (Rodrik 2011: 108) or solely political actions, initiated against an opponent to avenge the closure of forerunners of the JDP, namely the Welfare Party (1998) and the Virtue Party (2001) (Balci, Jacoby 2012: 138). On the other hand, discussions on what these political actions stand for have been mostly neglected. Rather, studies predominantly scrutinize the impact of court cases on democratic consolidation (Gürsoy 2015) or foreign politics (Balci 2012). Similarly, Ali Balci and Tim Jacoby (2012: 141) state that pursuing a judicial process that has such flaws as conspiracy creates an “ethical dilemma”, yet they do not delve further into what this dilemma tells us about the relationship between the army and the government. The term “show trials” (Tisdall 2012) is also used to describe the Ergenekon and Sledgehammer cases and the July 15 attempted coup case is defined as a “sham trial” (Haliloglu 2017: 15). However, both analogies lack conceptual rigor and analytical depth.

6 In order to fill this void and avoid repeating the findings of the literature, the article lists the main reforms that undermined military bureaucracy and later focuses on the repressive side of the transformation of civil-military relations. To this end, the article uses court decisions, indictments, and official reports of state institutions apart from
The article discusses the prosecution of military officers in the Ergenekon and Sledgehammer cases as one group and the July 15 attempted coup case as another. The primary reason for this bisection is that the Ergenekon and Sledgehammer cases took place under the similar political and legal context of the rule of law and parliamentary democracy, and both concern allegations about intended or planned armed putsch. In contrast, the July 15 attempted coup case is embedded in the disparate political/legal context of an exceptional state of emergency rule and the transition period from a parliamentary rule to the Turkish style presidentialism, and involves an actual armed coup attempt.

In the Ergenekon case, the allegation was to establish a terror organization to generate chaos in society by attacking minority groups, bombing mosques, and assassinating public figures that would justify staging a coup by the TAF (Jenkins 2009a: 50; Balci, Jacoby 2012: 138). The first indictment of the Ergenekon case was filed in July 2008, the second in March 2009. Over time, 22 different indictments were combined in the Ergenekon case. The Sledgehammer coup plot investigation started in January 2010 and charged 365 suspects, including 89 generals and admirals. According to the indictment, a junta led by the then-Commander of the First Army Çetin Doğan prepared the plan envisaged in destabilizing the state by staging a series of terror attacks and provoking Greece to shoot down a Turkish airplane. These instances would provide the army with a pretext to perform a coup and remove the government from power (Ananicz, September 26, 2012).

The July 15 attempted coup trials were the other significant prosecution that concerned civil-military relations. Immediately after the July 15 instigation, 289 trials against coup perpetrators in 56 cities started. Among them, there were two main trials (aka roof cases), both of which were pending in Ankara. The Genelkurmay Çatı Davası (the General Staff Roof trial) focused on the planning of the coup, the organization of the plotters, and the occupation of the Headquarters of the General Staff. Whereby the Akâncı Üssü Davası (Akâncı Airbase trial) dealt with civil-military cooperation and how civilians, accused of being members of the Gülen Community, collaborated with military officials in the making of the coup (Akgün 2020: 16). The rest of the trials were based on crimes committed by the putschists separately.

In the July 15 attempted coup trials, the putschists were accused of being members of the Gülen Community. The Gülen Community is an Islamist group which is believed to have been in control of large portions of state administration before the JDP came to power, and allied with it afterward. The Gülenists carried out the Ergenekon case and coup plot trials for years, who were staffed within the judiciary and the police force. However, the alliance between the Community and the JDP started to break apart in February 2012, when a prosecutor issued an arrest warrant for the Undersecretary of the National Intelligence Organization Hakan Fidan, who was the right-hand man to then-Prime Minister Erdoğan in intelligence issues. Soon afterwards, the trials ended in December 2013, when Gülenist prosecutors launched a corruption probe against the JDP government. The JDP immediately responded by removing Gülenist police officers, prosecutors, and judges from their posts, and brought criminal charges against them. In a similar vein, the court boards of the Ergenekon case and coup plot trials were renewed through removals and dismissals. From thereon out, the Gülen Community
claimed to be an armed terror organization and referred as Fetullahçı Terör Örgütü (Fetullahist Terror Organization; FETÖ).

The article utilizes the framework of analysis developed by Jens Meierhenrich and Devin O. Pendas (2016) for political trials, and differentiates the “practices” of court cases at hand from their “purposes.” Practices of judicialized repression center around how the courts operate, and are composed of three mutually explanatory elements, which shape this operation in an intertwined way: power, procedure, and performance. The “purpose” dimension of the prosecutions, meanwhile, allows a focus on variations in the motivation behind trials. Accordingly, the trial can be a “decisive trial” that aims to settle a contentious legal question of political significance. Alternatively, a trial can be a “didactic trial,” which seeks to spread a political message. The last type of trials based on their purpose is “destructive trials” that aim at a symbolic or physical elimination of the enemy.

After dissociating the Ergenekon/Sledgehammer cases and the July 15 attempted coup case into their components of power, procedure and performance, the article discusses whether and to what extent these cases are examples of decisive, didactic, or destructive trials. Although the destructive aspect is in the foreground in all three of the cases, the article ascertains that the elimination of the adversary is not the single political motivation behind the prosecutions. The Ergenekon case swung from punishment to acquittal, while the Sledgehammer case was reopened after acquittals, showing the absence of a foreordained decision for defendants either in the direction of penalizing or releasing them. Actually, the Ergenekon/Sledgehammer cases have played a significant role in designing military hierarchy in line with the government's interests. The July 15 coup attempt trial, on the other hand, has only been a secondary tool after the presidential decrees in the restructuring of the TAF through purges and dismissals. Then, its political role can better be conceived within the context of state-society relations as it is highly circumscribed by the sociopolitical developments surrounding it. That being the case, the article suggests that the Ergenekon/Sledgehammer court cases are also decisive trials, and the didactic character of the July 15 attempted coup case is inevitable.

It was not unprecedented in the history of the Turkish Republic to see military officers in the dock. However, the prosecution of military officers under the JDP rule was distinctive, because the courts were employed as the central apparat of repressive mode of governance. First, the courts that handled the Ergenekon/Sledgehammer cases and the July 15 attempted coup case were regular parts of the criminal justice system, although they applied discriminatory legal codes and disregarded the defendants' constitutional rights. In that sense, they normalized judicialized repression. Additionally, court cases against military officers under the JDP rule were parts of a long-term policy of harassment. Finally, they played an intervening transformative role in civil-military relations, and therefore, produced larger socio-political consequences.

Legal Reforms and Trimming of Military Bureaucracy’s Authority

The first setback in the military's political authority began within the EU accession process. In 1999, Turkey was officially acknowledged as a candidate country and in March 2001, the government announced its National Program for the Adoption of the
Acquis. Accordingly, the number of civilian members of the National Security Council increased in October 2001, and the wording of Article 118 of the Constitution was changed so that the National Security Council submitted its views to the Council of Ministers as advice only to be evaluated rather than primarily considered as previously.

After the JDP came to power in November 2002, legal reforms to curb the military’s extensive political influence continued unabated. The government’s efforts for civilianization were initially legitimized against the backdrop of an ideological cleavage between the secularism of the state and Islamism of the JDP. While the military presented itself as the guardian of constitutional order and secularism (Narli 2000: 117-118; Warhola, Bezci 2010: 428), the JDP was a party that evolved from the Islamist National Outlook Movement and was established by the leadership of the Welfare Party. The speeches of the top military personnel against the party during the initial years of JDP’s rule were coupled with the army’s interference in presidential elections via an e-memorandum on April 17, 2007, which was generally regarded as a soft coup and triggered early elections. Worried that the military would organize a more powerful putsch against the government at any time, as it did on February 28, 1997 against the Welfare Party government and led to its closure, the JDP needed to limit the military’s power if it were to consolidate its rule.

Accordingly, the Secretary General of the National Security Council was made responsible to the prime minister following the acceptance of the seventh EU harmonization package in July 2003 as Law 4963. The Secretary-General also lost its authority to follow up the implementation of Council’s decisions and its right to access civilian public agencies or legal persons. After the reforms, the prime minister would nominate one of his/her deputy prime ministers to submit the Council’s decisions and opinions to the Council of Ministers, who would then secure their implementation in case they were approved. Lastly, the prime minister could nominate a civilian Secretary General who had until then only had been a military officer.

Having the EU’s wind at its back, the JDP undermined the presence of military officers in the supreme regulatory boards. Representatives of the TAF were removed from Yüksek Öğretim Kurulu (the Council of Higher Education) in 2004 and from Radyo Televizyon Üst Kurulu (the Supreme Board of Radio and Television) in 2005. Reforms decelerated in the aftermath of the rejection of the EU constitution first in France and then in the Netherlands in 2005, as the JDP perceived these rejections as objections to their membership. Legal steps that crippled the military’s reserved rights resumed only in June 2009 with the legislation of Law 5918, which amended the Turkish Code of Criminal Procedure 5271 and restricted the military jurisdiction to the time of war and martial law. Regardless of the nature of the offense, this amendment removed civilians from the jurisdiction of military courts. Furthermore, the amendment of Article 125 of the Constitution in the September 2010 referendum limited military’s organizational autonomy by subjecting Yüksek Askeri Şura’s (Supreme Military Council) decisions concerning all kinds of leave – except for retirement due to shortages of cadres – to judicial review. This paved the way for the appeal of the Council’s decisions on reactionary (Islamist) activities.

These reforms curbed the military bureaucracy’s role as a veto power (Haugom 2016: 6). As a result, the army considerably stepped back from veering off politics. The excitement surrounding the reforms was immense given the overwhelming tendency to interpret them as steps towards solid civilianization and democratization. For
instance, Ersel Aydınli (2009: 591) claimed that reforms amounted to a paradigm shift and military power was at its political nadir. Toktaş and Kurt (2010: 401) argued that the JDP’s reforms demonstrated civilianization in Turkish polity and the democratic consolidation of civil-military relations. Similarly, Metin Heper (2011: 250) suggested that in the post-2002 period, the military’s relation with the civilian government had increasingly come to resemble the best practices in liberal democracies. In such an atmosphere, the Ergenekon and Sledgehammer trials were also mostly perceived as parts of civilianization for various reasons. According to their supporters and sympathizers, these prosecutions brought Turkey’s “deep state” on trial and opened the veil of obscurity on numerous assassinations, disappearances, provocations, and disinformation campaigns of past decades. Last, but not the least, the trials were also believed to have ended the army’s privilege based on unaccountability and impunity (Ertür 2016: 177-178).

Nevertheless, one had to wait until 2016 to see more sweeping changes. On July 15, 2016 a coup was attempted in Turkey, led mainly by a faction of the TAF to overthrow the government and establish military rule. In a single night, 250 people died, and 2,735 were injured. Six days after the attempted coup, a state of emergency was declared. Under the conditions of state of emergency, Turkey’s political regime underwent a drastic transformation through a shift from century-old tradition of parliamentary democracy to a presidential system in April 2017 by a referendum. This state of emergency was only abolished on July 18, 2018 following the election of Erdoğan as the first executive president of the Republic on June 24, 2018.

Under the state of emergency rule, the government responded to the putsch by clamping down on the TAF in an unprecedented fashion with investigations, purges, and legal reforms. For example, immediately after the coup attempt, the general commands of the gendarmerie and coast guard were removed from the TAF and brought under the ministry of interior. The commanders of the army, navy, and air force were removed from the Chief of the General Staff and were subordinated to the ministry of national defense. The president and the prime minister were authorized to receive direct information from and give direct orders to the force commanders and their subordinates. The commanders and subordinates were to implement these orders without further approval of the Chief of the General Staff.

The composition of the Supreme Military Council was first changed in July 2016 in favor of the civilians, leaving the Chief of the General Staff the only military person in this Council. Nevertheless, Article 2 of Presidential Decree no.8, dated July 15, 2018, altered the composition of the Supreme Military Council once again. The Ministers of Treasury and Finance, the Minister of National Education, and all force commanders became members of the Council. The General Secretariat of the Council was separated from the Ministry of National Defense and instead attached to the Presidency. The Ministry of National Defense now had the authority to issue statements to the press about the Council’s meetings.

There was also a fundamental reform of military education. The war academies, military high schools and non-commissioned officer preparation schools were all closed on July 31, 2016. After the closing, war academies and non-commissioned officer preparation schools operated under the National Defense University, the head of which was a civilian appointed by the President. Decisions on the disciplines offered for study, the number and type of postgraduate institutes, and the type, duration, and
curricula of study of these institutes would be determined solely by the ministry of national defense, sidelining the force commanders and the Chief of the General Staff. In addition, promotion and appointment processes were brought under civilian domination. The appointment decisions would now be subject to approval by the ministry of national defense and the ministry of interior, instead of by force commanders. Additionally, the Ministry of National Defense, after consultation with the Chief of the General Staff, would determine the promotions of generals and admirals in the TAF as opposed to the single handed power of the Chief of the General Staff. In January 2017, the Military Court of Appeals, Military High Administrative Court, and military courts were abrogated. This would mean the end of the judicial autonomy of the military that had prevailed since 1963. Lastly, on July 15, 2018, the Chief of the General Staff, who had been accountable directly to the prime minister since 1961, came under the auspices of the Ministry of National Defence.

To sum up, the post-2016 restructuring has thoroughly bypassed the Chief of the General Staff in the promotion and extension of force commanders' terms of office. Simultaneously, the control of the President and the Ministry of National Defense over retirements has increased. Removing force commanders from the General Staff has also reduced this post to that of a coordinator rather than the top commander of the TAF (Haugom 2016: 5). The Chief of the General Staff’s dominant role in military education policies has been similarly reduced. Commanders now have no authority in their own military schools (şahin 2018: 47). Therefore, post-coup restructuring of the civil-military relations is the final phase of a process that has brought the military’s 60-year old tutelary powers to an end.

Judicialized Repression and Criminal Prosecution of Military Officers

As previously mentioned in the introduction, the criminal investigations in the summer of 2007 against high-ranking military officers had an earth-shattering effect on civil-military relations amid the positive atmosphere created by the reforms. In June, the police investigations in the Ergenekon case began after the publication of the alleged diaries of a former commander in the weekly magazine Nokta, which exposed coup plans against the government (Grigoriadis, Özer 2010: 109). Shortly after, prominent individuals from different backgrounds were detained and arrested, including commanders of the armed forces such as the former Chief of the General Staff Başbuğ, heads of civil society organizations, journalists, and university rectors (Jenkins 2009a: 37, 41; Baran 2010: 81). Police investigations found four military coup plans codenamed Ayışığı, Sarkız, Yakamoz and Eldiven. In 2009, another coup plan, Kafes Eylem Planı, was discovered. Nevertheless, the most well-known coup plan was codenamed Sledgehammer, which relied on news published in the daily Taraf, a liberal Turkish journal allegedly close to the Gülen Community. The accusations were based on a suitcase full of documents, tapes, and CDs submitted by an unknown person to one of the journal’s authors. The Sledgehammer trial almost solely relied on data in a single CD, supposedly recorded in March 2003, yet included references to events dated as late as 2008 (Rodrik, Doğan 2010: 24, 27) and later on was proven as forged.

In September 2012, the court made its verdict in the Sledgehammer case and sentenced 325 members of the TAF to imprisonment for 13 to 20 years (Ananicz, September 26,
2012). Doğan, the then-retired commander of the Air Forces Halil İbrahim Fırtına, and then-retired Commander of the Navy Özden Örnek received prison sentences of up to 20 years. In the Ergenekon case, the court handed down its judgment in August 2013. 17 defendants, including Başbuğ, were sentenced to life imprisonment and 194 were imprisoned for being members of the Ergenekon Terror Organization or for aiding it. However, these verdicts proved to be the first round in a long showdown between the government and military officers, as prosecutions turned upside down after 2014. In March 2014, the Constitutional Court overturned the decision of the first instance court in the Ergenekon case on the basis of the Constitutional Article 19. The underlying reason was the violation of the defendants’ personal liberty and security. As a result, all of the accused were released. The Constitutional Court reached another significant decision in June 2014 in the Sledgehammer trial by ruling the violation of the defendants’ right to fair trial on the basis of the Constitutional Article 36.

In March 2015, the first instance court in the Sledgehammer trial ruled that the digital data, on which the previous judgment relied on, was fraudulent. Consequently, 236 defendants were acquitted. In the Ergenekon case, the Court of Cassation ruled for a retrial in April 2016 on the basis of a lack of concrete evidence showing the existence of a terrorist organization. In July 2019, after a total of 11 years, all suspects were acquitted of terrorist charges. Yet recently, the public was once again baffled by the re-opening of the Sledgehammer investigation. In June 2021, the Court of Cassation overturned the acquittal of seven soldiers in the Sledgehammer trial, including Çetin Doğan. Arguing that the concrete evidence was sufficient, reliable, and audible, the Court of Cassation also requested further analysis of digital evidence that the first instance court had considered fraud.

When it comes to the July 15 coup attempt trials, over 100,000 investigations were carried out (Akgün 2020: 26). Besides civilians, 4594 military personnel were arrested in the aftermath of the coup attempt. Yet, the prosecution of coup plotters was not deemed expedient as the trials neither started nor ended in a short period. The first hearings of the two main trials took place ten months after the coup bid at the earliest; more accurately on May 22, 2017 in the General Staff Roof trial and on August 1, 2017 in the Akıncı Airbase trial. Although most of the 289 trials were small in scale, the main trials had a high number of defendants and extended indictments. The General Staff Roof trial charged 224 defendants and the Akıncı Airbase trial charged 474. The indictments were as long as 2581 pages in the General Staff Roof trial and 4658 pages in the Akıncı Airbase trial. Similarly, the July 15 Martyrs Bridge trial, which pressed 34 charges of homicide, had 143 defendants and 1052-page-long indictment.

It is certain that July 15 was a military coup. According to the indictment of the General Staff Roof trial, the coup attempt was led by the Peace at Home Council (Yurtta Sulh Konseyi), which was composed of 38 military officers. In addition, more than 8000 military personnel were involved in the coup attempt, and 35 aircraft, 37 helicopters, 74 tanks, 246 armored vehicles, and 4000 small arms were used (Yargıtay Cumhuriyet Başsavcılığı 2018: 1). Nevertheless, the courts made an effort to separate the army from the attempted coup. They depicted the coup attempt not as an action of the TAF but as the latest attack from the Gülen Community, which had already been deemed a terrorist organization and named as FETÖ at the time of the coup attempt. Accordingly, the coup attempt was conducted by the Fetullahist Terrorist Organization’s militants of various ranks, which attempted to influence the TAF to change the constitutional
order, abolish the Turkish Grand National Assembly, and the government, and assassinate President Erdogan.  

Likewise, the indictment of the Akıncı Airbase trial stated that the addressees of this investigation were those affiliated with the Fetullah Gülen Terrorist Organization. Left outside of the scope of the investigation were the TAF personnel considered loyal to the state, nation, homeland, and flag. Yargıç Cumhuriyet Başsavcılığı (Supreme Court of Appeals Prosecutor’s Office) embraced a similar attitude. Accordingly, the coup was attempted by “uniformed terrorists “affiliated with the Fetullahist Terrorist Organization, who acted on organizations’ aims, albeit being members of the TAF (2018: 2). As the putschists were portrayed not as military officers, nor even as proper members of the army, but as members of the Fetullahist Terrorist Organization, the July 15 incident was officially named the “Coup Attempt of Fetullahist Terrorist Organization/Parallel State Structure”.

The court gave its verdict at the General Staff Roof trial on June, 20 2019. A total of 126 defendants were sentenced to aggravated life imprisonment, and 33 were acquitted. The Court of Cassation’s decision in July 2022 to overturn four defendants’ life sentences and to approve the rest terminated the case. In the Akıncı Airbase trial, on November 26, 2020 the court handed down 29 sentences of aggravated life imprisonment, 46 sentences of life imprisonment, and 19 sentences of imprisonment ranging from 12 to 16 years (Miş et al. 2021: 308). The Court of Appeal approved the case in June 2022. In May 2022, all 289 of the July 15 attempted coup trials came to an end in the first instance courts. Among the 1,634 aggravated life sentences and 1,366 life sentences, 109 were former generals and 1,652 were former officers. The courts sentenced 1891 defendants to prison terms varying from two months to 20 years, while 2870 defendants were acquitted, and 964 received no sentence. Nevertheless, given the number of trials, the appeal process completed in the Court of Cassation in six years was 123 – less than half of the total. The finalization of all coup trials is not likely until the mid-2020s (Ergin, July 15, 2022).

Practices and Purposes: The Ergenekon/Sledgehammer Cases

Meierhenrich and Pendas (2016: 53-57) single out three components of practices that together construct the operation of courts. Among them, “power” means the ability to compel the adversary to go to the court and abide by the court’s decision. This concept revolves around state power. “Procedure” involves legal rules and steps that structure legal action in trials. They are necessary to reach a verdict in these cases. “Performance”, meanwhile, means various practices involved in staging and marketing the proceedings. This involves public participation and the ritual nature of trials. Regarding purposes, firstly, a trial can be a “decisive trial” that aims to settle a contentious legal question of political significance. Its raison d’etre is political regulation. Alternatively, a trial can be a “didactic trial,” which seeks to spread a political message. Raison d’etre of didactic trials is political communication. Lastly, a trial can be considered a “destructive trial.” The Raison d’etre of destructive trials is the elimination of the enemy. The nature of destruction can be symbolic or physical, yet its particularity is the decisively confrontational stance taken against the defendants. The authors (2016: 61-63) underline that regardless of whether or not the trials are decisive, didactic, or destructive, the peculiar dynamics of their contentious politics are mostly
governed by the practices of the courts, and consequently by the interplay between its elements of power, procedure, and performance.

32 These three components of practices can be identified in the court cases at hand to different degrees. For instance, the power component is most prominent in the Ergenekon/Sledgehammer cases compared to the July 15 attempted coup case. The Ergenekon investigation probed into offenses committed by military personnel, some of which occurred on military premises. When the investigation first started in 2007, these offenses fell under the jurisdiction of military courts, and the legal basis for bringing soldiers before the judge in civil courts was unclear. In June 2009, a legal amendment put an end to this uncertainty, and military personnel became subject to the jurisdiction of civilian courts in peacetime for offenses regulated by the Code of Criminal Procedure, including staging coups and organized crimes, even if the offense was committed in military lieu. Nevertheless, this hastily made amendment violated constitutional provisions regulating the military courts. After the referendum of September 2010, this contradiction was resolved by amending Article 145 of the 1982 Constitution, and the military personnel prosecuted in the Ergenekon case and coup plot trials were put on trial in civilian courts.

33 The role of the police force in the Ergenekon and Sledgehammer cases also deserves mentioning. The military members were brought to the courts through intense and unsettling police raids (Jenkins 2009a: 36; Karaveli 2009), which from time to time turned into a display of power by the police over military officers. The police force’s role in these cases went far beyond being a law enforcement body. They obtained evidence illegally, at times even fabricated it. For instance, it later became apparent that police officers had uploaded the telephone numbers of the members of Hizb ut-Tahrir terrorist organization to Mehmet Ali Çelebi’s (a helicopter pilot charged in the Ergenekon trial) mobile phone – when he handed his phone into the Istanbul Police Directorate.33

34 Lurking underneath the power of civilian judges over the military officers was, in fact, the supremacy of the police’s power over the army. The police-army encounter that took place in these court cases was part of a significant confrontation between these two institutions, reflecting a broader change in the preferred security apparatus of the state. Under the JDP rule, the authority of the police was extended with the amendment of the Anti-Terror Law in June 2006 and of the Law on the Powers and Duties of the Police in June 2007. The Domestic Security Package of March 2015, meanwhile, broadened the police’s right to use firearms, a right which would continue after the July 15 abated coup. As Ayfer Genç Yılmaz (2020: 146-149) argues, the police slowly emerged not as an assisting force, but as a competing force against the TAF as the balance between civilians and the military was distorted in the early 2000s.

35 Pertaining to procedures, in the Ergenekon/Sledgehammer cases the military officers were not prosecuted on the basis of regular criminal procedures, but were subjected to discriminatory practices. Until their abolition in 2014, special assize courts pended the Ergenekon/Sledgehammer cases. Founded in June 2004, these penal courts were extensions of the infamous State Security Courts, which were authorized to try cases concerning national security; yet, in fact, they served in purging political opposition (Polat 2016: 95). While special assize courts had similar competencies with the State Security Courts, they were wholly composed of civilian judges. Moreover, special assize courts restricted the defense and denied the accused some of the rights concerning due
process, which were constitutionally protected. Mainly, arrest periods were longer; keeping the suspects in pre-trial detention for years in the absence of concrete evidence was routine. In addition the secrecy clause effectively obstructed the defense attorney’s access to the case file. Additionally, the preparation of indictments lasted months. At the time of their submission to the courts, the indictments were thousands of pages long. For instance, the first indictment in the Ergenekon case was 2,455 pages long, with an additional 441 files of evidence. The second indictment was 1,909 pages long, with 248 additional files of evidence, and the third was 1,454 pages long (Jenkins 2009). This situation created the impression to defense attorneys that the lengthy indictments were intentional to discourage a close engagement with the evidence. In March 2014, the special assize courts were abolished and the case files in the Ergenekon case and coup plot trials were transferred to regular assize courts. However, the majority of the proceedings in the Ergenekon case would already be over by then.

The last component of practices is the performative character of trials. The court’s performance firstly attempted to show the public that the courts were working. Secondly, it attempted to convince the public of the suspects’ guilt (this aspect was particularly at the forefront in the Ergenekon/Sledgehammer cases). Authorities involved in the investigations and prosecutions leaked sensitive evidence to the pro-government media, thereby having the suspects already convicted in the court of public opinion (Polat 2016: 97). On TV channels, the public could also follow the police raids and searches on military premises by police. Nevertheless, the participation of the public was deterred in the Ergenekon case firstly by court decisions, and secondly due to the physical conditions of the case (inside the campus of Silivri Penal Institution located on the outskirts of Istanbul). One possible reason for this precaution was to avoid anti-government protests as widespread opposition was still lively at that time. There were indeed protests in front of the Silivri Penal Institution in Istanbul, as well as in Ankara and Izmir on the day that the court announced its verdict in the Ergenekon trial.

Additionally, terrorism discourse has played a critical performative role in the prosecutions. The Ergenekon/Sledgehammer cases affected the public’s stance towards the military. The literature contributes the legitimacy for the military’s involvement in politics in the public’s trust to the military (Gürsoy 2015: 111). Bardakçı (2013: 412, 417) argues that the key to the TAF’s guardian role was its high esteem within society. The terrorism investigations undermined the dignity of military officers and discredited them in the public eye. The Ergenekon case highlighting the military’s involvement in many of the infamous crimes of the past not only unnerved the public, but also challenged the army’s positive image in the eye of the public. As Serdar Kaya (2012: 153) shows, the image of a “terrorist military chief” or a “murderous military” suggested to the people the necessity to question the place and meaning of the TAF as the nation’s hero. Moreover, in order to damage the reputation of military members, illegal wiretaps against those entangled in the Ergenekon case were leaked to pro-JDP and pro-Gülen media, including intimate details of their private lives such as marital infidelity (Cagaptay, February 25, 2010). As a result, there was a significant decrease in public confidence in the armed forces according to the public opinion surveys conducted after 2007. Yaprak Gürsoy (2015: 108) demonstrates that whereas the level of trust in the TAF was over 90 percent in 2005, it had diminished to 69 percent in 2010.
Regarding purpose, the Ergenekon/Sledgehammer cases are destructive trials. Accordingly, the government initiated the Ergenekon/Sledgehammer cases against the pro-secular groups in the TAF to decrease their power (Balci, Jacoby 2012: 138). Another line of thought asserted that the target group was not only limited to the TAF members; the trials and the arrests also aimed to eliminate the secular opposition in society (Gürsoy 2015: 119). Detention of prominent secular critics of the government, along with possible legitimate criminals, was the fundamental reason behind this fear (Eligür 2010: 273). Therefore, the JDP government launched the Ergenekon/Sledgehammer cases to round up social dissidents in general by criminalizing dissidents as coup-plotters (Karaveli 2009).

Nevertheless, the course of the court cases implies that the elimination of the adversary may not have been the single political motivation behind the prosecutions. Firstly, the court cases lasted far too long to knock down a single adversary. Secondly, the Ergenekon case swung from punishment to acquittal, and the Sledgehammer case was reopened, showing the absence of a foreordained decision for defendants either in the direction of penalizing or releasing them. A closer look may detect other political motives behind the cases besides the destruction of an adversary. The Ergenekon/Sledgehammer cases were used as an instrument to regulate and exert influence on civil-military relations. Besides the legal reforms against military bureaucracy, the Ergenekon/Sledgehammer cases directly intervened in the line of promotions and retirements, leading to a new design in the military hierarchy. With mass arrests and pre-trial detentions, military cadres were vacated and Gülenist officers filled the positions (Kardas, Balci 2019: 9). This explains why the courts in these cases made pre-trial detention almost a rule. In this context, the former Chief of the General Staff Işık Koşaner stated that he took every step in the direction to release military officers pending trial, yet negotiations with the government yielded no result. As such, the Ergenekon/Sledgehammer cases can be deemed as decisive trials.

The Ergenekon case led to the arrest of one-tenth of the TAF’s generals and admirals as of 2011 (Gürsoy 2012: 736). The Sledgehammer case negatively affected a total of 188 generals and staff officers in active duty, ending the careers of the overwhelming majority through retirements and dismissals. To practically see how the criminal prosecutions interfered with military administration, one can refer to the Supreme Military Council meetings, which took place annually. In 2010, 11 generals mentioned in the Sledgehammer investigation were not promoted, and the First Army Commander Hasan Işısız, who was summoned to testify in coup plot investigations, was not appointed as the Commander of the Land Forces. In 2011, then-Chief of the General Staff Işık Koşaner and all the force commanders resigned shortly before the meeting of the Council. While commenting on his resignation, Koşaner explained that he did not want to be responsible for forcing his fellow soldiers to retire due to their involvement in Ergenekon or Sledgehammer investigations. Indeed, in 2012 the next Chief of the General Staff Necdet Özel pensioned off 40 generals and admirals who were in pre-trial detention. Similarly, the commander of Gendarmerie Bekir Kalyoncu, who was expected to become the commander of the land forces in 2013, retired due to his prosecution in the Ergenekon case. Retirements or dismissals did not end after the dissolution of the Gülen community-JDP alliance and the recognition of terrorism cases as conspiracies. Even after the Constitutional Court ruled for a retrial in the Sledgehammer case in June 2014, 12 generals and admirals on active duty, who were
charged in the Sledgehammer and Ergenekon cases, retired in the Supreme Military Council meeting of August 2014. In 2015, only 3 of the 46 military officers, who were standing in the Sledgehammer case no longer as defendants but as injured parties, were promoted.

**Practices and Purposes: The July 15 Attempted Coup Case**

Concerning the power component of trials, the role of the police in bringing the suspects to court was also visible in the July 15 attempted coup case. In this case, the police staged large-scale anti-Fetullahist Terror Organization operations in the TAF immediately after the coup attempt, which continues to this day. Until November 15, 2019, 14,433 military members were taken into custody and suspended from duty; around 4,400 were later arrested (Akgün 2020: 14). The government’s backing of the police force vis-a-vis the army continued after the coup attempt. Capacity and effectiveness of the police were further reinforced with the establishment of the Auxiliary Task Force Police Unit, first in the capital in July 2018, then in Istanbul two years later. The most recent legislation of January 2021, meanwhile, gave the police force access to any military equipment in the stock of the TAF upon the demand of the minister of interior in times of social incidents deemed as a threat to national security, which solidified the police as a paramilitary organization.

Regarding procedures, the July 15 attempted coup investigations were conducted during the state of emergency, and trials were held under the presidential system. On July 21, 2016 the government shelved the European Convention on Human Rights. It suspended the suspects’ and defendants’ constitutional rights in October 2016 by amending the Turkish Code of Criminal Procedure number 5271 and the Anti-Terror Law number 3713. Following these changes, prosecutions could include extended detention periods without judicial review: police officers were present during interviews between detainees and defense counsel, documents and records used during the interview could be seized, and the courts could read the summary of long indictments. Nevertheless, no extraordinary court was established; court proceedings were public, and retroactive law was not used.

In the July 15 attempted coup case, the performative act of the courts looms over the components of power and procedure. An overly dramatized prosecution process and the amplification of the propagandistic impact of trials intended to show not only that the courts were working, but also the guilt of the suspects. Excessive numbers of security personnel were present in the court halls, even though the suspects’ hands were already handcuffed, giving the image that they were tremendously dangerous people who could flee at any time. In the July 15 attempted coup case, scenes of torture and ill-treatment of the generals were also disseminated by all means of media. Terrorism discourse, meanwhile, mostly concerned the construction of deviance. The courts worked to show the public the otherness of those in the dock, particularly from the TAF and from the nation. As stated before, the courts distinguished the members of the army from the terrorists/traitors, who disguised themselves – according to the official discourse – in military uniforms to stage a coup. Such depictions precipitated an understanding of the events on July 15 as a military coup without military participation (Şen 2020: 59). As such, the July 15 attempted coup case and its representation provided the remaining cadres of the TAF with an exit from humiliation.
In fact, the official narrative about the coup attempt punctuates the otherness of those in the dock from the nation. Accordingly, the Fethullahist Terror Organization was depicted as an instrument of western powers – primarily the USA – and its actions constituted an act of foreign invasion (Akkaya 2020: 195, 196). The narrative also emphasized that the coup attempt failed because of the popular resistance that followed the call by President Erdoğan, which was aired on live television, despite the evidence that the larger body of the TAF did not support the coup and actively resisted it (Siyaves 2016: 465). As stated in the Joint Declaration of the Grand National Assembly of Turkey, the nation “[...] stood against and thwarted this bloody coup attempt” and “protected the Republic of Türkiye and its institutions at the cost of its life” (Türkiye Büyük Millet Meclisi’nin Ortak Bildirisi 2016). Hence, citizens as natural born soldiers without a uniform faced terrorists/traitors with a military uniform, who took orders from foreign powers, and attacked the unity of state with its own people. The construction of “Cemetery of Traitors” by Istanbul Metropolitan Mayor Kadir Topbaş for the killed putschists and the burial of the corpse of a lieutenant there ten days after the coup attempt was an example of this segregation.

The July 15 attempted coup case was a continuation of this face-off between the nation as the savior of the homeland, and the defendants as the terrorists/traitors. Especially at the initial stages of the prosecutions, the courts created an image that they were merely servants of the gallant nation, who was implied to be the actual victor against the terrorists/traitors. According to this narrative, the nation’s desires would shape the courts’ decisions. In clear contrast to the Ergenekon case, gymnasiums were transformed into court halls or new court rooms were built close to city centers to facilitate the public’s participation in the court hearings. For instance, in Ankara, new courtrooms were constructed within the Sincan Prison compound so that multiple attempted coup trials with hundreds of defendants and spectators could be held simultaneously (Akgün 2020: 152). Crowds were allowed to gather outside the court halls and harass the defendants while they entered the buildings. Moreover, they voiced their demands concerning the courts’ judgments. One scene of public engagement was people chanting for the reenactment of the death penalty; another involved people holding posters before the courtrooms and demanding a specific dress code for coup plotters as a way to humiliate them (fig.1). State sponsorship of the gatherings before the court halls was noteworthy. Transportation to and from the court halls were provided mainly by municipalities free of charge. In the summer, municipalities pitched tents in front of the court halls to comfort the spectators while they waited outside, and procured food and beverage for them.
Similar to the Ergenekon/Sledgehammer cases, the primary purpose of the July 15 attempted coup case was the destruction of the opponent. This case constitutes a direct continuation of the government’s counter-terrorism campaign in order to destroy an old ally, Gülen Community, who had betrayed the JDP. Nevertheless, the rate of acquittals in the July 15 attempted coup case is as high as 32.8 percent, with those who received no sentence at 11.1 percent. This suggests that the courts did not sentence 44 percent of the defendants overall. Additionally, 40.5 percent of those acquitted were soldiers (Ergin, July 15, 2022). While it is assuredly injustice towards the suspects who were charged and put behind bars for months or years in pretrial detention for no reason, these numbers also hint that the case was also used for purposes other than eliminating those who came before the judges. A closer look may detect equally, if not more significantly, social and political motives behind the July 15 attempted coup case.

Undoubtedly, the July 15 attempted coup case interrupted the top-brass of the TAF. Among those who received life sentences, 1761 were former military officers, including 109 generals. However, the military hierarchy was reshaped mainly through purges based on decrees, not necessarily by criminal prosecutions. Against this backdrop, the political role of this case can best be seen within the context of state-society relations as it is highly circumscribed by the sociopolitical developments surrounding it. Accordingly, a didactic trial could also describe the July 15 attempted coup case. For decades, the Gülen Community had managed to weave a pronounced network of followers within the population (Şen 2020: 59). While branding the defendants as Gülenist terrorists/traitors, the July 15 attempted coup case undertook the task of scapegoating and ostracizing them as the guilty party. Hence, the court case gave the public and the state the chance to isolate themselves from the Gülen community. The ultimate aim was to restore social cohesion and unity between state and society around the JDP and its leader Recep Tayyip Erdoğan. In that sense, scenes of public enthusiasm outside the court halls can be juxtaposed to that of the people convening in the Democracy and Martyrs Rallies or democracy watches. In the first instance, the people...
were pushing for the terrorists/traitors to get what they deserved and in the second instance, pushing for national will and democracy.

The role of the courts in penning a narrative surrounding the abortive coup is worth mentioning. The indictments made an analogy between the May 27, 1960 coup and the July 15, 2016 coup attempt. The main claim was that these two instigations were alike in their form and structure: both were organized out of the military chain of command, and the military junta consisted of 38 individuals. Indeed, the indictment of the General Staff Roof trial stated that some of the putschists closely studied how the May 27 coup had been put into action, and then replicated it. Moreover, it was also claimed that the seeds of the Gülen community were planted after the 1960 coup, implying that the main perpetrators of the July 15 coup attempt originated in the post-1960 political environment. This comparison between the July 15 coup attempt and the May 27 coup has a clear political message. Throughout its rule, the JDP presented the ex-prime minister Adnan Menderes, who was executed by the 1960 military junta, as the main victim of the military coup and a “hero of democracy”. Against this background, the analogy and the alleged tie between the incidents of July 15 and May 27 were attempts to construct Erdoğan in the image of Menderes as the victim of the military coup attempt and as a devout defender of democracy.

Generals in the Courts of Constitutional State

Instrumentalization of courts to exert repression is powerfully conditioned by the politicojudicial context, also determining the power, procedure, and performance components of the practices of courts explained earlier. At one extreme, there are show trials. This is the common name of trials that solely aim at retribution of the regime’s opponents (Christenson 1991: xviii-xix). The most known examples are the French revolutionary tribunals (1792-95), the National Socialist Regime’s People’s Court (1934-45), and Stalin’s Moscow trials (1936-38). The functioning of courts varied depending on the national context. Yet, the main instances of show trials occurred out of the constitutional order, and they completely broke off their relation to legality. Therefore, for Judith N. Shklar (1964: 148), these were thoroughly political phenomena and should not be considered legal events. Similarly, after naming them “partisan trials” Ronald Christenson (1989: 10) states that they were fraudulent and utterly unsupported by law. First, they did not even comply with the minimum standards of a trial, including the procedural rules. Hence, they lacked any legal agenda and implemented no use of legalism. Second, the entire court spoke with one voice. The prosecutor and the judge acted in unison. Moreover, the defense counsel was either barred or he/she was appointed by and collaborated with the court.

The court cases that are at the center of analysis here suffer from numerous judicial flaws such as leaking of information to the pro-government press, the pre-dawn raids of the suspects’ homes, long and unreasoned pre-trial detentions, fabrication of evidence by the police, prosecutors’ ignorance of evidence in favor of the defendant, and last, but not the least, torture and ill-treatment of defendants, particularly in the case of the July 15 attempted coup trials. Nevertheless, they also differ from show trials because basic requirements of a trial were met. Evidence of violation of an existing law was presented to the court, witnesses were heard, and the right to choose the defense council and right to speak were guaranteed. In fact, an analysis of these court cases
manifest turgid procedural rules rather than absent ones. This portrays legality and the constitutional state as the key parameters in expounding the prosecution of military officers.

The Ergenekon/Sledgehammer cases and the July 15 coup attempt trials took place under a constitutional state. The principle of legality in a constitutional state, meanwhile, demands a law, an act made criminal by law, and evidence supporting the assertion of personal fault (Posner 2005: 101). The fact that the July 15 coup attempt trials took place during the exceptional conditions of state of emergency did not shelve legality and the principle that the governments cannot criminalize citizens for political dissent. Instead, criminalization of dissent was still justified because he/she violated a law, not because he/she was an opponent of the government. This twist is exactly what the power, procedure, and performative components of the Ergenekon/Sledgehammer cases and those of the July 15 attempted coup trials aimed to accomplish: aligning harassment of political opponents with the constitution, expressing a political issue as a legal argument, subsuming political agenda under legal agenda, and all in all, constructing illegality as legality. In that respect, these court cases come close to what Anthony Pereira (2005: 13-14) describes. They were not mere charades that glossed over the legality of the regime's repression. They were legal exercises conducted by judges who believed in the legitimacy and coherence of the law. Prosecutors and judges of these cases made careful efforts to examine national security laws and apply them to concrete instances, deciding what was or what was not subversive. Therefore, while the prosecution of military officers in these court cases involved politics, they also remained judicial events. The nature and function of trials as legal institutions continued, although their functioning produced injustice.

A significant factor that influences the practices of courts under a constitutional state is the magnitude of judiciary’s dependence on and cooperation with the political power in question. Cooperative judiciary is an endemic problem in the Turkish judiciary. It is traditionally conservative, pays disproportionate attention to the security of the state rather than individual rights and freedoms, and favors the ruling party of the day (Özsu, Ertekin 2013). The Ergenekon/Sledgehammer cases and the July 15 attempted coup case reflect the blurred distinction between the judiciary and the executive branch as they heavily relied on judges siding with the government, so that the court boards in Ergenekon/Sledgehammer cases had replaced the presumption of innocence with the presumption of guilt. That is, proving their innocence against terrorism allegations became the responsibility of defendants. For years, judiciary-executive cooperation was covert in the Ergenekon/Sledgehammer cases, and only after the July 15 coup attempt was it officially accepted that the Ergenekon/Sledgehammer prosecutions were conspiracies “[...] established on the basis of forged evidence” (Department of Corporate Communications of the Presidency 2016: 29).

Accordingly, the Ergenekon trial aimed to bring the military officers, who stood against the Gülen Community in the TAF, to heel and liquidate them. Lawsuits and investigations served the purpose of tainting them as guilty in public opinion, and causing them to lose their effectiveness. Similarly, Gülenists in judiciary, security, and intelligence services were said to produce false evidence in the Ergenekon and Sledgehammer cases, using law as a weapon through disciplinary investigations. Hence, criminal prosecutions strengthened the existence of the Gülen community within the state (Yargıtay Cumhuriyet Başsavcılığı 2018: 15). They prevented the promotion of
certain army commanders, bureaucrats, and police chiefs, led to their dismissal from their respected professions as retribution, and placed the members of these communities to vacant positions. What has become the official narrative of Ergenekon and Sledgehammer cases is traceable in the court decisions of the Fetullahist Terrorist Organization prosecutions. Accordingly, the objective of the Sledgehammer trial was to seize the strategically important commands within the TAF by the Gülenists. In fact, the Sledgehammer trial provided the grounds for liquidating the existing commanders and for promoting the Gülenists to their positions.52

Contrary to the Ergenekon/Sledgehammer prosecutions, judiciary-executive cooperation was explicit from the beginning and admitted to in the July 15 attempted coup trials, prompted by the sociopolitical context of the state of emergency. The cooperative judiciary in the July 15 attempted coup trials did not judge the legality of actions ex-post but interfered in the coup attempt that night and became an actor that shaped the trajectory of events. Only two and a half hours after the initiation of the coup attempt, the first investigation was launched in Istanbul, with Küçükçekmece Chief Prosecutor Ali Doğan stating that pro-coup soldiers would be detained wherever they were found (Department of Corporate Communications of the Presidency et al. 2018: 11). The Ankara Chief Public Prosecutor’s Office ordered the arrest of pro-coup soldiers around 4 o’clock in the morning while the coup attempt was still in progress and launched the investigation of coup activities at the Headquarters of the General Staff, shortly followed by the Chief Public Prosecutor’s Office in Gölbashi (Department of Corporate Communications of the Presidency et al. 2018: 15, 17). In line with the judiciary’s political activism, the defendants were presumed guilty in the July 15 attempted coup trials, which was reflected in the judges’ public speeches. For instance, the Ankara Chief Public Prosecutor stated that trials were merely a procedure, and those involved in creating the coup would be handed aggravated life sentences.53

Conclusion

Civil-military relations in Turkey since 2016 has been a projection of the authoritarian regime prevailing in the country. The President has the authority to give direct orders to commanders and their subordinates, and he is the sole power in giving promotions to the lower ranks of the TAF and in appointing generals. This article has discussed that the establishment of civilian supremacy and presidential control over the TAF in the last two decades has been a consequence of the combined use of reformative and repressive instruments. The JDP deployed these two forms of governance in the field of civil-military relations in a complementary way so that repression of military officers through criminal investigations and court cases has never disappeared, even at the height of reforms. Therefore, rather than treating legality and illegality, consent and coercion, and persuasion and harassment as mutually exclusive rationalities, they were instead blended into the recalibration of civil-military balance of power.54

The significance of this combined deployment of two forms of governance during the JDP rule is the judicialization of repression rather than reliance on bare violence, torture, or extra-judicial killings. The examination of the practices of the Ergenekon/ Sledgehammer cases and the July 15 attempted coup trials showed that even during the state of emergency rule, legality was not used completely arbitrarily by the judges. This point solidifies the courtrooms as part of the analysis of the civil-military
transformation and urges the examination of the intricate ties between judiciary and executive powers as well as the legality and politics surrounding them. In this direction, the politics of prosecuting military officers does not only focus on the intended purposes of revenge or retribution of the opponent, but also to the very practice of this judicial activity in which these ideas are embedded. The ability of the government to set judicial mechanisms into motion against a particular group to strengthen its position and weaken that of the opponent is itself a politically significant phenomenon, because the presence of cooperative judiciary conditions it. Acquired capacity of the government with this cooperation, however, is probative of the fact that criminal justice can be used as a political weapon against dissent under a constitutional state.

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NOTES

1. ‘Turkey’s New Presidential System’.
2. The main limitation of the article, which is itself a symptom of the authoritarian nature of Turkey’s political rule, is the difficulty in accessing adequate data, and thus, having to work with impartial information on these court cases. Until roughly 2014, the media’s interest and attendnacy of the public was high in the Ergenekon and Sledgehammer cases, which reflected in the fair number of scholarly studies on these prosecutions. However, this interest waned over time. Especially after acknowledgment of the cases as a conspiracy of the Gülen Community, it is challenging to come across much-needed scholarly analysis that would reexamine and reconstrue the cases from the outset on the basis of their conspirational nature. When it comes to the July 15 attempted coup case, silence prevails in the academia to a large extent and it is the
Foundation for Political, Economic and Social Research (Siyaset Ekonomi ve Toplum Araştırmaları Vakfı) that publishes studies on the case and tracks the trials. As Behlül Özkan (2020: 227) underlines, this Foundation is a partisan institution and JDP’s apparatchik, which disseminates information only reflecting governing party’s point of view. Likewise, state institutions, including high courts and the official news agency of the state Anadolu Agency, in their reports and news, use vulgar discourse and act as propaganda apparatus of the governing party. This point limits the amount of reliable data that the article can consult.

3. ‘Ergenekon Davası’

4. General Staff Roof trial was pended by the Ankara Heavy Penal Court no 17 and Akinci Airbase trial by the Ankara Heavy Penal Court no 4.

5. Since then, it is still unclear with whom the governing party made a new alliance within the judiciary in the rehearing of these cases as well as in the July 15 attempted coup case. For some (Akkaya 2020: 193) it is the Kemalists; for others (Alemdar 2020: 207) the nationalists. As a matter of fact, the details of the new executive-judiciary cooperation in the aftermath of the dissolution of JDP-Gülen alliance are likely to remain ambiguous until a new crisis or a new rupture in the governing block will open up an opportunity for us to learn more about inter-state alliances between different interest groups. That being the case, the article is cautious about making wide-ranging interpretations about court decisions, attending actors, and establishing direct cause-and-effect relations in the analysis of these politicojudicial events.

6. The most recent studies on “enemy criminal law” by Turkish jurists and scholars involve Şanlı 2019; Değери et al. 2020; Özkan 2019; Erkan 2020.

7. For instance, Mustafa Rüştü Erdelhun, the tenth Chief of the General Staff, was tried in Yassıada Courts for misfeasance in office after May 27, 1960 coup. Similarly, after the coup attempt of May 21, 1963, 151 active and retired officers, including leaders of the essaying the Staff Colonel Talat Aydemir and Major Fethi Gürca, and nearly 1500 cadets were arrested and tried in three separate military commissions (Mat 2014: 349).

8. In contrast to that, trials in the 60s were pended at extraordinary courts. They did not last very long because of their extraordinary status. The whole prosecution ended within 13 months in Erdelhun’s case and 14 months in the May 21 attempted coup case. Also, trials in the 60s did not aim at upsetting civil-military relations, which had already been upset by the military coup of May 27. For instance, then-Prime Minister İsmet İnönü did not consider the May 21 coup attempt as an issue that required alteration of civil-military relations and therefore did not initiate reforms that targeted military administration (Esen 2020: 11).

9. The term “deep state” refers to powers operating with impunity through and beyond the official state structure. It is considered to be a network of illegitimate alliances intersecting the military, the police force, the bureaucracy, the political establishment, the intelligence agency, and mafia organisations (Ertür 2016: 177).

10. Article 6 of the Decree in the Force of Law no 668.
11. Article 36 of the Decree in the Force of Law no 669.
12. Article 45 of the Decree in the Force of Law no 669.
13. Article 104 of the Decree in the Force of Law no 669.
15. Article 203 of the Decree in the Force of Law no 694.
17. Even though at the beginning each alleged coup plot had its own indictment, they were later on merged with that of the Ergenekon case.
18. ‘Balyoz Davasında Karar Açıklanı.’
19. ‘Ergenekon Davasında Generallere Müebbet.’
20. The Decision of the Constitutional Court dated March 6, 2014 on Mehmet İlker Başıbüğ’s application no 2014/912.
21. ‘Ergenekon Davasında Tahliyeler.’
22. The Decision of the Constitutional Court dating June 18, 2014 on Sencer Başat and others’s application no 2013/7800.
23. ‘Balyoz Davası’nda Beraat Kararı.’
24. ‘Ergenekon Davasında Karar Açıklanmıştı.’
25. ‘Balyoz Sancı 7 Kişinin Beraati Bozuldu.’
26. ‘15 Temmuz’un komuta merkeziydi...’
27. ‘15 Temmuz şehitler Köprüsü...’
28. The indictment of Ankara Chief Public Prosecutor’s Office dating March 03, 2017, no. 2017/7327. The case files of these 38 officers were separated and later merged with the Akıncı Airbase Case. See Miş et al. 2018: 294.
29. The indictment of İzmir Chief Public Prosecutor’s Office dated October 21, 2016, no. 2016/2090
31. ‘Turkish court upholds...’
32. ‘FETÖ’nün Darbe Girişimi Davalarının Tümü Tamamlanmıştı.’
33. ‘Ergenekon Coup Plot Case.’
34. ‘Ergenekon Dursuşmasına İzleyici Alınmayacak.’
35. ‘Ergenekon: Silivri'de Protesto Eylemi.’
36. ‘Eski Genelkurmay Başkani...’
37. ‘İşte Balyoz Davası’nın Bilançosu.’
38. ‘YAŞ Maratonunda Hükümetin Dediği Oldu.’
39. ‘YAŞ’ta Emekli Edilenler...’
40. ‘YAŞ Karaları Açıklanmıştı.’
41. ‘YAŞ Erken Bitti.’
42. ‘Atamalar Hayal Kırıklığı Yarattı.’
44. ‘Diyanet İtiraz Etti.’
45. On December 24, 2017, the necessary legal changes were made by the Decree in the Force of Law no 696, however; to this date, it is unclear whether the single dress code is practiced.
46. ‘FETÖ’nün Darbe Girişimi Davalarının Tümü Tamamlanmıştı.’
47. Accordingly, during the state of emergency rule 15,021 military personnel were purged, and between the period since the end of the state of emergency on July 18, 2018 and June 2020, another 4,462 soldiers were purged. See ‘Bakan Akar Açıkladı.’
48. Democracy watches was a period of state sponsored social mobilisation between July 15 and August 10, 2016. In this period, citizens were invited by the state to take the streets to safeguard the national will and democracy. Watches started in the early evening hours, usually get crowded before midnight, with some citizens standing on watch until the sun rise. The Democracy and Martyrs Rally took place on August 7 and marked the high point of this period (Şen 2020: 60-61).
49. ‘Ergenekon Duruşmasına İzileyici Alınmayacak.’
50. There have been decisions of the European Court of Human Rights regarding the Ergenekon and Sladgehammer trials condemning Turkey such as Bektaş vs. Turkey, application no 70026/10; Mengen and others vs. Turkey, application no 44012/09; Yüksel and others vs. Turkey, application no 55835/09; Sağdıç vs. Turkey, application no. 9142/16. Also see the reasoned decision no 2018/43 of the Istanbul Heavy Penal Court no 25, 142.
51. Türkiye Büyük Millet Meclisi Araştırma Komisyonu Raporu (Turkish Grand National Assembly Research Commission) 2017: 227. After the report circulated in the media, the
President of the Grand National Assembly of Turkey made a statement saying that such a parliamentary investigation commission had been established, but a report on which the commission members had agreed upon, and which passed through the legal processes in accordance with the provisions of the internal regulations, was not submitted to the Presidency of the Grand National Assembly before the official deadline had expired. Therefore, the report was not officially recognized and is not accessible on the official page of the Grand National Assembly. See 'TBMM Başkanlığında Basın Açıklaması'

52. Indictment of Istanbul Chief Public Prosecutor’s Office dating February 9, 2017, no. 2017/727, 56.
53. ‘Başsavcı 15 Temmuz’un Yıldönümünde Konuştu...’

ABSTRACTS

The article examines the establishment of civilian supremacy and presidential control over the Turkish Armed Forces in the last two decades. It purports that such control was possible due to the combined use of reformative and repressive instruments. Under the JDP governments, intermittent legal reforms trimmed the political power of military bureaucracy and subjected it to the supervision of civilian administration. At the same time, the military was repressed through criminal prosecutions that affected scores of military personnel. In that way, the article supports the claims that authoritarian transformation of Turkey does not follow a sequential process where years-long reforms were replaced by repression in the state of emergency rule that declared in the aftermath of the July 15 coup attempt. Rather, the JDP deployed reform and repression in a concomitant and complementary way. In fact, repression of military officers through criminal investigations and court cases had never disappeared, even at the height of reforms. In this regard, the article addresses the July 15 attempted coup case and the Ergenekon and Sledgehammer cases separately due to the disparate political/legal contexts surrounding these prosecutions. It also aims to provide an analytical frame for examining judicialized repression in the form of criminal prosecutions.

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Keywords: civil-military relations, Turkish Armed Forces, political trials, authoritarianism, Turkey

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