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JURIDICO-POLITICAL AND SPATIOTEMPORAL CONDITIONS OF
EXCEPTIONAL SECURITY MEASURES

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JURIDICO-POLITICAL AND
SPATIOTEMPORAL CONDITIONS OF
EXCEPTIONAL SECURITY MEASURES:
THE CASE OF TÜRKİYE BETWEEN 1923
AND 2019

A Ph.D. Dissertation

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By Burcu Türkoğlu Payne

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ABSTRACT

JURIDICO-POLITICAL AND SPATIOTEMPORAL CONDITIONS OF EXCEPTIONAL SECURITY MEASURES: THE CASE OF TÜRKİYE BETWEEN 1923 AND 2019

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This dissertation examines the state's interference with the constitutional rights and liberties regime in the name of security in light of the practices in Türkiye between 1923 and 2019. It aims to explain what juridical and political aspects such measures of the state may have, explore the spatial and temporal dimensions of these security measures, and relate these dimensions to the juridico-political conditions of the security measures contradicting the norms concerning rights and liberties, which are constructed legally by states. It seeks to conceptualise exceptional security measures by examining the state as a whole with all its relevant institutions instead of examining a specific source of powers, such as the executive, the legislature, or the police. It shows that the exercisers of state power and the power to make the decision that interferes with rights and liberties vary depending on the time and the juridico-political context. It

seeks to understand how and when state authorities act in contradiction to the norms concerning rights and liberties, the source of state authorities' power to interfere with the rights and liberties regime, and what spatiotemporal aspects these practices have.

Keywords: Constitutional order, emergency, exception, exceptional security measures, political power, Türkiye

ÖZET

OLAĞANÜSTÜ GÜVENLİK ÖNLEMLERİNİN HUKUKİ-SİYASİ VE MEKANSAL-ZAMANSAL KOŞULLARI: 1923-2019 ARASI TÜRKİYE ÖRNEĞİ

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Doktora, Siyaset Bilimi ve Kamu Yönetimi Bölümü

Tez Danışmanı: Prof. Dr. Pınar Bilgin

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Bu tez, devletin güvenlik adına anayasal hak ve özgürlükler rejimine müdahalesini 1923-2019 yılları arasında Türkiye'deki uygulamalar ışığında incelemektedir. Bu çalışma, bu tip güvenlik önlemlerinin ne tür hukuki-siyasi özellikler taşıyabileceğini araştırırken güvenlik önlemlerinin mekansal ve zamansal boyutlarını keşfetmekte ve bu boyutları güvenlik önlemlerinin devletler tarafından yasal zeminde oluşturulan hukuki-siyasi özellikleriyle ilişkilendirmektedir. Yürütme, yasama, polis gibi belirli bir yetki kaynağını incelemek yerine, devleti ilgili tüm kurumlarıyla birlikte bir bütün olarak inceleyerek istisnai güvenlik önlemlerini kavramsallaştırmayı amaçlamaktadır. Bu tez, devlet iktidarını kullananların ve hak ve özgürlüklere müdahale eden karar alma yetkisinin zamana ve hukuki-siyasi bağlama göre değiştiğini göstermektedir. Devlet otoritelerinin hak ve özgürlüklere ilişkin normlara nasıl ve ne zaman aykırı davrandığını, devlet otoritelerinin hak ve özgürlükler rejimine

müdahale etme yetkisinin kaynağını ve bu uygulamaların zaman-mekansal yönlerinin neler olduğunu anlamaya çalışmaktadır.

Anahtar Kelimeler: Anayasal düzen, istisna, istisnai güvenlik tedbirleri, olağanüstü hal, siyasi iktidar, Türkiye



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CHAPTER 1

INTRODUCTION

This dissertation examines the state's interference with the constitutional rights and liberties regime in the name of security in light of the practices in Türkiye between 1923 and 2019. It aims to explain what juridical and political aspects such measures of the state may have, explore the spatial and temporal dimensions of these security measures, and relate these dimensions to the juridico-political conditions of the security measures contradicting the norms concerning the rights and liberties regime. Introducing the research, I will first explain the rationale behind writing this dissertation. Then, I will introduce two bodies of the Political Science and International Relations (IR) literature on security measures interfering with rights and liberties. The second section will comprise the conceptualisations of such measures based on the norm-exception dichotomy – a body of literature that has mainly been developed since 9/11. In the third section, I will introduce several lines of thought that underscore the continuity of the security measures in question. The fourth section will introduce the case of the Republic of Türkiye and explain how the state practices in Türkiye are relevant to the existing literature. What follows will define the key concepts of the dissertation (exceptional security measures, exception, and emergency) and offer an analytical framework to analyse security measures infringing upon rights

and liberties. After presenting the conceptual framework, I will move on to presenting the research design. In the last section, I will outline the dissertation.

1.1. Rationale of the Dissertation

Emergency powers legally embodied in state institutions, be it martial law or the ruler's prerogative, have a long history in both theory and practice of modern statehood. Since 9/11, contemporary works in the literature of Political Science and IR have mainly analysed the state's interventions in the rights and liberties regime in the name of security (exceptional security measures)¹ through the distinction between the past and present divided by a historical rupture, namely, the 9/11 attacks. Indeed, 9/11 was a shift in how states respond to what they frame as a threat to the nation/state, as the events of 9/11 were utilised to make ambiguous definitions of what was framed as a threat. However, such interventions of states against what/whom they define as a threat to the nation/state had been integral to state rule before 9/11, too (Bigo, 2011; Feldman, 2010; A. Neal, 2012; Neocleous, 2006b; Scheuerman, 1997).

This observation constitutes the starting point of this dissertation. The post-9/11 literature has primarily explained exceptional security measures through the norm-exception dichotomy. Contemporary politics where rights are compromised in the name of security has been framed as the state of exception, as the

¹ I will call the security measures that interfere with the rights and liberties regime 'exceptional security measures'. I will conceptualise the term in question in the following sections of this chapter.

literature has placed exceptional security measures in a space of lawlessness that defies democratic politics. The exception referring to the absence of the constitutional order and democratic politics has a “sociological and historical truism”, as Kalyvas (2008, p. 119) argues. There are cases such as Chile (Cristi, 2000), Venezuela and Colombia (Colón-Ríos, 2011), Brazil (Paixão & Massimo, 2020), and Türkiye, where a unitary place of political power undemocratically acted outside the constitutional order in history. In Türkiye, for example, the state of exception connoting the suspension of the constitutional order encompassed four years (1960-1961; 1980-1983) of its republican history. On the other hand, the interference with constitutional rights and liberties in Türkiye may be anything but exceptional. Then, how do we understand the exceptional security measures in Türkiye in the remaining 92 years of the 96 years under research?

Looking into emergencies provides some answers. Besides the state of exception when the constitutional order was suspended, the abovementioned countries also had experiences where constituted powers (constituted by the constitution) employed constitutionally determined emergency measures while the constitutional order was in place. For example, within the legal order, martial law and states of emergency (in some regions or across the country) encompassed approximately 39 years of the republican history of Türkiye. The exceptionalist literature does not distinguish between the exception, during which the constitutional order is suspended, as a unitary authority assumes the constitution-making power, and emergencies, where the constitutional order remains intact and exceptional security measures are employed within the legal

framework. As Ellen Kennedy argues (2011, p. 538), the studies that do not distinguish between exceptions and emergencies “repeat the mistake of collapsing emergency into exception and the suspension of rules and norms”. The state of exception (the constitutional order is suspended) and states of emergency (the constitutional order remains in place) refer to different juridico-political conditions. Besides the acute distinction between the absence and the presence of legal order, constitutional emergency measures are often employed through or besides parliamentary politics.

Thus, Türkiye experienced either a state of exception, martial law, or emergency for roughly 43 years. Consequently, during more than half of the 96-year period examined, about 53 years, the country was neither under a state of exception nor subject to constitutionally provisioned exceptional security measures. However, during the 53 years, state authorities could still interfere with the rights and liberties regime under the pretext of security, a phenomenon that defies explanation within the framework of exception and emergency. Although every constitutional order has regulations on exceptional circumstances that might require taking security measures that restrict or suspend the rights and liberties in the name of security, not every security measure as such is taken based on constitutional or legislated emergency responses.

To explain the security measures interfering with citizens’ constitutionally recognised rights and liberties, the distinction between exceptions and emergencies helps us escape the norm-exception finitude (every security practice is either in the realm of the norm or the exception) to some extent.

However, the case of Türkiye shows that it does not suffice. The two concepts, 'the state of exception' and 'the state of emergency', do not exhaust state authorities' ways of interfering with the rights and liberties regime. A body of literature is insightful to understanding interventions to constitutional rights and liberties without being carried out within a state of exception or emergency. In contrast to the exceptionalist logic in analysing security politics of the contemporary era by pointing at historical ruptures like 9/11, some lines of thought have addressed the continuity in state actions that contradict the rights and liberties regime. Several contextual analyses have indicated that exceptional security does not necessarily refer to lawlessness, challenging the arguments of studies grounded in the norm-exception dichotomy (among others, see Davies, 2008; Gregory, 2006; Humphreys, 2006; Hussain, 2007; A. Neal, 2012). However, theoretical discussions have rarely met empirical evidence on different juridical forms of exceptional security measures, and most studies have addressed one primary source of power (such as the executive, the legislature, or security professionals) that decides on exceptional security measures.

While building on this second body of literature, I aim to conceptualise exceptional security measures by examining the state as a whole and the exercisers of its power varying depending on the time and the juridico-political context. I seek to understand how and when state authorities act in contradiction to the norms concerning rights and liberties, the source of state authorities' power to interfere with the rights and liberties regime, and what spatiotemporal aspects these practices have. This dissertation challenges exceptionalist

arguments by integrating theory and practice through a conceptual and analytical framework beyond the conventional norm-exception binary (except for the cases of the suspension of the constitutional order in its entirety). It examines the politics of security and the security policies interfering with Türkiye's rights and liberties framework from 1923 to 2019. An in-depth analysis of the case of Türkiye shows that the existing conceptualisations of exceptions and emergencies lack generalisability and comprehensive explanations for varying juridico-political forms of the ways in which states interfere with the rights and liberties regime. The state practices within Türkiye offer insight into how state authorities act in contradiction to rights and liberties frameworks.

The following section will introduce the literature analysing exceptional security measures based on the norm-exception dichotomy.

1.2. The Exceptionalist Literature of the Post-9/11 Era

In response to the 9/11 attacks, the US legislated draconian laws, such as the Patriot Act, which equipped state authorities with extraordinary powers contradicting the rights and liberties regime in the name of security. In the aftermath of 9/11, rights and liberties were narrowed through legal and administrative actions by prioritising security measures globally (see Bellamy & Bleiker, 2007; Eckert, 2008). In addition to enacting legislation allowing national surveillance strategies and security measures that contradict the norms concerning human rights, the US's officially declared war against terrorism was fought through clandestine detention facilities, such as the Abu Ghraib prison in

Iraq and the Guantánamo Bay detention camp on Cuban soil, acts of torture, and military invasions of Iraq and Afghanistan.

The events of 9/11 marked a turning point in the way states handle what they frame as terrorism, as they seized upon these events to define the empty signifier broadly. The post-9/11 security politics, shaped by the goal of defeating terrorism at the national and international levels, has brought forth legal and practical quandaries regarding rights, liberties and security. In an attempt to explain such politics and policies, contemporary literature on states' responses to what state authorities framed as a threat to the nation/state resorted to German jurist Carl Schmitt's theory of the state of exception (see Agamben, 2005; Aradau, 2007; Diken & Laustsen, 2004, 2005; Dillon, 2018; Doty, 2007; Fierke, 2015; Gregory, 2006; Huysmans, 2008; Johns, 2005). Schmitt was one of the strongest critics of liberalism. His name was avoided from being mentioned by scholars following WW2 as he was a Nazi whose thoughts set a somewhat doctrinal basis for the fascist cruelty in Nazi Germany (Çelebi, 2008, p. 8). However, in the post-9/11 era, there raised "a post-9/11 flurry of interest" in Schmitt (A. Neal, 2008, p. 88) among those critical of the security politics of post-9/11 (A. Neal, 2012, p. 261) that has prioritised "the security interests of governments" instead of individuals (Bilgin, 2003, p. 208). Schmitt's theory of sovereignty and his conceptualisation of the exception constituted a basis for academic debates to explain and criticise contemporary security politics.

Prior to 9/11, Germany served as the quintessential case for examining the modern state in a state of exception in Political Science and IR scholarships. The

prioritisation of state security in politics in the post-9/11 era shifted the attention of those critical of this approach to governing. Before 9/11, Hitler's complete suspension of the constitution was an example of the state of exception, as theorised by Schmitt (1985). Following 9/11, drawing parallels between Nazi Germany and contemporary politics, the literature has questioned how state authorities in liberal democracies carry out illiberal practices in their national territories and abroad. The existing literature has been shaped based on the prevalent idea that the exceptional powers of state authorities have become integral in state rule since 9/11. As rights and liberties have been subjected to authorities' discretion, people have faced injustice at the hands of their own governments or international powers intervening in their territories.

In the literature, Schmittian concepts forming the theory of the exception and a sovereign as the ultimate decision-maker were translated into explanations of contemporary security practices. An exceptionalist understanding of security that considers 9/11 a rupture from the past and a dividing line between democratic politics and anti-politics (A. Neal, 2019b), law and politics (Basaran, 2008; Neocleous, 2006b), and the normal and exceptional (among others, see Apap & Carrera, 2004; Aradau, 2007; Guild, 2003; Salter, 2008; Tosa, 2009; Vaughan-Williams, 2008) has become prevalent. The decision-makers and implementers of security measures depriving people of their rights and liberties have been attributed to a decision-making power that is not legitimised through democratic processes as the decision is made in a space of lawlessness. This view has identified the post-9/11 era with "the state [that] extends exception as a

permanent state along a totalitarian line” (Diken & Laustsen, 2005, p. 74), with “postpolitics”, which means “both emptying out of politics and provoking naked violence” (Diken & Laustsen, 2004, p. 102).

The critics of post-9/11 security politics have also criticised the liberal state formation, considering liberal states’ security measures against terrorism and creativity in coming up with new ways of violating their citizens’ rights. Scholars have asked questions concerning the legitimisation processes of “an array of violent and illiberal practices” in liberal democracies (A. Neal, 2010, pp. 1–3) and how detention “camps and therapeutic policies exist within democratic forms of governance” (Huysmans, 2008, p. 179), as the rule of law rendered “optional for liberal democratic societies” (Dyzenhaus, 2006, p. 1). As the premise of liberal democracy that it would guarantee human rights became so apparently falsified by post-9/11 security politics, scholars have questioned the foundational tenets of liberal democracy.

While the analyses based on the norm-exception dichotomy have gained prominence in the post-9/11 era, another body of literature has pointed out the continuity and permanency of the security measures that lead to restrictions or suspensions of constitutional rights and liberties in liberal states. The following section will look at the studies pointing out the non-dichotomous relationship between the norms and “repressive but legal measures” (Hussain, 2007, p. 742), opposing the idea of ruptures in security politics.

1.3. The Literature That Says Making Exceptions to Norms Is Not So Exceptional

The liberal viewpoint of political power is concerned with “the erection of fences around political power” to avoid arbitrary rule (Neumann, 1950, p. 165). It aims to dissolve the political power “into legal relationships” and make all these relationships “purposive-rational, that is, predictable and calculable” (Neumann, 1950, p. 165). However, fencing does not necessarily work in practicality, as proven by the practices of post-9/11 as well as countless examples in history. A body of Political Science and IR literature has attributed embeddedness to exceptional powers in the state’s regular functioning by addressing the mundane nature of these powers and the multiplicity of state practices leading to restrictions or suspensions of rights and liberties. This approach has addressed how legal repressive measures are integral to the state power, implicitly or explicitly refusing or ignoring the idea of a rupture (among others, see Feldman, 2010; Hussain, 2007; Lazar, 2009; Loevy, 2016; A. Neal, 2012, 2019b; Neocleous, 2006b; Prozorov, 2005). Although this literature has also been shaped mainly since 9/11, its analyses have taken on a historical perspective, pointing out the historicity of security measures prioritising state security.

While security is a prerequisite for people to exercise their rights and liberties, in theory, regular security measures of state authorities do not intervene in the rights and liberties regime in modern statehood organised along the lines of liberal constitutionalism. Exceptional security measures contradicting this regime do not represent exceptions despite being extraordinary in the sense that they

disrupt the regular functioning of the constitutional norms on rights and liberties. That being said, they do not fit into the norm-exception dichotomy, as the constitutional order remains intact. In contrast to the Schmittian exception and the consideration of the aftermath of 9/11 as a state of exception, an era of lawlessness and anti-politics, research on post-9/11 security politics has shown that neither the constitutional order has been suspended (Davies, 2008; Gregory, 2006) nor has there been a lack of democratic politics in deciding on exceptional security measures in contemporary 'west', the centre of the exceptionalism discussions (Humphreys, 2006; Kurylo, 2022; A. Neal, 2012, 2019b). As Andrew Neal (2012, p. 261) argues, "[t]he Schmitt-influenced debate on exceptionalism" has "its continental legal assumptions and its ruptures, binaries, and singular understanding of sovereign power". The analyses drawing from the Schmittian state of exception overlooks the peculiarities of exceptional security measures where the law and politics coalesce, and the relationship between the norm and the exception is not necessarily dichotomous.

The exceptionalist approach suggests that norms are applicable solely under ordinary circumstances, and emergency regulations are considered suspended during extraordinary times (Lazar, 2009, p. 3). Challenging this approach founded in the norm-exception dichotomy, Nomi Claire Lazar's (2009) research on the security measures interfering with rights embeds emergency powers in the liberal state order. She underscores that "understanding emergency powers in terms of their continuities with everyday institutions and values" provides a more accurate understanding of emergencies and practices carried out during crises

(Lazar, 2009, p. 3). Leonard C. Feldman (2010) finds “the banality of emergency” in these everyday practices by examining police discretion. Regarding the exceptionalist approach, Feldman (2010, p. 163) points out that contemporary debate on exceptions and emergencies “constantly exceeds one reified model of the insides and outsides of law” through the dichotomy of the norm and the exception. However, the police exercise their power within “a more fundamental complexity” than the norm-exception simplicity in terms of the legal conditions of these practices (Feldman, 2010, p. 146). Indeed, the police, who are security professionals, were decision-makers concerning citizens’ rights and liberties long before 9/11 (see Benjamin, 2021; Neocleous, 2000; Prakash, 2022).

In every constitutional order, state authorities are equipped with means to protect the state. The people framed as a threat to the nation/state are subjected to the norms that allow the state to take precautions to protect itself. These norms categorically prioritise the political order at the expense of individuals’ rights and liberties. Nevertheless, the norms regulating the rights and liberties regime and the repressive means can exist simultaneously in defiance of the dichotomous relationship between the norm and the exception. States, whether classified as liberal democracies or not, are creative in producing ways of preventing their citizens from exercising their constitutionally recognised rights and liberties by justifying state authorities’ practices on the grounds of security needs. When they do so, the norms concerning state security are employed, contradicting the norms concerning rights and liberties against those framed as a threat. As Derek Gregory (2006, p. 420) argues, “law is not outside violence” and

“among other things, that law becomes the site of political struggle not only in its suspension *but also in its formulation, interpretation and application*” (italics in original). Mark Neocleous (2006b) has shown how emergency declarations have been a significant part of the rule of law in many countries and how emergency practices are not Schmittian exceptions. As such, empirical research has demonstrated that state authorities limit citizens’ rights and liberties in ways that defy the norm-exception dichotomy because “emergency powers might be exercised while liberal norms remain in force” (Lazar, 2009, p. 4).

The literature discussed in this section addresses that the constitutional framework upholds the norm of protecting rights while also recognising the possibility of their infringement. The analyses here encompass most state actions that go against the regime of rights and liberties. However, they lack explanations for the historical fact where the norm-exception dichotomy emerges. Most studies in this literature focus on a specific authority holding discretionary power over citizens’ rights and liberties, such as the legislative or the police. The notion of emergency is discussed as both a constitutional category and as state practices that interfere with the rights and liberties regime without an emergency declaration, despite the distinct juridico-political conditions of these two ways of encroaching upon rights and liberties.

This dissertation examines the state as a whole rather than pointing out the specific authority with discretionary powers over rights and liberties and the legality of this authority’s actions. The axis of this research lies in the juridico-political conditions of exceptional security measures emanating from and within

the tension between political power and law. This dissertation evaluates the juridico-political and spatiotemporal contexts surrounding such measures by examining the political domains of decision-making, as well as constitutional and legal frameworks that apply to the national territorial space. The diverse array of security practices observed in Türkiye underscores the need for a more comprehensive understanding of exceptional security measures. The subsequent section will delve into the specifics of the case of the Republic of Türkiye.

1.4. The Case of the Republic of Türkiye

The Republic of Türkiye was established in 1923. Throughout its history, those in positions of political power and practitioners of security policies have encroached upon the rights and liberties of citizens for various reasons. Until 2019, these interventions consistently prioritised state security and cognate notions, such as sovereignty, legal order, territorial integrity, and national unity. The threat framed each time was those deemed to be acting against governmental security interests.

With the onset of the COVID-19 pandemic in 2019, governmental authorities implemented exceptional measures such as national lockdowns and border closures. These measures also interfered with the rights and liberties of citizens like the previous ones. However, this time, what was securitised was not conscious political subjects who were deemed to have attempted to destroy the state but a disease. The justification for the infringement upon rights and liberties often invoked phrases such as ‘the health of our people’ and ‘the future of our

society,' addressing societal security over solely state security concerns (regardless of whether exceptional measures were utilised for governmental security interests or not).

The case of Türkiye between 1923 and 2019 presents a juridico-politically diverse range of security measures interfering with the rights and liberties regime, connoting varying juridico-political processes and decision-making structures throughout the state's history. These variations defy categorisation under a single concept (such as the 'exception' as articulated by Schmitt), underscoring the variety of the grey areas alongside the 1960-1961 and 1980-1983 occasions of the norm-exception dichotomy, which had only to offer the binary of black (lawlessness) and white (the rule of law) of state practices. I categorise these security measures practised simultaneously or at different times between 1923 and 2019 below to highlight that exceptional security measures can assume different juridico-political conditions.

States of exception (norm-exception dichotomy): The constitution-making power of the Republic of Türkiye established the state in 1923 and enacted the 1924 Constitution as the constitutional framework of state rule. After the constitutional order was established, Türkiye experienced Schmittian exceptions twice from 27 May 1960 to 15 October 1961 and from 12 September 1980 to 6 December 1983, where the constitutional order was suspended in its entirety and governing authorities emerged as the constitution-making power. While the political order (the state) was maintained in each period, the administration of the state was carried out in a domain of lawlessness as the absolute authority to

decide on security and public order necessities was not in any way responsible for their decisions or actions. As such, the military cadres that carried out the military coups declared martial law despite not being authorised by the constitution, which was eventually abolished. The declarations, legally null, became valid through force. Although the state and its institutions functioned, they did so only based on arbitrary decisions rather than the constitutional principles of the Republic. The state practices were not unconstitutional, considering that no constitutional order existed. These practices were outside the constitutional order – they were extraconstitutional. In each case, the decision-maker(s) on the exception replacing their decisions with the existing legal norms eventually established a new constitutional order.

Martial law and states of emergency (constitutional coexistence of rights and the means for their restriction): From the establishment of the state in 1923 until 2019, martial law (the constitutional emergency response between 1924 and 1980 and one of the emergency responses until 1987) was declared eleven times, and the state of emergency (one of the constitutional emergency responses between 1982 and 1987, and the only emergency response after 1987) was declared five times (two of these declarations were used as a method of transition from martial law to the state of emergency between 1984 and 1987). The decision-making on martial law or emergency declarations and their implementation always involved multiple actors and institutions, such as the executive, the Parliament, the military, and martial law commanders, depending on the constitutional framework at a given time. During the period under

research, martial law and states of emergency were in effect in specific territorial spaces of the country or in the entire national territory for approximately 39 years of state rule while the constitutional order was in place.

Legal-repressive measures (constitutionally non-determined): Besides the states of exception and emergency measures employed through the constitutionally determined juridico-political processes, state authorities in the Republic of Türkiye interfered with the constitutional rights and liberties regime in several other ways. The other ways of enacting state power were legislation (all throughout) and emergency decrees (from 1982). On the one hand, the Parliament was the decision-maker on security issues when it legislated legal norms contradicting the constitutional rights and liberties regime. On the other hand, emergency decrees became a constitutional principle favouring the executive in emergencies. However, the Parliament, too, was a decision-maker and contributed to the decision-making through its actions (see Chapter 6) or inactions (see Chapter 5). Apart from the state practices enacting state power by creating legal norms, state authorities exercised power by making discretionary decisions concerning matters framed as security issues. Varying exercisers of state sovereignty, including security professionals, bureaucrats, and the judiciary, carried out actions that altered the rights and liberties regime for those framed as a threat to the nation/state.

In the subsequent section, I will offer an analytical framework to comprehend the state authorities' ways of restricting or suspending constitutional rights and liberties on the grounds of security needs. I will define this dissertation's key

concepts and explain their relevance to a nuanced understanding of exceptional security measures by addressing where political power may lie in the state structure.

1.5. Key Concepts

This section provides this dissertation's definitions for the following key concepts: exceptional security measures (an umbrella concept), exception, and emergency. The term 'exceptional security measures' has been used in several studies to frame either the security measures that the state takes when it securitises a matter (e.g., Norman, 2018) or "security measures that go beyond ordinary law-and-order mechanisms" (Chopra, 2019, p. 555). The former use of the term is within the securitisation theory. In this framework, exceptional security measures are outcomes of exceptional security politics. Those holding power to turn something into a security problem seek to remove the issue in question from everyday politics "into a rarefied arena of executive decision and narrowed choice" (A. Neal, 2019b, p. 7; see Buzan et al., 1998, p. 23) - into the field of exceptional politics. The latter use of the term emanates from the conventional norm-exception dichotomy. Both uses of the term connote the exclusion of ordinary politics and the routine functioning of the state.

This dissertation conceptualises the term 'exceptional security measures' and uses it as an umbrella concept to frame all security measures that interfere with the rights and liberties regime. As such, exceptional security measures encompass the state of exception and emergencies. Such measures exclude

ordinary politics and the legal order when there is a state of exception. Other than the times of the exception, exceptional security measures remain embedded in the legal order and ordinary politics. Theoretically, it is an ordinary situation for citizens to be able to exercise their rights and liberties. Exceptional security measures disrupt the regularity of this situation, not necessarily the politics or the law. I call the security measures that contradict the constitutional norms on rights and liberties 'exceptional' due to their interference with the ordinariness of the norms on rights and liberties by making them exceptional to exercise temporarily or permanently. This approach rejects ruptures in security politics and allows us to historicise state authorities' responses to situations or events framed as a threat to the nation/state.

A situation ceases to be ordinary only through the decision on the extraordinariness of the situation in question. Identifying the threat, constructing the enemy, and deciding that the extraordinariness of the existence of a particular threat and enemy beget politics. For, the decision is political. I organise by concepts and highlight the juridico-political conditions of the decision-making and the implementation of the security measures restricting or suspending constitutional rights and liberties.

As noted earlier, contemporary literature mainly framed the prioritisation of state security as 'the state of exception', which has become somewhat 'permanent' following the events of 9/11. This perspective overlooked the varying juridico-political forms of security measures restricting or suspending rights and liberties as the state of exception refers to situations such as lawlessness and

the exclusion of democratic politics from state rule. This understanding of security measures contradicting the rights and liberties regime was built on the Schmittian exception (I will briefly explain it in this section and at length in Chapter 2). Nonetheless, categorising every instance of evading legal oversight as the Schmittian exception can lead to theoretically reductionist interpretations, disregarding the possibility that such measures may arise from a variety of juridico-political circumstances. As such, the Schmittian state of exception constitutes only one of the ways in which state authorities (a singular source of political power in cases of the exception) interfere with the rights and liberties regime. Each security measure is decided and implemented at the intersection of politics and the law. Where a security measure is juridico-politically positioned determines where the struggle for rights and liberties takes place.

The word 'state' in the concept of 'the state of exception' may mean two things: (i) the current condition or situation of something, or (ii) the political entity that has its own government, laws, and sovereignty and acts on discretion when a threat to the existence of the nation/state is concerned. In liberal constitutionalism, the 'state' in 'the state of exception' refers to the former, as the government is formulated as an institution that is limited by a constitution that establishes the basic principles and rules of governance and guarantees individual rights and liberties. The political entity, the state, functions within the bounds of the law, and therefore, the exceptional character of an emergency is managed through constitutionally determined and defined emergency measures. The latter definition of the 'state' in 'the state of exception' refers to a political

entity that somehow acts exceptionally and in defiance of citizens' rights and liberties whenever it deems 'necessary'. Based on this second definition, every state is a state of the exception – the ability to decide on the exception is what makes a state sovereign. When taken as the basis for understanding the state and its authorities' actions, the latter definition leaves us with no critical standpoints against security politics but obedience and acceptance. In this understanding, the decision of the sovereign becomes prior to the law in case the sovereign has decided that there is a threat to the state's existence. As such, the constitutional norms on rights and liberties get suspended by the sovereign decision-maker, and they become at the whim of the political power. This latter definition refers to Schmitt's theory of the exception (decisionism).

Schmitt (2008, p. 125) theorised the state as an antecedent to the legal order. He defined the exception as a situation decided by the sovereign, who is not bound by positive law (Schmitt, 1985). The sovereign, for Schmitt, connotes a source of power that is limitless in its potentiality to decide how to handle a security threat to the existence of the state and its nation, which may, in Schmitt's theory, occur "in cases of extreme conflict" (Cristi, 2011, p. 354). According to Schmitt (2007), the essence of *the political* is the distinction between friend and enemy – the distinction made by the sovereign, based on which political unity endures. The sovereign "decides whether there is an extreme emergency as well as what must be done to eliminate it" (Schmitt, 1985, p. 7). The "extreme emergency" is the exception, the extreme conflict between the friend and the enemy, which leads to the sovereign decision to suspend the constitution in its

entirety and decide on the means of security measures to eliminate the threat (Schmitt, 1985, p. 7). For Schmitt, who ascribes the power to make the constitution to a sovereign rather than the people, the sole entity with the legitimate power to decide on the exception is the sovereign, who has the potential to emerge as the constituent power when they decide on the exception. As such, in contrast to the liberal state theory, “[t]he unity that a people represents does not possess ... [a] decisionist character” (Schmitt, 1985, p. 49). However, for Schmitt, the sovereign, who is not accountable before the law, does have such character.

In his conceptualisation of the exception, which he built on his previous works but mainly developed after 9/11, Giorgio Agamben (2005, p. 4), like Schmitt, defined the state of exception as the entire suspension of the constitutional order. Agamben focused on how security policies initiated within the scope of the ‘global war on terror’ and spread internationally deprived people of their rights and liberties. As such, he depicted the detention camp in Guantanamo as an area where the state of exception prevails as it has been “entirely removed from the law and from judicial oversight” (Agamben, 2005: 4). Although he interpreted the events from a biopolitical perspective, Agamben, like Schmitt, placed the sovereign decision at the centre of his theory (see Passavant, 2007, p. 157), and explained the relationship between security and rights and liberties in the modern state through the norm-exception dichotomy. Drawing on his earlier argument that the exception has become the *nomos* of the modern state (Agamben, 1998, p. 166), he declared the permanency of the exception based on the practices in

the Guantánamo camp (Agamben, 2005). As Lazar (2009, p. 3) argues, Agamben's work, "despite himself, is fundamentally Schmittian." As the sovereign decision, like it is in Schmitt's conceptualisation of the exception, makes every right vulnerable to arbitrary actions of the sovereign, the sovereign decision cannot coexist with democratic politics in Agamben's conceptualisation of the exception (Huysmans, 2006).

The 'state of exception' explains some but not all security measures interfering with the rights and liberties regime. Practices range and take different juridico-political forms. For this reason, making a distinction between exceptions and emergencies is necessary to comprehend the difference between the extraconstitutional and the un/constitutional. Even if state practices within the use of a constitutional emergency response are (found) unconstitutional (by the judiciary at some point), it still means that the emergency practices (and the court verdict) take place within the constitutional order, as every decision concerning security is made and every practice is carried out by the powers constituted by the constitution-making power. Therefore, 'extraconstitutional' and 'unconstitutional' refer to different juridical situations that cannot be explained through an approach determined by the norm-exception dichotomy. The former belongs to the exception (no constitutional order exists while the political order endures), and the latter belongs to an existing constitutional and political order.

The literature, which frames the security measures within the constitutional order (such as daily practices of security professionals and bureaucrats or legal regulations that give state authorities vast discretionary powers to intervene in

rights and liberties) as Schmittian exceptions, seems to either have ignored or forgotten Schmitt's thoughts and explanations on these "extraordinary security measures". In *Political Theology*, Schmitt writes the following:

A jurisprudence concerned with ordinary day-to-day questions has practically no interest in the concept of sovereignty. Only the recognizable is its normal concern; everything else is a "disturbance." Such a jurisprudence confronts the extreme case disconcertedly, for not every extraordinary measure, not every police emergency measure or emergency decree, is necessarily an exception. What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order. (Schmitt, 1985, p. 12)

Schmitt's conceptualisation of the exception is explanatory of the experiences of the suspension of the constitutional order in its entirety when a single source of authority monopolises political power. On the one hand, in times of exception, this singular power source elevates its political power above the constitution by framing something as a threat to the existence of the political order. On the other hand, when the political authority upholds the constitutional framework in emergencies, a specific authority established by the constitution depicts a situation or event as an extraordinary threat to the nation/state and resorts to emergency measures determined by the constitution. This authority portrays the decision to declare an emergency as a necessity to protect the constitutional order. In this context, where the constitutional order remains intact, the contradiction is inherent within the constitution itself: it pertains to the conflict between the constitutional norms on people's rights and liberties and those

addressing the security of the constitutional order. Every constitutional order grapples with this inherent contradiction.²

While states of exception and emergencies encompass various state practices that contradict the rights and liberties regime, they are not the sole avenues through which state authorities implement such measures. Several case studies have shown that constitutional rights and liberties may be restricted or suspended in the name of security in many ways in the world, with or without a declaration of a state of emergency (among others, see Apap & Carrera, 2004; Aradau, 2008; Best, 2018; Bigo, 2006b; Biswas & Nair, 2010; Doty, 2007; A. Neal, 2012, 2019b; Vaughan-Williams, 2008; Z. Yilmaz, 2019; Yonucu, 2018). The constitutional order in each study referenced remains intact. An account for the intervention of state authorities in people's rights and liberties when the constitution remains in force and constitutional emergency measures are not enacted may help us explain exceptional security measures more nuancedly.

In an attempt to do so, I offer a framework I have developed based on the concepts that Shampa Biswas and Sheila Nair (2010) used to conceptualise the exception (Türkoğlu, 2024). Biswas and Nair (2010, p. 2) argue that “the exceptions produced in the enactment of state power” may also be produced “in the exercise of sovereign power.” Considering both notions simultaneously, I

² Liberal constitutionalism's approach to resolving this contradiction is setting spatiotemporal limits on emergency measures. As such, state authorities infringe upon rights and liberties only until the situation or event framed as a threat is eliminated and only in the territorial space where this situation or event took place. Everyone regains their rights and liberties as soon as the threat is eliminated.

classify the different juridico-political forms of exceptional security measures as follows:

The enactment of state power: While taking these security measures, the state may enact its power by either (i) turning state authorities' decisions interfering with the rights and liberties regime into binding legal regulations or (ii) employing the constitutionally determined emergency responses (see Türkoğlu & Elitsoy, Forthcoming). As such, the legislation and statutory decrees as regulatory and binding texts may establish norms that disrupt the standard operation of the constitutionally acknowledged regime of rights and liberties. During states of emergency, norms on measures necessary for national or state security supersede those concerning rights and liberties. However, the constitutional framework remains intact.

The exercise of sovereign power: The sovereign power may be exercised either through (i) the practices of state authorities, such as bureaucrats and security professionals within the constitutional framework or (ii) the sovereign decision that prevails over the constitution. State authorities' routine practices that they engage in on a daily basis due to their professions lead to relatively minor-level decisions concerning people's rights and liberties. Still, the constitutional order endures, but the norms on rights and liberties do not. The emergence of the constitution-making power as the second way of exercising sovereign power refers to the utilisation of the state power while suspending the constitutional order, in the way Schmitt theorises the exception.

Although this framework analytically helps, exceptional security measures often involve various combinations, such as coupling legislation with security professionals as decision-makers. As such, while the state enacts its power to handle what it frames as a threat, the enactment may be accompanied by the exercises of sovereign power. While the juridico-political forms of exceptional security measures are not necessarily exclusionary of each other, they help us understand the sources and uses of state power. As Neumann (1950, p. 162) argues, the struggle for political power is the struggle for the power to influence “the behavior of the state, its legislative, administrative and judicial activities”. This power does not necessarily lie in the hands of a singular entity. Instead, entities such as political parties, the military, and the judiciary may have a say in times of threat framing and deciding which means to use to eliminate the threat. As Feldman (2010, p. 138) argues, “political contestation” has a “constitutive role” in determining whether an exceptional security measure is legal or extralegal. This role of the struggle for political power ceases the exceptionality of the security measures interfering with rights. The political and constitutional order functions and is maintained only through combinations of the enactment of state power and the exercise of sovereign power.

The state and state power refer to different things. In matters framed as security issues threatening the nation/state, deriving from the decision that there is a threat to the political entity, state power (distributed by the constitution while the constitutional order is in place or monopolised in times of state of exception) is utilised through a legitimisation process that prioritises the state. The political

history of the Republic of Türkiye provides examples of these different articulations. Through the categorisation offered and by examining the case of Türkiye, I aim to explore the grey areas of the state's exceptional security practices and show how they are engrained in the ordinary state rule other than in times of exception.

1.6. Research Design

This dissertation is a qualitative single-country study, attempting to understand how and on what basis state authorities decide to take and implement exceptional security measures at the state level, the legal and political manifestations these measures can assume when imposed through discretionary or arbitrary actions or inactions of state authorities, and the varying forms of juridico-political frameworks of exceptional security measures.

Single-country studies use “empirical data exclusively from one country” (Pepinsky, 2019, p. 188). As such, this dissertation analyses the Republic of Türkiye in-depth, inquiring about the exceptional security measures taken between 1923 and 2019 and how they were employed, implemented, and justified by the decision-makers. It examines the historical trajectory of the case country in four periods (1923-1948, 1948-1971, 1971-2002, and 2002-2019) in regard to the juridico-political forms of exceptional security measures taken differently in different territorial spaces within the country, such as provinces and regions.

What type of case the country selected for a single-country study is decisive in terms of the conclusions sought or reached in an in-depth study. Hard (least likely) cases refer to those “pose difficult tests of theories, in that ... one would not expect a theory’s expectations to be borne out by a review of the case evidence” (Rapport, 2015, p. 431). “Cases of the ‘most likely’ type are especially well suited to falsification of propositions, while ‘least likely’ cases are most appropriate for tests of verification” (Flyvbjerg, 2011, p. 308). The Republic of Türkiye within the research design proposed is neither. Türkiye is not a hard case, as the state’s interference with the rights and liberties regime in the country, even only through states of exception and constitutional emergency or martial law declarations, encompasses 43 of the 96 years under research. As such, the case is not the least likely one that one may think would not possess the expectations of a theory concerning exceptional security measures. It is not an easy (most likely) case since, in the *longue durée*, it affirms one theory at specific times in history while falsifying the same theory at other times.

As Aaron Rapport (2015, p. 433) argues, “[c]ases are apt to be ‘less’ or ‘more’ likely to support a theory rather than ‘least’ or ‘most.’” The bodies of literature on exceptions and emergencies discussed above are opposing in the way that one explains such security measures through a dichotomous logic grounded in the distinction between the norm and the exception, while the other considers these measures as a part of state administration. The research design of this dissertation aims to explore the multiplicity and diversity of the phenomenon studied through the case of Türkiye, taking into account both theoretical

frameworks. The purpose of this dissertation is not to refute one of these two theoretical frameworks and affirm the other, nor do the conclusions of this research lead to either. As Flyvbjerg (2011, p. 308) highlights, “the identification of a case as most or least likely is linked to the design of the study, as well as to the specific properties of the actual case”. Since the research is aimed at understanding a phenomenon, the Türkiye case is explored to show the depth and extent of the tension between political power and the law determining the legal framework for rights and liberties. Last but not least, it provides theoretical and empirical insights into exceptional security measures that the existing literature has not addressed.

Based on the state practices of the Republic of Türkiye, the present research seeks to generate theoretical inferences that may be applicable to other countries. Single-country studies are deemed to provide high levels of internal validity, while they are criticised on the grounds that these analyses “in which the country is the case under study are by their very nature unable to establish whether or not their findings generalize across country cases” (Pepinsky, 2019, p. 193). Studies of single historical cases, as Dietrich Rueschemeyer (2003, p. 307) highlights, “can develop new theoretical ideas ... and put them to the test and use the results in the explanation of outcomes” (see also Flyvbjerg, 2011, pp. 304–306). By contextually analysing a single unit and tracing it historically, this dissertation aims to help understand a larger population of cases through the conceptual, analytical, and theoretical frameworks it proposes. As Thomas B. Pepinsky (2019, p. 188) argues, “the intensive study of a single country can yield

general theoretical insights with comparative implications.” Through these insights and implications, single-country research can simultaneously provide internal and external validity, as “detailed case analyses often entail the generation, testing, revising, and retesting of explanatory propositions within the same complex material” (Rueschemeyer, 2003, p. 315). In analysing the case country, this dissertation provides contextual analyses by providing historical background to reach valid analyses and conclusions (see Halperin & Heath, 2020, p. 168).

The present research analyses multiple forms of data: The primary data of this study consists of the constitutions enacted in the history of the Republic of Türkiye (1921, 1924, 1961, and 1982 Constitutions), the Turkish Grand National Assembly minutes, legal regulations (laws and decrees) that place exceptional security policies in the constitutional order, news and columns in newspapers that reported events and discourses of state officials that led to the restriction or suspension of constitutional rights and liberties. Having sought to increase the validity and reliability of the research, this dissertation regards the politics of exceptional security with an awareness of the “politics of evidence” (Altheide, 2008, p. 137). As such, the data collected from newspaper reports, columnar articles and other non-academic sources are limited only to events and statements of state officials, avoiding subjective interpretations of events, incidents, policies, and decisions.

Observational data is gathered based on the recognition of the say-do gap (see Halperin & Heath, 2020, p. 199). I use primary and secondary data

complementarily to point out the contradictions between legal regulations, security discourses, and state authorities' actions and inactions.

The secondary data involve scholarly and non-scholarly work. This dissertation reviews and examines scholarly work in various disciplines, such as political theory, critical security studies, conflict resolution, constitutional law, sociology, history, postcolonialism, and economics. Non-scholarly secondary data includes published biographies and autobiographies of those who enacted the state power or exercised the sovereign power while creating or implementing the security policies contradicting the constitutional norms concerning citizens' rights and liberties.

I examine the primary data in juxtaposition to the theoretical assumptions provided by the scholarly work I examine. The lack of matching patterns between the state practices in Türkiye and the theoretical frameworks in the literature produces the puzzle for this study, as my research of Türkiye shows regular irregularities, not necessarily fitting the existing literature on exceptions and emergencies. Through the analysis of the primary data, I seek different theoretical explanations and conceptualisations other than the existing research suggests. In an attempt to understand the mismatches between the theory and practice, I look at what state officials defined as a threat to the nation-state, what concepts they used while they framed an event, a territorial space, or people as a threat against which interfering with the constitutional rights and liberties regime would be legitimate, and how they legitimised their decisions. Through the substantiation I provide at theoretical and empirical levels, I integrate theoretical

insights with practice without confining the practices to a specific type or form of exceptional security measures articulated by the existing theoretical approaches.

The trustworthiness of a qualitative research inquiry lies in several factors, such as clear definitions of the key concepts, thorough engagement with the existing literature on the subject, the integration of empirical evidence with broader theoretical contexts, and the interconnection of these elements within the research framework (Rose & Johnson, 2020, p. 435). As Sandra Halperin and Oliver Heath (2020, p. 144) highlight, “[w]hen we attach a label or general term (concept) to observations or events, we can link separate observations or events together and form generalizations.” However, as the authors underline, “[s]ocial science is characterized by a continuous conflict not only over how we define concepts, but which ones we should use to comprehend a given reality” (Halperin & Heath, 2020, p. 144). The “given reality” I examine is that states restrict or suspend constitutional rights and liberties while citizens’ having their constitutional rights and liberties is the constitutional norm. As such, when states frame something as a threat to the nation/state, they act or remain inactive, their (in)actions contradicting the constitutional norms concerning the rights and liberties regime. To comprehend this given reality, I use the concepts and the analytical framework I explained in the previous section.

1.7. Structure

This dissertation comprises seven chapters, including the introduction and the conclusion. Chapter 2 will overview the existing literature on exceptions and

emergencies and expand upon the conceptual and analytical framework introduced in the introduction. Having reviewed approaches to exceptional security measures, Chapter 2 will discuss the multiplicity of juridico-political and spatiotemporal conditions of exceptional security measures, pointing out that the existing literature falls short in explaining the state's exceptional security practices due to particularistic approaches that overlook the complexity of the state structure.

Chapters 3-6 will examine the case of the Republic of Türkiye. These chapters will build on the discussion on exceptional security measures in Chapter 2. Each chapter will focus on distinct periods determined by shifts in juridical frameworks influenced by the political landscape and the security understanding of the ruling authority.

Chapter 3 will examine the state authorities' practices contradicting the constitutional rights and liberties regime in Türkiye in the formative years of the Republic between 1923 and 1948. During the time under research, in line with liberal constitutionalism, Türkiye had a written constitution (the 1924 Constitution, *1924 Teşkilât-ı Esasîye Kanunu*) in which the state's emergency response was provisioned as martial law. Having examined the state practices contradicting the constitutional rights and liberties regime, Chapter 3 will underscore the juridico-political and spatiotemporal aspects of exceptional security measures.

Chapter 4 will explore state authorities' exceptional security practices between 1948 and 1971. The chapter will comprise the period that began with political struggles between two political parties, the CHP (Republican People's

Party, *Cumhuriyet Halk Partisi*) and the DP (Democrat Party, *Demokrat Parti*), resulting in the DP winning majority in the Parliament in 1950 and becoming the primary determinant of exceptional security measures until the 1960 military coup. The chapter will continue with Türkiye's first state of exception experience after the 1960 military coup, during which the constituent power emerged and introduced a new constitutional order. This chapter will examine how the change in the social and political structures affected the way in which state authorities defined threats and how citizens' rights and liberties were restricted or suspended.

Chapter 5 will look at the period between 1971 and 2002. The timeframe under research in this chapter spans around 31 years, with more than 80 per cent of that time being marked by either martial law or a state of emergency in at least one province within the national territory. However, the security measures in question were not solely the results of the use of constitutional tools during an emergency or the suspension of the constitution. Chapter 5 will discuss the dispersedness of decision-making power on exceptional security measures in a constitutional order where the executive was envisaged as the primary decision-making power. It will demonstrate the state's relationship with its territory and how exceptional security measures may differ in different geographies and across issues.

Chapter 6 will examine the state's exceptional security practices between 2002 and 2019, a duration under the AKP (Justice and Development Party, *Adalet ve Kalkınma Partisi*) rule, started with the AKP's lifting of the state of

emergency that had been in force in the southeastern provinces of Türkiye for approximately 15 years. This chapter will end in 2019, the year when state authorities interfered with the rights and liberties regime based on reasons other than state security as the COVID-19 pandemic hit the world. Chapter 6 will discuss the impacts of international developments on the security politics in Türkiye and how the state made use of legislation and the judiciary system for its own purposes.

Chapter 7 will conclude the research and present the dissertation's analyses and arguments.

CHAPTER 2

LITERATURE REVIEW AND ANALYTICAL FRAMEWORK

This chapter delves into the dissertation's conceptual and analytical framework through an overview of the literature on exceptional security measures. Conceptualisations and theories of exceptional security revolve around the notions of sovereignty and political power, decision-making in the constitutional order, and the spatiotemporal aspects of the security measures that contradict the rights and liberties regime, as discussed in the preceding chapter. This chapter further explores the existing discussions of exceptional security measures and the juridico-political conditions of such measures. It elaborates on how this dissertation will analyse the state practices interfering with Türkiye's rights and liberties regime between 1923 and 2019.

In what follows, the first section will begin with the definitions of the concepts of the constituent and constituted powers to explain how the constitutional order is established and maintained. The second section will discuss whether the norms on rights and liberties and states' repressive measures contradicting these norms are dichotomous or they coexist. The third section will examine who takes and implements exceptional security measures. Section 4 will look into the spatiotemporal aspects of exceptional security measures at the international and national levels to comprehend the juridico-political conditions to which specific territorial spaces are exposed.

Lastly, the chapter will discuss the studies that examined exceptional security measures in the context of the Republic of Türkiye.

2.1. Constitutional Order and the Powers to Establish or Maintain It

Security measures interfering with the rights and liberties regime recognised within the constitutional order can be instituted by the constituent or constituted powers. The former acts outside the constitutional framework. In contrast, every action of an authority defined and determined by the constitution to use exceptional powers is carried out within the bounds of the constitutional order. Constituted powers' actions may contravene constitutional principles and be unconstitutional, but as long as there are judicial remedy possibilities against state authorities' actions (and inactions), the power remains within the constitutional order. Positivist and decisionist legal approaches offer different understandings as to who the constituent power is and how the constitutional order is established. These divergent conceptualisations yield divergent answers to the questions concerning the relationship between the legality and legitimacy of state authorities' actions (see Loughlin, 2014).

The constituent power holds legal and political connotations (Colón-Ríos et al., 2021, pp. 926–927) because it decides the political nature of the legal association of the people. According to legal positivism, a fundamental tenet of the liberal theory of the modern state, the people are the sovereign that holds the authority to make the constitution, which essentially serves as a social contract. The people are the constituent power - through constitution-

making, they define the political characteristics of the state's formation. As such, what begets citizens' liberty is "the constituent power of the people, who self-legislate and self-govern" (Spång, 2014, p. 1). While it is the legitimacy basis of a constitutional order, the practice of self-legislation in modernity has two facets: it establishes the constitutional order and keeps shaping it once it has been established (Kalyvas, 2008, pp. 6–7; Spång, 2014, p. 1). By attributing the constituent power to the people, liberal state theory bases the legitimacy of the state's use of its sovereign power on democratic and constitutional foundations. The law institutionalises the political power and distributes it among the state's branches - constituted powers. Every constitution in line with liberal constitutionalism regulates citizens' rights and liberties alongside emergency measures to be taken when a threat to the constitutional order arises. As such, according to the positivist approach of constitutionalism, emergency measures regulated within the constitutional order are deemed to be instituted by state authorities that are bound by constitutional norms.

While the positivist approach focuses on the constitution as a legal authority and the state actions' compliance with constitutional norms, decisionism asks "how legal authority is generated within the political domain" (Loughlin, 2014, p. 224). Schmitt, as a decisionist theoretician asking this same question, does not base the state's legitimacy on the people and does not consider the people to be sovereign. Instead, according to Schmitt, the sovereign can only be a monarch (Cristi, 2011, p. 353). Schmitt considers that "[t]he people as such are incapable of a decision", and "[o]nly monarchical figures may exercise sovereignty" (Cristi, 2011, p. 354). As such, it is the

monarchical, not the democratic principle, that ensures the making of a constitution (Schmitt, 2008, p. 117). In his *Constitutional Theory*, Schmitt explains this as follows:

The constitution-making power is the political will, whose power or authority is capable of making the concrete, comprehensive decision over the type and form of its own political existence. The decision, therefore, defines the existence of the political unity in toto. The validity of any additional constitutional rule is derived from the decisions of this will. (Schmitt, 2008, p. 125; italics in original)

In Schmitt's formulation of the constituent power, its "decision over the type and form" of the state's and the nation's political existence is a political one that emanates from the notion of necessity. In his constitutional theory, the constitutional order is maintained as long as there is no decision by the sovereign that there is a threat to the existence of the political order. Once the decision on the existence of a threat is made, the sovereign decision-maker emerges as the constituent power out of necessity and suspends the constitutional order in its entirety as the constitution ceases to offer the means to overcome a conflict (Loughlin, 2014, p. 224). For, Schmitt's decisionist constitutional theory is based on a norm-exception dichotomy, as Schmitt conceptualises the existence of a threat to the political order, framed by the sovereign decision-maker, as the state of exception, during which the constituent power emerges and replaces its decisions with the existing legal norms. The decision-making actor with monarchic attributions here defines a source of power that is not limited by the code of law when the necessity to decide on an exception presents itself. In this context, the decision-maker is not necessarily one person – an assembly or a council might as well be a monarchical figure. When the exception presents itself, the monarchical

figure, the sovereign, is the decider on all the unforeseen cases for which they make foundationally political decisions (Schmitt, 2008, p. 126).

To recapitulate, the issue that both positivists and decisionists try to understand and theorise is how the tension between political power and law unfolds while the state endures. Positivists try to confine the deteriorating impacts of this tension into legally regulated spatiotemporal realms (where and when the emergency powers can be used law-based). The decisionist perspective denies such limitations and places political power above the law. As such, the two positions are oppositional with each other. The following section will discuss where the norms and exceptions to these norms stand (inside/outside of the constitutional order).

2.2. Norms and Exceptions to Norms: Dichotomy or Coexistence?

This section looks into what happens with the state's legal framework when political power decides to make exceptions to the norms concerning rights and liberties by taking repressive measures. The legal framework constitutes the political order and sets the principles of its routine functioning through norms. State authorities' construction of the threat and their implications of the norms granting power to state authorities often lead to creating exceptions to norms concerning rights and liberties. In the political orders framed through liberal constitutionalism, some of the norms regulate citizens' rights and liberties and the states' responsibility to protect them from any external intervention so that, ordinarily, citizens have the liberty to exercise their rights. However, this simplistic formula of the juridico-political

existence of the state does not necessarily smoothly function as “[n]orms are neither text nor a set of texts, but the meanings construed from the systematic interpretation of normative texts” (Ávila, 2007, p. 5). The interpretation of norms tends to be subjective. The systematicness of the interpretation ceases to be the governmental and judicial principle when norms are ambiguous or when the decision-maker faces a novel occurrence for which there is no preceding decision or interpretation.

That being said, decisions defining a specific situation, event, people, or geography as a threat to the existence of a given political order may result in defining the times as ‘extraordinary’, requiring exceptional security measures, hence interfering with the norms concerning the rights and liberties regime until the threat is deemed to be eliminated. According to the defenders of liberal constitutionalism, the state guarantees the rights and liberties regime unless there is a threat to the nation/state requiring the restriction or suspension of some constitutional rights and liberties to facilitate the use of exceptional security measures targeting the threat. While these measures constitute exceptions to norms on the rights and liberties regime, they comply with some other norms concerning the security of the nation/state. As such, every constitutional order functions on this inherent contradiction between contradicting provisions. As Nasser Hussain (2007, p. 742) argues, “rule of law is and has always been capable of accommodating a range of repressive but legal measures.” Then, theoretically, in the liberal order of the state, norms and exceptions to norms are not dichotomous, but they can exist simultaneously in every legal order. As such, both the legal and political orders are preserved during times of emergency.

Schmitt criticises this view of liberal constitutionalism as he thinks that the legal norm cannot always foresee the event that the decision-maker will consider extraordinary. He (1985, p. 6) writes, “a general norm, as represented by an ordinary legal prescription, can never encompass a total exception, the decision that a real exception exists cannot therefore be entirely derived from this norm.” For Schmitt, “liberalism’s theory of law, especially as expressed in legal positivism” reflects “mere technicism” (McCormick, 1997, p. 206). Liberal constitutionalism unifies the political and legal order and finds the validity of the state only in the validity of the legal order according to which the political order functions, whereas, according to Schmitt (1985, p. 12), “[t]he existence of the state is undoubted proof of its superiority over the validity of the legal norm.” As such, “in cases of extreme conflict, when public order and security are jeopardised” (Cristi, 2011, p. 354), the political power is to decide on the exception, which is an unpredictable event or incident. Deciding on the exception accompanies the suspension of the constitution in *toto* because “[u]nlike the normal situation, when the autonomous moment of the decision recedes to a minimum, the norm is destroyed in the exception” (Schmitt, 1985, p. 12). In Schmitt’s theory, the decision that there is a threat against the nation/state results in the dichotomous relationship between the norm and the exception. The legal order cannot persist during the exception, while the political order does.

Schmitt’s adamant critic, Agamben, also conceptualises the exception as a state of lawlessness by equating the exception to the suspension of the constitutional order. According to Agamben, in a state of exception, “[t]he political sphere, the place of sovereignty and the referent of the sovereign’s

decision, is created in its separation from ... the juridical" (Passavant, 2007: 154). Having considered 9/11 as a break from the past and argued that "the state of exception has today reached its maximum worldwide deployment", Agamben contends that the governmental violence has complete impunity from the law and lacks temporal and spatial boundaries, leading to the absolute abandonment of the "state of law" (Agamben, 2005, p. 87). The empirical grounds for Agamben's conceptualisation of the exception lay in the Guantánamo detention camp. This camp stands as an exemplification of the state of exception, which is now the norm. By comparing the Nazi concentration camps to the Guantanamo camp, Agamben argues that this contemporary practice of confining people to a camp represents the permanent practice of the state of exception in the modern state, as the detention camp "is entirely removed from the law and from judicial oversight" (Agamben, 2005, p. 4).

By explaining the exceptional security measures in the post-9/11 era as the state of exception and through the norm-exception dichotomy, Agamben has made an essentially Schmittian conceptualisation of the exception. Particularly following Agamben's work, *State of Exception*, "emergencies and emergency powers are treated with reference to this dichotomy between norms and exceptions" in the literature, as Lazar (2009, p. 3) argues. As such, scholars critical of the security policies in the post-9/11 era have discussed the security measures in defiance of human rights as notions of the state of exception, referring to lawlessness or a legal black vacuum, as pointed out by several studies (among others, see Basaran, 2008; Humphreys, 2006; Johns, 2005; Neocleous, 2006b). For instance, Bulent Diken and Carsten Bagge

Laustsen (2005, p. 5) argue that after 9/11, “the logic of the camp is generalized; the exception is normalized”, as the exception has become the norm and the norm has disappeared (Diken & Laustsen, 2005, p. 7). Likewise, Codi Hauka (2013, p. 67) argues that Agamben’s conceptualisation of the exception “illustrates contemporary issues surrounding the scope of sovereign authority is found in international prisons”, as those exposed to the state of exception are “reduced to bare life, stripped of all political and legal status at the mercy of the sovereign.” Nick Vaughan-Williams (2008, p. 329) considers “borders between states” as “a zone of anomie devoid of law”, following Agamben. Referring to the Israeli West Bank Barrier, Hiroyuki Tosa (2009, p. 424) argues, “the wall itself indicates ... [that] the significant sovereign power suspends the rule of law while establishing a highly securitized political process.” As Kennedy (2011) observes, contemporary studies on exceptional security have prevalently used the concepts of ‘emergency’ and ‘exception’ interchangeably with reference to Schmitt and have used the concept of ‘exception’ to refer to all practices of restriction or suspension of rights and liberties. However, this has led to reductionist interpretations of Schmitt’s theoretical arguments and the security-oriented policies for several reasons.

First, ‘exception’ means something definite in Schmitt’s understanding: the unlimited and uncontrollable sovereign decision and lawless violence as any legal norm binding for the sovereign is absent. In Schmitt’s conceptualisation, the sovereign is an illimitable authority that identifies something as an existential threat to the state and acts on its decision to save the state while the entire legal order is suspended. This total power imposes itself by being able to decide on the exception. The constrained power to take exceptional

security measures within the bounds of possibility provided by the constitutional order is not sovereign in the Schmittian sense. This type of power may constitutionally be held accountable before the same legal order. The sovereign connotes the constituent power for Schmitt (see 2008, p. 126), while the foundation of all other powers embedded in the state structure, including the legislative, executive, and judiciary, are constituted powers – instituted by the constituent power (Gözler, 2016, pp. 13–17).

Second, who the decision-maker is at a given time and the juridical conditions of a political order lead to differentiations in the juridico-political form of exceptional security measures. Exceptional security measures coded in the law and the exceptional security measures practised in the absence of the coded law ontologically connote different juridico-political situations. Being one of the axes of contemporary studies, in the Guantánamo detention camp, as Hussain (2007, p. 744) underscores, “we do not find a suspension of the law but merely the activation of certain statutory powers for the calling up of military and coast guard reserves.” Indeed, the continuous mundanity of states’ interference with rights and liberties may be carried out through the law, sometimes even through “excessive law-making” (Finden & Dutta, 2024). As long as there is legal control of unconstitutional practices, the issue of unconstitutionality may be resolved within the law. This possibility refers to the existence of the constitutional order. As Kalyvas highlights,

[t]he exception, besides designating the juridical declaration of an emergency situation, is the condition of possibility of sovereignty and extraordinary politics, not its essence. It is ... where the closure of the social explodes to bring about a displacement among its different structural levels, including the legal system, that there is the possibility for an immanent radical change in the political organisation of society. (Kalyvas, 2008, p. 119)

As such, moments of exception have something to do with the constituent power (Elster, 1995, p. 370; Kalyvas, 2008, p. 119). Framing all deviations from the constitutional order as an exception leads to negligence of the difference between ‘emergency’ as a constitutional tool to handle a threat to the security of the nation/state and the suspension of the constitution in its entirety.

Besides Schmitt’s contemporary interpretations endorsing the exceptionalist analyses of constitutional orders and resulting in theoretically reductionist arguments, the empirical bases of these studies undermine the validity of the generalisations they propose. While the Agambenian line of thought has explained contemporary security politics through the norm-exception dichotomy in defiance of democratic politics, state practices carried out in regard to the Guantánamo camp and various contextual analyses have indicated that exceptional security does not necessarily refer to lawlessness (see Davies, 2008; Gregory, 2006; Humphreys, 2006; A. Neal, 2012; OHCHR, 2017). There can be multiple decision-makers on exceptional security issues rather than the ‘sovereign’ or the executive, in contrast to Schmitt’s theory of exception and the studies grounded in the norm-exception dichotomy. Moreover, contrary to Agamben’s argument, “the post-9/11 expansion of ‘security’ has not damaged or hindered the activity of politics in democratic institutions” (A. Neal, 2019b, p. 6).

Understanding the “prosaic” nature of extraordinary security measures (Feldman, 2010) provides insight into the blurred distinction between norms and exceptions to these norms in most instances. The exceptionalist view overlooks the definitive features that vary and differ in exceptions and

emergencies. Neocleous (2006b) has demonstrated the integral role emergency declarations play within the legal frameworks of numerous states, highlighting that emergency practices are not necessarily Schmittian exceptions. The line of thought that has discussed the exceptional security measures and discretionary decisions on rights and liberties escaping judicial overview under the concept of 'exception' (among others, see Aradau & Van Munster, 2008; Best, 2018; Biswas & Nair, 2010; Doty, 2007; Pope, 2017; Salter, 2008; Tosa, 2009; Vaughan-Williams, 2008; Walker, 2006), has adopted a particularistic view to generalise the phenomena - it has analysed the whole by looking at the part. In other words, as Prozorov (2005, p. 88) highlights, "Agamben's disconcerting extension of the metaphor of the concentration camp as the expression of the logic of political exceptionalism" has expanded a limited area of state violence onto the entire modern state, in negligence that a source of power may turn itself into a constitutive force.

The exception is the creation basis of the constitutive force through which a legal power turns into pure political power. Apart from the times of exception, the order is maintained by constituted forces that have legal aspects within the functioning constitutional order (even if it has deficiencies in its functioning). In what follows, I will explain the powers to declare exceptions to norms in the state order and further explore the academic debates on exceptions and emergencies.

2.3. Who Can Decide to Make Exceptions to Norms?

This section comprises how the decision on exceptional security measures has been studied in the literature. While the power to establish the constitutional order is outside the constitutional framework at the moment of the establishment, those maintaining the constitutional order reside within the constitutional framework. Pointing to the decision-making authority and process is crucial in identifying the political dynamics behind the restriction or suspension of rights and liberties.

This section proceeds with an overview of the theoretical conceptions of the decision and the decision-maker, followed by empirical work in the literature to show where the decision-maker has been situated by political science and IR scholarships. It discusses the literature's explanatoriness, generalisability, and limitations regarding how it comprehends the decision.

2.3.1. Theoretical Approaches

Concerning exceptional security, research on discretionary or arbitrary state violence and on the discretionary power allocated to state authorities has primarily drawn upon Schmitt's *Political Theology*, in which he defines the sovereign as "he who decides on the exception" (Schmitt, 1985, p. 5). According to Schmitt, the sovereign is the only authority that "must decide whether the constitution needs to be suspended in its entirety" (Schmitt, 1985, p. 7). The 'must' here indicates that Schmitt considers the decision and the sovereign's existence as a necessity. In Schmitt's view, the decision connotes

extraconstitutional state practices to overcome the security problem that is defined as an existential threat by the sovereign.

The Schmittian thought suggests that “the sovereign’s decision on the exception expresses the political existence of a people” (Vinx, 2015, p. 106). The decision replaces the once-made law to maintain the political order and save the state. The decision-maker, be it a prince or an assembly, is not bound by the code of law. As Mika Ojakangas states (2004, p. 53), “[i]t is not the sovereign as a person who is sovereign, but the sovereign decision.”

However, “the sovereign is never a given instance, a prince or a dictator, who decides on the state of exception, but on the contrary, the one who decides on the state of exception *is* the sovereign” (Ojakangas, 2004, p. 53, italics in original). As such, the sovereign and the state are inseparable as the state endures and is maintained due only to the potentiality of the sovereign decision, which can only be made by political power that is puissant enough to prevail over the constitutional order while preserving the state.

The sovereign decision is at one of the extreme ends of the scale of the tension between the law and political power. In the Schmittian exception, political power defies the law altogether to pursue new attributions of the political order (the state). As the decision on the exception cannot be supervised through legal means, the political power under the monopoly of a monarchical figure acts arbitrarily, employing arbitrary violence against those whom it considers the enemy. According to Hidemi Suganami, arbitrary violence routinely exists as a potential in the practice of sovereignty (Suganami, 2007, p. 529). Potentiality is immanent in sovereign power, making the exception and the emergence of the constituent power probable.

The following quote from Kevin Attell's work is insightful for understanding how the actualisation of the potentiality in the sovereign would mean being unconstrained by any force, such as positive law:

Terence Irwin ... emphasizes the distinction between potentiality as a capability of a thing (as either an agent or patient) and the possibility (or impossibility) of a certain state of affairs. In fact, he ... translates it thus: 'Something is capable to which if there belongs the actuality of that of which it is said to have the potentiality, nothing impossible will be the case.' ... This is to say that something (or someone) is able to realise a potentiality or capability if external conditions do not prevent the exercise of that potentiality, i.e., make its actualization impossible. Or, in other words, I can exercise a capacity if nothing prevents me from doing so. (Attell, 2009, pp. 39–40)

Thus, potentiality is realised when an entity or individual has the capability to act on their decision beyond the boundaries of the constitutional order. In such instances, political power supersedes constitutional limits.

On the relationship between the norm and the exception, Suganami highlights that Schmitt's definition of the exception does not suggest an acute distinction between the normal and the exception. Instead, sovereignty in the Schmittian sense functions through the embedded potential of actualising the exception "in a routine practice" (Suganami, 2007, p. 522). Suganami (2007, p. 522) calls this routine practice "the practice of sovereignty" and argues that "the essence of the practice of sovereignty lies in the fact that the justification ... is never complete yet the authority is asserted and by and large accepted". According to Suganami (2007, p. 529), "the routine operation of the law may itself involve violence seen as arbitrary from some extra-legal standpoint". Drawing on Suganami's argument, the violent actions of the state target those framed as threats as the law reservoirs the possibilities for violence. He

argues, “the state authority’s rule is invariably accompanied by some justificatory account in terms of security” (Suganami, 2007, p. 522).

Suganami’s work is insightful in contextualising various historical and social backgrounds of states that beget varying practices of sovereignty and that the potential of violence can be actualised in different ways in different territorial spaces. While I incorporate Suganami’s perspective into my conceptual framework concerning sovereign power practices, I diverge from Suganami in some conceptual and analytical regards. Conceptually, in this dissertation, I employ the concept of ‘arbitrary’ to explain the unrestrained decision based on personal whim. As such, I contend that arbitrary practices do not find their legitimate basis in any form of the law but rather the lack of any legal or physical restraints, making accountability before the law out of the question. When the constitutional order is in place, the possibilities of violence embedded in the law and legal action against state authorities entitled to carry out violent practices refer to discretion rather than arbitrariness. Analytically, the use of arbitrary violence may be a sovereignty practice, as Suganami suggests. However, unless the law is suspended in its entirety and the sovereign emerges as the constituent power, this use of violence is neither arbitrary nor refers to an exception in the Schmittian sense. As such, the state’s exceptional security practices include the potentiality of arbitrary use of violence. However, the discretionary use of violence refers to legal-repressive measures that may be legally challenged in the constitutional order.

Like Schmitt, Agamben also defines the sovereign as the ultimate authority to decide on the exception. He conceptualises the sovereign as “the unitary place of decision” that “is not hampered by checks and balances” (Passavant,

2007, p. 154). In terms of how he defines the decision and the decision-maker, Agamben differs from Schmitt. For Agamben, “[i]n modern biopolitics, the sovereign is he who decides on the value or the nonvalue of life as such. Life ... now itself becomes the place of a sovereign decision” (Agamben, 2017, p. 118). In this context, the sovereign decides to distinguish valued and non-valued lives from each other and to exclude the latter from the former. This sovereign decision on the distinction between the two categories of lives, while reminiscent of the Schmittian distinction between the friend and the enemy, differs from Schmitt’s thought regarding the notion of necessity. As such, Schmitt’s understanding of the political requires the enemy for the survival of the nation. While Schmitt considers the existence of an extra-legal sovereign as a necessity, “Agamben argues that this ‘necessity’ is in no way an ‘objective’ occurrence; rather, sovereign power declares a ‘fictitious lacuna’ in order to affirm its own continuing relation to it” (A. Neal, 2010, p. 102; see also Humphreys, 2006, pp. 677–680). For this reason, Agamben’s decision-maker, the sovereign, is a subjective and fictitious entity, just like the exception is.

By theorising the exception as a situation that results from the sovereign decision, Schmitt and Agamben exclude societal involvement and democratic politics from their understanding of the exception (Huysmans, 2008). Both thinkers describe the state of exception as lawlessness created for security-related reasons. They exclude the exception from the democratic realm, the institutions of which are created through the constitutional framework. Schmitt’s exception connotes an all-powerful actor’s decisionism, excluding democratic politics. Agamben uses the term ‘state of exception’ to explain all

forms of exceptional security measures and shuts the door on the democratic debate through his exceptionalist terminology. Nevertheless, as Stephen Humphreys rightly argues (2006, p. 683), Agamben's conceptualisation "is short of both empirical substantiation and conceptual clarification." While criticising modernity and its democratic politics, his theory drifts toward an essentialist understanding of exceptionalism that excludes democratic politics even though democratic politics has been an integral part of the decision-making on exceptional security measures in contemporary politics (Kurylo, 2022; A. Neal, 2012, 2021; Tsoukala, 2004).

Critical of the top-down understanding of security, a strand of thought analysing the security measures interfering with the rights and liberties regime adopts Foucauldian analyses, concepts, and methods in studying exceptional security practices (Aradau, 2008; Aradau & Van Munster, 2008; Bigo, 2006b; Huysmans, 2002, 2008; Jabri, 2006, 2007; A. Neal, 2006, 2008, 2009, 2010, 2012, 2019a). In his work titled *Security, Territory, Population*, a compilation of his lectures in 1977-1978, Michel Foucault (2009) refuses the idea of the sovereign (state) as the unitary place of decision-making. According to Foucault, power relations are always present everywhere. In contrast to the idea that the only way to understand power is to identify it with the state as the sovereign entity (Deacon, 2002, pp. 111–113), Foucault (1995, p. 138) argues that power relations present "a multiplicity of often minor processes, of different origin and scattered location, which overlap, repeat, or imitate one another, support one another, distinguish themselves from one another according to their domain of application". Instead of pointing to a specific sovereign authority in terms of security politics, Foucault comprehends power

relations within complex governmental and societal mechanisms. These complex mechanisms “constitute new forms of the modes of exercising power that sovereign power cannot fully exploit” (Genel, 2006, p. 47).

The Foucauldian line of thought seeks to explain exceptional security policies as the products of multiple and multi-layered governmental and societal processes. Based on this understanding of power relations, a branch of analyses on exceptional security considers decision-making processes as “a multiplicity of heterogeneous practices of government, the origins of which are historically dispersed” (A. Neal, 2010, p. 145). Indeed, in most cases, there are dispersed and multiple decision-making processes on exceptional security measures. For example, a state of emergency declaration may be coupled with bureaucrats’ or security professionals’ discretionary decisions regarding citizens’ rights and liberties. Likewise, parliamentary politics laying the legal foundations for exceptional security measures may accompany discretionary decisions of other state authorities. However, the decision-making may also be under the monopoly of an entity or person that manages to monopolise political power, ending the mundane scatteredness of decision-making authorities that exercise sovereignty (see Neumann, 1950, p. 179).

To recapitulate: while the Schmittian and the Agambenian conceptualisations of the exception address a unitary decision-making authority, the Foucauldian line of thought addresses dispersed and multiple authorities of decision-making. Each approach lacks generalisability in explaining different juridico-political forms of exceptional security measures. I will explain the whys and hows in the subsequent four chapters, providing empirical evidence. To briefly explain for now, while Schmitt’s theory of the

exception is explanatory in terms of the 1960 and 1980 military coups in Türkiye in regard to the unitary place of decision-making and the emergence of the constituent power presenting itself as the remedy to Türkiye's internal and external security problems, the exception is such rare occurrence that the Schmittian exception lacks explanatory power to comprehend state practices that contradict the constitutional rights and liberties regime and their mundanity in the state rule. Besides, even when whom Schmitt calls the 'sovereign' has total power, the decision-maker may seek approval from society, and therefore, societal concerns may have an impact on the political even during a state of exception. In contrast to the Agambenian understanding of exceptional security, the case of Türkiye shows that measures of exceptional security may be taken within the law, often based on the law, while the constitutional order is in place. In contrast to the understanding that considers security external to politics, how political actions and thoughts labelled by state authorities as communism, separatism, and terrorism were problematised and dealt with infers that security problems may be handled through politics within regular and ordinary parliamentary activities. The Foucauldian approach is explanatory in terms of the multiplicity of decision-makers and the overlapping exceptional security practices, which are taken simultaneously through different methods such as legislation, the declaration of a state of emergency, the discretion of public officers, and executive decrees. However, it lacks an explanation for the constituent power as the unitary place of the decision and the suspension of the constitutional order in its entirety.

2.3.2. Empirical Examples

This subsection overviews several empirical studies examining the decision-making on exceptional security measures. Identifying a threat and developing exceptional security policies to eliminate it require decision-making processes that differ based on the constitutional tradition of a country and who the decision-maker is. Security studies remain preoccupied with sovereign power and the executive as the decision-maker on exceptional security (A. Neal, 2019b, p. 1). In contrast to the understanding that fixes the decision-making authority in exceptional security matters to the executive, the data from a 2004 study shows that among 147 countries, in 50, the executive alone can declare a state of emergency; “parliamentary confirmation of the executive decision is explicitly required in a further 49 constitutions”; and in 16 countries the legislature has sole authority (Humphreys, 2006, p. 684n44). Moreover, declaring an emergency is never the only way to take exceptional security measures.

Research indicates that, depending on the context, decision-makers may vary between the executive (Dyzenhaus, 2005), the legislative (A. Neal, 2012, 2019a, 2021), the judiciary (Hussain, 2003, 2007; Türkoğlu & Elitsoy, Forthcoming), bureaucrats and security professionals (Apap & Carrera, 2004; Bigo, 2002, 2006a, 2006b; Feldman, 2010; Neocleous, 2000), and even civilian border patrols (Doty, 2007). As such, contemporary literature on exceptional security measures extensively pointed out the dispersed nature of the decision-making power. Few of these studies highlighted the mundanity of state authorities’ discretion to interfere with the constitutional rights and liberties regime. Even though they addressed decision-making authorities

other than the sovereign or the executive, a considerable part of the literature has distinguished between law and politics (see Chapter 1). The Schmittian conceptualisations of the exception in the literature have drawn parallels between today's decision-makers on security issues and Schmitt's sovereign power. I will first overview the studies critical of but inspired by Schmitt. Then, I will move on to the studies pointing out the mundane nature of state authorities' discretion in interfering with the constitutional rights and liberties regime.

Concerning the exceptional security measures maintained through sublevel decision-making, R. B. J. Walker (2006, p. 80) argues that while Schmitt focuses on the "big exception" declared, the exception today emerges contemporarily, as the bureaucratic machinery, not "grand sovereigns", maintains it. According to Walker (2006, p. 80), the contemporary era identifies not with "the disappearance of sovereignty but the multiplication and proliferation of sovereignties", where "exceptions are now made as a continual mode of action." By constructing "the other as enemy, as absolutely alien or absolutely threatening" (Walker, 2006, p. 80), liberal democracies give "way before invocations of sovereign necessity, to the privileging of national security over all other values" (Walker, 2006, p. 76). Walker's analyses of exceptional security practices pertain to a context where the constitutional framework remains intact rather than in situations where sovereign decisions supersede constitutional principles.

In a similar line of thought, Roxanne Lynn Doty (2007, p. 114) argues that "undocumented migration" in the US "has been linked to all things undesirable ... and, particularly since 9/11, to national security." Due to this linkage formed

long before the 9/11 events yet strengthened after, the media, politicians, and “anti-immigrant groups” have had the discourse that border security and not letting undocumented migrants enter the territory are essential for national security and the “defence of the nation” (Doty, 2007, p. 123). Doty argues that even though the actions based on this discourse to secure the borders cause “*seemingly* less-spectacular happenings” than the “events in Nazi Germany, ... they can tell us a great deal about exceptionalism and the political” (Doty, 2007, p. 124, italics in original). Drawing on Schmitt’s thoughts, Doty argues that “actual physical combat and killing is not necessary for the friend-enemy distinction” (Doty, 2007, p. 125). According to Doty (2007, p. 125), “the decision to patrol the Mexico-U.S. border constitutes a decision in the Schmittian sense” because “participants arguably do perceive themselves as involved in a life and death struggle.” On decision-making, Doty writes the following:

Many of these decisions are legalistic in the sense that they involve the creation of new laws or the reinforcement of existing laws. All these function to create exceptions that apply to a certain group of people within the society. They thus work to restructure society along the model of the exception though this restructuring may not always be highly visible. (Doty, 2007, p. 125)

Then, according to Doty, decision-makers that she analyses decide on the exception just like Schmitt’s sovereign. In Schmitt’s theory of sovereignty, the sovereign “steps out of normativity, the normal constitutional order” when he decides on the exception (Cristi, 2011, p. 354). The sovereign is the decision-maker in times of extreme conflict to defend the state against the enemy of the state. Hence, referring to Schmitt, Doty (2007, p. 128) suggests that undocumented migrants constitute the enemy. This issue, which corresponds

to the friend-enemy distinction in Schmitt's thought, corresponds to the distinction between 'us' and 'them' in securitisation theory, and 'them' represents the 'other' in the equation (Doty, 2007, p. 128). In contrast to these approaches, Doty (2007, p. 129) argues, "[b]oth the securitisation paradigm and Schmitt's theory conceive of 'the decision' as something that comes predominantly from a unified entity and for the most part from above." However, the multiplicity of comparatively minor decisions and multi-layered decision-making processes in border patrolling indicate that the decision-makers do not constitute a unified entity; instead, there are many decision-makers (Doty, 2007, p. 130).

Also critical of understanding a unitary authority as the decision-maker, Jacqueline Best (2018) examines technocratic decisions that restrict or suspend rights and liberties. Best (2018, p. 1) defines the state of emergency as "emergency exceptionalism" and argues that it "operates through an episodic logic in which normal politics are suspended in times of declared crisis." According to Best (2018, p. 5), this concept refers to "a singular, temporary logic". She portrays states of emergency as anti-politics by addressing emergencies as the suspension of the regular functioning of political institutions. In contrast with emergency exceptionalism and its singular logic, according to Best, multiple technocrats in contemporary politics decide on restrictions or suspensions of rights and liberties. Technocratic exceptionalism operates "on a continuous basis in the background, suspending normal political processes over certain issue areas or certain individuals deemed dangerous enough to exempt from normal politics" (Best, 2018, pp. 1–2). In this view, technocrats who have the authority to decide on

matters concerning people's rights and liberties make decisions "on a day-to-day basis, in political spaces exempt from many of the norms of liberal democratic politics and yet have the power to define and constrain liberal rights" (Best, 2018, p. 1).

As such, the literature suggesting that the Schmittian exception today is executed not by the unitary sovereign, who holds total power according to Schmitt's conceptualisation, but by other decision-makers, adheres to exceptionalist rhetoric and argues that Schmitt's theory of sovereignty fails to explain contemporary practices of exceptional security. While these views effectively address the exceptional security measures in the contemporary era, the discussions regarding Schmitt's theory overlook the juridico-political circumstances of the exception in the Schmittian sense (see Chapter 1). Moreover, these studies also overlook that the fragmentation of sovereign power is not a new phenomenon in the modern state. For example, Neumann (1950, p. 175) stated in 1950 that many of "the decisions of the bureaucrats ... are creative ones, not derived from precedent or standing rules, but highly discretionary and thus essentially lawmaking in character." As early as 1921, Benjamin (2021, p. 47) stated that "the police intervene 'for security reasons' in countless cases where no clear legal situation exists, if they are not merely, without any reference whatsoever to legal ends, accompanying the citizen as a brutal harassment ... or quite simply surveilling him". Indeed, there is evidence that security professionals have historically had discretion on issues concerning rights and liberties in modern statehood, at least for decades, if not centuries (see Feldman, 2010; Neocleous, 2000; Prakash, 2022).

In contrast to the Schmittian conceptualisations of the camp as the place of the sovereign decision and exception, Hussain (2007, p. 740) highlights that at Guantánamo, “we find not an emptying out of law but an abundant use of technical distinctions, differing regulations, and multiple invocations of authority.” Hussain (2007, pp. 740–741) objects to popular readings of Schmitt, including the one by Agamben, based on empirical evidence from Guantánamo. Hussain (2007, p. 741) states that the state of exception “is at the very least inadequate to explain the use of bureaucratic regulations and administrative classifications.” As such, he writes, “while a decision on the exception seems hard to find [at Guantánamo], the internal operations in a supposed space of exception reveal ... an intensification of an administrative and bureaucratic legality” (Hussain, 2007, p. 744).

Another scholar who points to the multi-part and -layered decision-making processes without resorting to the Schmittian exception and explains the decision-making processes in contemporary politics without reducing them to the norm-exception dichotomy is Andrew W Neal. Neal (2012, see also 2006) examines the exceptional security measures in the UK (and later, in Australia). He underscores the overlapping and multiple decision-making authorities and moments rather than defining exceptional security measures through the decision as the definitive notion that parts parliamentary (democratic) politics from its regular functioning. According to Neal (2012, p. 261), “history shows that normalization becomes a feature of legislative security politics over time, as the specter of emergency fades”. In contrast to the arguments that security is outside regular politics or somewhat above it, Neal (2019b, p. 2) argues that “[s]ecurity is no longer an anti-politics. It is

politics” and handled through parliamentary politics in countries such as the UK and Australia in the post-9/11 era (A. Neal, 2021). Neal’s arguments challenge the understanding of exceptional security that confines decision-making to a limited area of governmental practices.

To reiterate, the studies reviewed in this subsection primarily focus on decision-making processes of a smaller scale than sovereign decision-making processes, where the unmitigated sovereign holds a political power monopoly. While they have disagreements regarding whether these decisions fall under the state of exception and whether they are a novelty of the post-9/11 era, all scholars discussed contend that contemporary security politics is carried out through the prolongation of the use of exceptional security powers by bureaucracy, security professionals, and civilian authorities, who are granted discretionary powers concerning people’s rights and liberties. Based on the literature overviewed, we can argue that, as long as the constitutional order is in place, the decision-making power on issues problematised as exceptional security issues is dispersed and contextually varies.

The following section will explore the spatiotemporal dimensions of exceptional security measures, aiming to discern the locations, durations, and temporal scopes during which diverse decision-makers impinge upon the regime of rights and liberties.

2.4. Spatiotemporality: Where, When, and For How Long Do States Employ Exceptional Security Measures?

Regardless of its juridico-political conditions, decisions on exceptional security measures usually target a territorial space with its inhabitants. The implementation of the decision exposes the people living in a territorial space to interference with their rights and liberties recognised by the law (national, international, or both). Emergency responses are recognised within every constitutional order, provisioning the use of exceptional powers, theoretically allowed only in times of emergency. Exceptional responses address no specific geography but the state's national territory as the political space. However, the practice shows that states may be spatially selective while intervening in the (national and international) rights and liberties regime. Legal principles concerning people's rights do not equally apply everywhere in the world or across the national territory.

Liberal constitutionalism suggests that all emergency powers are limited to a specific time and space. These powers are employed when a threat to the nation/state emerges, and they remain employed until the threat is eliminated where it emerged. As such, the threat's spatiotemporal aspects determine the exceptional security measures employed in response to the threat. Every security measure implemented has geography, and most have geopolitical justifications. As Joost Jongerden (2007, p. 10) argues, space is not an "abstract entity external to society"; instead, "each society is characterized by a new organization of space and of people in space". A national territorial space is where the political existence of a people is located.

The spatiotemporal aspects of exceptional security measures are interlinked with the debate concerning the dichotomy/coexistence of norms and exceptions to norms. Scholars have discussed why specific spaces are exposed to exceptional security measures. The literature has questioned the temporality of such measures in specific areas and territories. The subsequent subsections will look at how the spatiotemporal aspects of exceptional security measures have been studied in the literature. Are the spaces examined by the literature the location of the exception? Are they places where the constitutional order has been suspended? What juridico-political conditions allow exceptional security measures to be spatially selective? This section attempts to answer these questions as a part of the conceptual and analytical framework.

2.4.1. International Territories

Contemporary studies examining the space/time of exceptional security measures have primarily focused on either constructed spaces on international soil, such as the Guantánamo detention camp and the Abu Gharib prison, or international territories exposed to military invasions, such as Iraq and Afghanistan (among others, see Agamben, 2005; Biswas & Nair, 2010; Diken & Laustsen, 2004, 2005; Dillon, 2018; Fierke, 2015; Gregory, 2006, 2010, 2011; Hussain, 2007; Jabri, 2006, 2007, 2010; Kessler & Werner, 2008; Khalili, 2012; Vaughan-Williams, 2008). Some of these studies pointed to these spaces as the 'spaces of exception' where the constitution was permanently suspended following 9/11. In contrast, others pointed to the

continuity of the exceptional character of these spaces by highlighting the pre-9/11 security politics and international power struggles. I will overview these varying arguments concerning spatialities and temporalities of exceptional security measures.

The Guantánamo detention camp on Cuban soil is ruled and used by the US government despite being outside the US. The international implications of national decisions bring about the fundamental question concerning the juridico-political aspects of these decisions impacting a specific space outside the national territory. Contemporary research seeking explanations for this quandary has presented various analyses based on empirical evidence and reports. Scholars analysing exceptional security measures on the grounds of the norm-exception dichotomy, interrogating overseas military interventions and detention camps outside national territories, argue that “exceptional measures ... are no longer temporally or spatially bound, but have become the norm” (Aradau, 2008, p. 293). This view has constituted the prevalent argument for the literature that considers the security environment of post-9/11 as essentially a turning point in security politics, almost a rupture from the past. An overview of the analyses indicates that Agamben’s conceptualisation of the exception has widely influenced how the literature comprehends the territorial spaces of exceptional security.

According to Agamben, the detention camp in Guantánamo presents an example of the space where the state of exception prevails. The (fictitious) sovereign, deciding to erase “any legal status” of the individuals under detention and turning them into “unnameable and unclassifiable” beings (Agamben, 2005, p. 3), confines these people into the “zone of anomie”

(Agamben, 2005, p. 23), which is not in any way subjected to judicial control (Agamben, 1998, p. 4). No social and political rights are granted to the people imprisoned in this constructed space. According to Agamben, “insofar as law is maintained as pure form in a state of virtual exception, it lets bare life ... subsist before it” (Agamben, 2017, p. 55). *Bare lives* in the Guantánamo detention camp are those whose rights and liberties are taken away by the sovereign. As such, the people under detention in the camp are just human bodies and nothing else, according to Agamben. They are altogether excluded from the social and political domains (see Huysmans, 2008).

On a similar note, Vivien Jabri (2007, p. 130) also argues that “the workings of the state of exception clearly relate to Guantanamo, Abu Ghraib, Bagram airbase and other locations as yet undetermined, locations of incarceration ... beyond the scrutiny of law.” As such, Jabri, in her use of the concept of the exception, excludes the modalities of the law from the exceptional security practices carried out in the aforementioned constructed spaces and the international territories of military invasions, such as Iraq, in the name of security. Having discussed contemporary security politics and injustice “as a twenty-first century mode of colonisation”, she argues that the power targets “the other through direct violence and other forms of abjection witnessed more recently in Iraq ... and in camps such as Abu Ghraib and Guantanamo” (Jabri, 2007, p. 150, see also 2006).

Like Agamben and Jabri, Nick Vaughan-Williams also considers the Guantanamo camp a space where the exception prevails. Drawing upon Schmitt’s theory of sovereignty (the sovereign with the power to decide on the exception is the prerequisite for the norm to exist), Vaughan-Williams (2008,

p. 329) argues that for a juridico-political order to exist in the international, there needs to be a definition of and a distinction between normal territories and exceptional territories. He highlights that “Schmitt reads the notion of juridical–political order as something synonymous with the state” (Vaughan-Williams, 2008, p. 330). The territorial borders of a sovereign state mark the distinction between inside and outside as well as between the norm and the exception. Thus, in Schmitt’s theory, “the limits of territory and the limits in law appear coextensive” (Vaughan-Williams, 2008, p. 330), and yet, this view contradicts the legal definitions and interpretations in the UN report of 2006³, as the report states that “the limits of territory are not necessarily coextensive with limits in law” (Vaughan-Williams, 2008, p. 323).

Having taken the UN report as guidance on how to make sense of the borders in legal and political terms and concerned with the Guantanamo camp’s juridico-political situation, Vaughan-Williams (2008, p. 334) thinks that the Schmittian conceptualisation of the exception is not explanatory for the case of Guantánamo since the UN report shows that the state practices in places outside the national territory can be within the scope of the (international) law that applies nationally. According to Vaughan-Williams (2008, p. 333), the Agambenian exception may explain the juridico-political conditions of Guantánamo as Agamben’s conceptualisation is biopolitical

³ The UN report on the *Situation of Detainees at Guantanamo Bay* is an illustrative example of the law’s in-the-making character. The report, published in 2006, reaches a conclusion by interpreting the international law that is theoretically binding for the US (United Nations, 2006). While the US authorities have been insistent on the Guantanamo camp being outside judicial review to keep the area exempt from the law that is valid in the US territory, the UN interprets the same legal texts differently and decides that “human rights law applies at all times, even during situations of emergency and armed conflicts. The war on terror, as such, does not constitute an armed conflict for the purposes of the applicability of international humanitarian law” (United Nations, 2006, p. 24).

(human bodies/*bare life*), not national territory-based. Put differently, the law in global politics applies to human bodies even if these bodies are not in the national territory to which they belong.

The UN report in question pertains to the interpretation of the law as a set of international regulations binding the authorities responsible for deciding on or implementing exceptional security measures within the Guantánamo detention camp. As such, while Vaughan-Williams' study examining the Guantánamo case discusses the camp from an Agambenian perspective, it simultaneously falsifies Agamben's views on the extralegal character of the practices in the camp. Besides, the Schmittian exception does not exist where the law is valid and functioning. As Sara Davies highlights,

The Schmitt argument relies upon the two key claims: first, that the judicial branch of government will adopt and even promote legally dubious practices in order to appease the executive; and second, that the 'legal black hole' that evolves from such practices will be seen as justified when measured against the threat. (Davies, 2008, pp. 86–87)

On the one hand, let alone justifying the practices that took place in the detention camp, the judiciary of the US has repeatedly ruled that practices in Guantánamo are unlawful (Davies, 2008, pp. 87–91). This fact indicates that, as the UN report of 2006 and Vaughan-Williams suggest, the law has applied to the exceptional security practices in Guantánamo. Nevertheless, this same situation also shows that the exception in the Schmittian sense has not existed in Guantánamo. On the other hand, in contrast to the Agambenian exception that assumes the exceptional security practices of the US in Guantánamo are immune to judicial review, the US Supreme Court has repeatedly falsified this assumption. As Davies (2008, p. 88) highlights,

“[u]nlike Agamben’s argument, the US Supreme Court found that derogation to certain laws does not have unlimited application.”

In one of the studies examining an entire country or countries as the space(s) of exceptional security, Hiroyuki Tosa (2009) has looked at the inequality between states in the world through the concept of “neoliberal governmentality” and argued that it causes various forms of exclusion. According to Tosa (2009, p. 421), “the periphery of global politics” consists of spaces, such as Palestine, over which arbitrary and precautionary methods of governance are adopted as a consequence of the global war on terror. Tosa considers neoliberal governance in the periphery as the manifestation of the state of exception. Following Agamben, he argues that the security policies of the post-9/11 era have led to “the politics of exclusion”, which sometimes “leads to a state of exception in which people have to endure ‘bare lives’ as *homo sacer*” (Tosa, 2009, p. 414).

Similarly, Shampa Biswas and Sheila Nair (2010, p. 2) highlight that in the aftermath of the terrorist attacks of 9/11, there have been communities excluded and even decimated in the places where the exception prevails, such as Iraq and Afghanistan. Turning to Agamben’s thinking, they argue that “what constitutes sovereign power is the ability to declare what is exceptional to that order” (Biswas & Nair, 2010, p. 5). According to Biswas and Nair (2010, p. 6), “exceptional” bodies in the world’s peripheries are “delimited” and defined as “exceptional” by the sovereign power. The periphery is the “‘third-world’ spaces of exception”, where “no violence or intervention can be illegitimate”, and the sovereign practice ceases to be exceptional (Biswas & Nair, 2010, p. 6; see also Aradau & Van Munster, 2011, p. 111). These

countries, therefore, are spaces of exception. The practices of exceptional security measures in third-world countries are not national emergencies (Biswas & Nair, 2010, p. 20). Instead, these “states of exception”, the states of the third world, have been formed “through the intersections of the logic of sovereignty” (Biswas & Nair, 2010, p. 25).

While Biswas and Nair’s focus is on explaining the ‘spaces of exception’ in relation to the notion of sovereignty, Derek Gregory (2006) focuses on the logic of international law to explain the practices in these places. Gregory (2006) criticises Agamben’s view of the detainees as being *bare lives* residing in the Guantánamo camp. He argues that Agamben’s explanation of the detainees as such politically pacifies the people in Guantánamo because “sites like Guantánamo Bay need to be seen not as paradigmatic spaces of political modernity (as Agamben argues) but rather as potential spaces whose realisation is an occasion for political struggle” (Gregory, 2006, p. 405).

Gregory, like Agamben, views the Guantánamo camp as a realm of exceptionality. Nevertheless, he holds a different perspective from Agamben regarding the interplay between the law and this exceptional space. According to Gregory (2006, p. 405), Agamben’s account of the exception “is insufficiently attentive to the spatialities of international (rather than national) law.” In contrast to Vaughan-Williams’ take on Agamben’s theory discussed above, Gregory (2006, p. 407) highlights that the war on terror and its emergencies “involve a spatiality that is largely foreign to Agamben’s account” as Agamben bases his arguments only on the “suspensions of national law during states of emergency declared.”

The main pillars of Gregory's objection to the Agambenian conceptualisation of the exception are the space of exception as a site for political struggle, spatialities of international law, and emergencies based on international law. This perspective is noteworthy in how it discovers the relationship between the law and exceptional security. In his own terms, Gregory (2006, p. 407) explores "the relations between sovereign power, law and spatiality" by historically tracing the formation of the camp in Guantánamo. In the way Gregory understands it, the exception in Guantánamo does not mean a state of lawlessness, nor does 9/11 present a breaking point. On the contrary, this space of exception has existed based on the law since long before 9/11. According to Gregory (2006, pp. 408–410), international law's decentralised nature and the definitions of the "other" that habituates imaginative geographies in the international arena operate to create these spaces of exception, and the detention camp in Guantánamo is one of them. In this context, the law itself may be utilised to create territorial spaces in which people are exposed to exceptional measures that deprive them of their fundamental rights and liberties.

Hussain (2007) has also shown the long history of the juridico-political basis on which the Guantánamo detention camp could be constructed, defying the argument that the camp is the space of the Schmittian exception and constitutes a rupture in security politics. Like Gregory, Hussain (2007, p. 736) points to the long history of Guantánamo being a territorial space that refers to "a particular and changing combination of geopolitics, law, and sovereignty." Critical of Agamben, Hussain (2007, p. 737) underlines that Guantánamo is a "colonial artifact" created through "the unilateral treaty

imposed by one sovereign power on another". As such, Hussain (2007, p. 737) opposes the argument that "Guantánamo is and always has been a space beyond regular law". He writes, besides "the last half century of human rights treaties and conventions designed to give all human beings some status", even the treaty that led to the creation of Guantanamo as colonised territory, "by definition, stipulates basic jurisdictional parameters" (Hussain, 2007, p. 737). The law as a site for political struggle consists of texts, precedents, and interpretations that change and evolve. There is a politics to the formulations, interpretations, and applications of the law (see Dworkin, 1982), which may, for instance, result in varying consequences drawn from the same legal regulation and even contradicting precedents. As such, the juridico-political conditions of the Guantánamo camp result from a politically created legal loophole and, as Hussain (2007, p. 739) argues, "the web of administrative legality of which the camp is a part".

In this subsection, I presented various thoughts and discussions on the security measures that interfere with the rights and liberties regime internationally formed by several human rights treaties. While some scholars consider the spaces of exceptional security practices as locations where the law is suspended, others historicise these locations and point to the legality of the practices in question. In the following subsection, I will examine several studies on the national spaces of exceptional security.

2.4.2. Territories within the National Borders

Most studies investigating the spatiotemporal patterns of exceptional security measures within national borders focus on constructed spaces such as border control posts and camps. The literature has primarily discussed the rights of those who are not welcome to a specific national territory – people framed as a threat at border control points (among others, see Apap & Carrera, 2004; Bigo, 2002; Hönig, 2014; Salter, 2008) or those confined to refugee camps (among others, see Dasgupta, 2023; Engler, 2018; Hanafi & Long, 2010; Tuastad, 2017; Turner, 2005). As such, the studies in question have looked into the state practices mainly within extraterritorial spaces of ‘exception’. Some other studies within the realms of gentrification and postcolonialism literature, though they do not focus explicitly on exceptions or emergencies, have offered valuable insights into comprehending the spatial arrangements of exceptional security measures implemented at the national level in specific territorial spaces (among others, see Danewid, 2020; Go, 2023; Maharwal, 2017; Mamdani, 2020; Meyer, 2021; Prakash, 2022). This subsection will provide an overview and discuss each of these bodies of literature.

Studies examining refugee camps through the concept of the state of exception mainly draw parallels between the detention camps discussed earlier and the camps to which refugees are confined, resulting in the exclusion of these people from the realm of law and politics. For example, Anne-Marlen Engler (2018, p. 487) argues that the refugee camp in Berlin is “an exemplary case of Agamben’s *permanent state of exception*” (italics in original), while Rajarshi Dasgupta (2023) makes the same argument for the

case of the Bihari refugees in Dhaka. Having examined the Palestinian refugee camps in Lebanon, Sari Hanafi and Taylor Long (2010, p. 147) point out that these camps are exceptional as a result of “the suspension of all sovereign authority over the camp and, in its place, the implementation of other ‘temporary’ or ‘emergency’ powers”. On the other hand, some scholars focusing on the camp phenomenon within the national borders criticise the Agambenian approach to understanding the exceptional security measures in such spaces, considering that the tensions between the law and political power that Agamben point out “are very much *inherent* to the camp apparatus itself, for it cannot be reduced to the single rationality of the production of bare life”, even though, for example, the camp in sub-Saharan Africa remains an exceptional space (Fresia & Von Känel, 2016, p. 251, italics in original).

Although the security policies leading to what scholars call states of exception or emergency have had a history dating back decades ago (see Levy, 2010), migration policies, especially those employed by the EU countries, the UK, Australia, and the USA, have become a hot topic following 9/11 within the debates of exceptions and emergencies. One of the studies on the subject by Joanna Apap and Sergio Carrera (2004) examines the practices of the Schengen regime and argues that the discourses about the necessity of taking security measures have become predominant at the EU level. According to the authors, the security measures taken have been “justified on the grounds of ‘special security concerns’ or a ‘state of emergency’” (Apap & Carrera, 2004, p. 400). As public officers at the border control posts have been capacitated to decide who “may be a serious threat to the internal security of the state” without “clear legal standards” (Apap &

Carrera, 2004, p. 404), they are not held politically or legally responsible (Apap & Carrera, 2004, p. 408).

Drawing from Agamben's conceptualisation of the state of exception as a "permanent spatial arrangement" and the Foucauldian concept of "governmentality", Mark B. Salter (2008, p. 365) examines borders, arguing that "governmental procedures of examination at the border institutionalize a continual state of exception at the frontier that in turn performs the spatio-legal fiction of territorial sovereign and the sovereign subject in each admission/exclusion decision." Salter, like Apap and Carrera, focuses on the daily activities of border control officers. According to him, the permanency of the state of exception at the border control posts derives from the borders being "the threshold of law", where international mobility has been framed as a threat (Salter, 2008, p. 366). Through the exceptionalist logic dominating contemporary literature, Salter excludes politics from the modalities of what he defines as the state of exception. As such, he places the decision-makers at the borders as the performers of the sovereign power. For Salter (2008, p. 269), "the raw decision to admit or expel an individual at the border takes place both inside a normal bureaucracy and outside the normal condition of politics."

While Salter's discussion revolves around the security regime built at the border control points and the mundanity of what he calls the state of exception, Patrick Hönig (2014), also through an Agambenian framework, focuses on the exclusion of unauthorised refugees through the border control posts, which is under a state of exception for Hönig. He rightly highlights that "some of us enjoy premium access to rights, while others are offered a

somewhat scaled-down rights menu to choose from” (Hönig, 2014, p. 128).

According to Hönig, this scaled-down menu applies to unauthorised migrants.

He argues that these people cannot exercise their rights and liberties and face racism as European countries endorse the logic of exception and create bare lives out of refugees (Hönig, 2014, pp. 134–136) by inverting the “camp with its boundaries pushed outwards” (2014, p. 138). As such, he uses the camp phenomenon to portray the outside of the national borders – the territories in which unauthorised migrants are supposed to be for those exposing these migrants to the state of exception.

While contemporary literature on the spatiotemporal dimensions of exceptional security measures at the national level predominantly centres on constructed spaces, some studies examine the exceptional spaces within the non-constructed areas of the national territory. These studies can be found within the fields of postcolonialism and gentrification, as noted above. While they may present different interpretations regarding the spatially selective nature of the state’s restrictive and repressive behaviours, their shared focus is to illustrate how specific spaces within a state’s territory, inhabited by its people, are treated differently compared to other areas not subject to such measures. In these studies, too, those exposed to exceptional security measures are unwanted immigrants, though these immigrants typically migrated from former colonies, and many now hold citizenship in the countries where they reside.

Amit Prakash (2022) has conducted a research on the policing of North Africans in Paris between 1925 and 1975. Prakash’s book illustrates that between 1925 and 1975, the territorial spaces inhabited heavily by North

Africans were subjected to significantly more security-oriented governance in Paris compared to the rest of the population, and North Africans suffered heightened levels of police harassment and violence. Prakash (2022, p. 4) highlights that “historical consciousness can sculpt contemporary politics” and searches for the history of imperialism in Paris by examining how North Africans were policed in this imperial capital. In France, according to Prakash (2022, p. 8), the colonial logic of governing over the spaces inhabited by those from the former colonies of France led to “the particularist policing of North Africans.” Having historicised the police violence in specific territorial spaces, Prakash (2022, p. 58) underlines that, as early as 1948, the Parisian urban space was mapped and “certain areas of the city [Paris] and surrounding suburbs [were coded] as zones of social and political danger” due to these spaces being inhabited by North Africans.

Prakash’s research sheds light on the ongoing spatialised police violence in today’s France (see Body-Gendrot, 2011). Another study does the same for Britain and the US. Having historicised the militarized police violence over specific geographies in these two countries, Julian Go (2023, p. 2) writes that “police patrol, harass, and violently coerce racialized minorities at disproportionate rates”. As such, the militarization of the police has a racially unequal impact on society. Having aimed to present “a history of our imperial present” (Go, 2023, p. 4), Go shows that nonwhite neighbourhoods in the US and the UK have been subject to racially-motivated, militarised and spatialised police violence. Taking the history of the militarization of the police acting through an imperial logic back to 1829, Go (2023, p. 251) argues that the authorities, who subjected the colonies to pure violence in the colonial period,

still control the metropolises with “military-imperial policing”. As such, the police, using military tactics, serve in “metropolitan colonies” “to maintain a racialized socioeconomic order” (Go, 2023, p. 251).

According to Manissa M Maharwal (2017, p. 340), the racialised socioeconomic order is maintained by “creating ‘safe’ spaces for capital investment and gentrification” in the San Francisco Bay Area of the US, at least since the mid-1990s. This territorial space has been inhabited heavily by black people. Maharwal (2017, p. 349) argues that “gentrification signifies ... the concomitant security forces which exert violence and spatial control upon poor racialized urban populations”. The urban policies, according to Maharwal, aim to whiten the areas of the racialised poor by relocating black people to the suburbs. As such, the “spatial reorganization of the Bay Area” involves “security and policing practices used to enforce and protect capital investment and gentrification across the Bay Area” (Maharwal, 2017, p. 343).

Likewise, Dugan Meyer (2021, p. 271) argues that gentrification is “always class and race-based displacement”. As gentrification is inherently against the immunity of domicile and is carried out through the legal means that the state power provides, it ultimately is the state’s architecting the spatial and social order through dispossessing populations and enabling the transfer of the capital. In this context, gentrification legitimised on the grounds of security is not only a “place-making” but also a “place-taking” project (Meyer, 2021, p. 272). The claim that there is a need for security in a specific space functions through the claim of insecurity, which then functions as the legitimisation basis for state authorities’ actions. Neither is insecurity objectively an occurrence, nor is security ever complete. Nevertheless, the security discourse is

functional not only in gaining political support (those who are dispossessed are always a minority in numerical terms) but also in the co-creation of the friend and the enemy, security and insecurity. The political power hangs in this co-creation process. As Meyer (2021, p. 279) argues, “[s]ecurity aspires ... not to eradicate or rehabilitate such threat objects but rather to administer them, to perpetually restage and reposition the specter of insecurity just beyond reach, but close enough to excite.”

This subsection overviewed three categories of territorial spaces where people are deprived of their rights and liberties: borders, refugee camps, and pieces of national territories inhabited by those framed as a threat, a source of insecurity. The former two categories refer to the spaces where state authorities interfere with non-citizens’ rights and liberties regime and distinguish between inside and outside of a specific place. Those framed as a threat, unwanted people, are attempted to keep inside the camp and outside national borders. However, the distinction between inside and outside is less clear with the pieces of national territory hosting citizens.

In the next section, I will introduce the literature examining the state’s exceptional security practices in Türkiye. I will aim to show how the juridico-political and spatiotemporal aspects of exceptional security measures have been studied in the context of Türkiye.

2.5. The Republic of Türkiye in the Literature

Until roughly the 2000s, the focus of security literature in Türkiye predominantly centred on the military and its autonomous imposition on

civilian politics. The research on the power of the military and its comparatively unaccountable positioning in the state structure lacked a historical-sociological or sociopolitical lens, as the studies were limited to military-civil relations (Balta Paker & Akça, 2010, pp. 13–14). As Evren Balta Paker and İsmet Akça (2010, p. 14) argue, studies on Türkiye have primarily presented a state-centred historical narrative and adopted a kind of “methodological militarism” in research. State-centric analyses portray the military and civilian bureaucracy as an all-powerful class capable of ruling all segments of society, while on the other hand, they depict military service and militarism as inevitable and normal. As Zafer Yılmaz (2019, p. 716) highlights, scholars “generally attribute the sources of a permanent state of siege and emergency policies to either civil-military relations, the ideological orientations of military-bureaucratic elites, disagreements among political elites or a continuing strong state tradition in the country” (see also Balta Paker & Akça, 2010, pp. 354–365).

In contrast, another body of literature critical of state-centric analyses, as well as the state prioritising itself while taking security measures, has discussed the hegemony of the military over the sociopolitical realms in Türkiye (see Altınay, 2004; İnsel & Bayramoğlu, 2004). According to Ali Bayramoğlu and Ahmet İnsel (2009, p. x), in Türkiye, the sphere of the state and the sphere of politics have been distinguished from each other since the establishment of the state. Of these two spheres, the state has been prioritised over and protected from politics (Bayramoğlu & İnsel, 2009, p. x). Consequently, according to Bayramoğlu and İnsel (2009, p. x), “issues can be confined to the sphere of the state and thus closed off from political debate”

based on the justification grounded in national security. The authors state that the “Kurdish problem, the definition of secularism, foreign policy and education are among the issues” (Bayramoğlu & İnel, 2009, p. x). Having provided archival data on the state’s restrictions concerning the matters noted by Bayramoğlu and İnel, Zafer Üskül (1992, 1997, 2014) has examined declarations of martial law and state of emergency in the history of the Republic. Üskül’s studies have given insights into the politicalness of exceptional security measures by discussing the decision-making processes that involved politicians and their threat-framing.

Joakim Parslow (2016) has examined the emergency powers granted to the executive power in the history of Türkiye and argued that “ever since the single-party regime of the interwar years, cabinets have wielded wide powers to suspend rights and exercise discretion concerning both security issues and property and finance regimes” (2016, p. 29). These emergency powers have been articulated in legal texts such as “statutes, temporary laws, regulations, and decrees” (Parslow, 2016, p. 29). Parslow addressed the scattered nature of emergency regulations while pointing at the discretionary power accumulation in the executive. Concerning the density and multiplicity of the emergency regulations in Türkiye, Ece Göztepe (2018, p. 524), a scholar in the field of constitutional law, has highlighted that Türkiye “has existed beneath the shadow of an emergency state” since the state’s establishment. She has characterised the extensive legal regulations concerning emergencies as “a constitution within a constitution”, derogating the constitutional norms (Göztepe, 2018, pp. 524–525). The emergency discussed by Parslow and Göztepe is the state’s constitutional response to

what is framed as a threat to the nation/state, which is regulated constitutionally and in other legal texts.

Kerem Öktem (2006) has examined the case of Türkiye with reference to Agamben and argued that in the “history of Turkish democracy since the 1950s, one could safely argue that the notion of ‘emergency as a rule’ has been a structural determinant of Turkish politics” (Öktem, 2006). While adopting the Agambenian framework of the exception, Öktem has not delved into the theory or explained the law-politics relationship. Arguing that the state of emergency practice is a manifestation of *raison d’etat*, Egemen B. Bezci and Güven Gürkan Öztan (2016) have examined the state of emergency regime continued uninterruptedly from 1984 to 2002 and stated that the state of emergency practices deepened due to the blurring of the distinction between the lawmaker and the law-preserving authorities. According to Bezci and Öztan (2016, p. 164), during the state of emergency, the reasoning that the “state authority requires a different set of strategies, rules and norms rather than the ones used to administer the daily routine of public life” shaped state practices until 2002. As such, scholars have explained the emergency practices through the norm-exception dichotomy and defined the state of emergency as the suspension of the constitutional order (Bezci & Öztan, 2016, p. 167).

The post-9/11 literature on exceptions and emergencies has proliferated analyses of Türkiye and broadened how scholars view the exceptional security practices in the context of the Republic. Scholars who have studied Türkiye predominantly conducted discussions around the arguments of the AKP government becoming authoritarian and what I call ‘exceptional security

measures' being or becoming permanent after particularly the 2010s (among others, see Arslanalp & Erkmen, 2020b, 2020a; Kaliber, 2023; Kaygusuz, 2018; Öktem, 2006). As such, the theoretical assumptions of the post-9/11 literature have been applied but mainly remained limited to the era under the AKP rule.

Contributing to the debate on the decision, Mert Arslanalp and T. Deniz Erkmen (2020a) have looked at “extremely temporary” methods of restricting or suspending constitutional rights and liberties instead of the prolongation or continuation of exceptional security measures by bureaucrats and security professionals. By examining the protest bans and curfews issued by dispersed governmental authorities in Türkiye between 2007 and 2018, the authors have argued that “constitutional rights and obligations” may be suspended “via executive and administrative decisions in an extremely localized, temporary, and ad-hoc manner” (Arslanalp & Erkmen, 2020a, p. 951). The scholars highlight that state officials, such as “governors in unitary systems, district governors, the ministry of internal affairs, the office of the prosecutor or even university presidents”, can be the decision-makers on matters concerning fundamental rights and liberties (Arslanalp & Erkmen, 2020a, p. 951). In contrast to the “conventional idea of a unified national executive as the focal point of emergency politics” (Arslanalp & Erkmen, 2020a, p. 950), according to Arslanalp and Erkmen (2020a, p. 961), multiple actors “use legal tools within a seemingly liberal-democratic constitutional order to facilitate and legitimize their curtailment of basic rights”.

The literature on Türkiye has also pointed out the role of the legislature in taking and implementing exceptional security measures. For example, Deniz

Yonucu's (2018) work on "legal violence" in Türkiye has shown how the law can be instrumental in state authorities' interferences with the rights and liberties regime. Having researched the legal struggle of a group of young socialists with the state starting in 2007, Yonucu (2018, p. 718) has argued that "what at first might seem to be a 'suspension of law ... can actually be an example of an ever-increasing control over lives through the use of legal tools." Thus, her argument on the exceptional security measures targeting those framed as a threat was beyond the conventional norm-exception dichotomy.

In his research on "the permanency of the political crisis and the constitution of legal emergency power" in Türkiye, Yılmaz (2019, pp. 716–717) has taken into account the plurality of decision-makers on the restriction or suspension of constitutional rights and liberties and the multi-layeredness of the security measures interfering with the rights and liberties regime. According to Yılmaz (2019, p. 733), state-centred and militaristic analyses have overlooked the "deep political roots of the rise of the executive prerogative principle" in Türkiye. He has argued that in Türkiye's political history, the prerogative power "had been transformed in every episode of political crisis to administer civil society, discipline political opposition and provide the necessary political authority to the ruling classes by military, judicial and political elites" (Z. Yılmaz, 2019, pp. 733–734).

Having criticised the exceptionalist view of contemporary literature in the post-9/11 era, Alper Kaliber (2023) has argued that "emergency and the rule of law need to be seen as different, yet increasingly intertwined modes of governance". Based on the last state of emergency in Türkiye that

encompassed between 2016 and 2018, Kaliber (2023, p. 441) has argued that especially in the authoritarian regimes “where emergency legislation is laid on top of existing ordinary legislation”, executive authorities break up the norm-exception dichotomy (Kaliber, 2023, p. 443). On a similar note, Özlem Kaygusuz (2018, p. 282) has argued that “there is a clear continuity in Turkey’s authoritarian trajectory” (see also Arslanalp & Erkmen, 2020b). According to Kaygusuz (2018, p. 288), “Turkey’s route towards authoritarianism” and an exceptional state under the AKP rule is due to the shift in the AKP’s security understanding. Kaygusuz (2018, p. 288) argues that since 2013, the state rule has shifted from the neoliberal security state to “pursuing the politics of regime security”.

Dinçer Demirkent (2018) has examined the constitutionality of the state practices during the 2016-2018 state of emergency and called the political developments of the period “deconstitutionalization (*anayasasızlaşma*)” (see also Altıparmak et al., 2018). According to Demirkent (2018), the legal regulations and constitutional amendments enacted during the emergency rule served the executive to evade political and legal oversight. Demirkent (2018) has argued that the legal framework created made the state of emergency a virtual regime rather than a constitutional one. As such, during the emergency rule, the Parliament was rendered entirely dysfunctional as legal regulations went beyond constitutional boundaries (Demirkent, 2018). Demirkent’s analysis of the emergency rule between 2016 and 2018 has suggested that the new constitutional framework that gradually transferred more political power to the executive is a process that freed the executive

from legal restraints, the logical consequence of which is the distinction between law and politics.

Saygun Gökarıksel and Umut Z. Türem (2019) have discussed the relationship between the law and politics in Türkiye following the end of the state of emergency in 2018 and in the context of authoritarianism. The authors consider the state of exception in Türkiye and the notion of the neoliberal state interrelated. The authors' analyses suggest that the state of exception and the exceptional state of the law that allows interferences with the rights and liberties regime should be comprehended within their continuities rather than historical ruptures (Gökarıksel & Türem, 2019, p. 182). As such, according to the scholars, the state of exception with its banality "could be seen as part of class politics, strengthening the sovereignty of capital through security measures and repressing the political opposition" (Gökarıksel & Türem, 2019, p. 184).

Some scholars in the literature have pointed out that exceptional security measures in Türkiye have been spatially selective. According to Ayşe Kadioğlu (2013), throughout the history of the Republic in Türkiye, the state has subjected the Kurdish citizens to a permanent state of exception, akin to the exception conceptualised by Agamben. However, unlike Agamben, Kadioğlu has underscored that in addition to the executive, the army, legal mechanisms and courts also undertake functions in maintaining the exception over the citizens of Kurdish descent in Türkiye. For Mert Arslanalp and T. Deniz Erkmen (2020b, p. 120), too, the security practices of the state over Kurds have presented continuity, including the periods before, during, and after the state of emergency declared in 2016: "the latest period of emergency

rule in Turkey was built upon and reflected a long history of emergency measures". The authors have argued that "a securitising approach to the Kurdish conflict is the single most important aspect of this historical continuity" (Arslanalp & Erkmen, 2020b, p. 120).

In summary, research on exceptional security measures examining the Republic of Türkiye can be categorised into pre-9/11 and post-9/11 studies in Political Science and IR. From the end of WW2 until the surge in literature following 9/11, exceptional security measures were primarily examined through the lens of militarism and civil-military relations. Scholarly debates on exceptional security measures emerging after 9/11 have influenced analyses of the case of Türkiye. The literature has introduced new analytical frameworks, shaped notably by the AKP authoritarianism and the emergency rule from 2016 to 2018. In these studies, the focus was mainly not on the state as a whole but rather on the decision-making of specific authorities. Most studies have contended that the executive was the primary decision-maker during the AKP era, particularly after the 2010s. Scholars who discussed the spatially selective aspects of exceptional security measures observed continuity of these measures in areas populated heavily by citizens of Kurdish descent. Constitutional law scholars analysed the constitutionality of state practices during emergencies in Türkiye, using the constitutional framework as their reference.

2.6. Conclusion

This chapter first overviewed contemporary literature on exceptional security measures and outlined the analytical framework within which the case of the Republic of Türkiye will be examined in the subsequent chapters. It categorised research into the pillars of academic debates on exceptional security measures: Constitutional framework (how it is created and maintained), how exceptional security measures are employed within or outside this framework, who decides to employ these measures, and when, where, and for how long the decision-makers decide to employ them. These pillars are the determinants of the juridico-political conditions of exceptional security measures, the source of power (law or political power) and the measures' spatiotemporal aspects referring to the state's relationship with its territory and inhabitants.

This chapter demonstrated that state practices manifest in various ways depending on the characteristics of a given case, which necessitate careful consideration of the case's contextual circumstances. Exceptional security measures are shaped by politics, broadly defined, irrespective of their juridical form. While political power is mainly dispersed among several authorities that hold the capacity to decide to restrict or suspend constitutional rights and liberties, rarely is it monopolised and only in times of exception. As long as legal oversight exists over the enactment of state power or the exercise of sovereign power, concerns regarding constitutionality can be addressed within the framework of the law.

Liberal law comes with its illiberal regulations. In the maintenance of the constitutional order, politics and law intertwine in several forms, and various

decision-makers and exercisers of exceptional security measures get involved in the process. Some security measures are exceptional, not because they are taken exceptionally. The state rule combines and intertwines the constitutional regular and legal-repressive measures that embody some form of threat definition and the measure to handle it. As Tugba Basaran (2008, p. 349) argues, illiberal security practices due to state authorities' decision-making power do not represent outside of the rule of law, but rather, their discretionary decision-making is embedded in normal politics. As Neocleous (2008, p. 69) highlights, the law is instrumental in legitimising the "violent actions conducted in 'emergency conditions'... in the name of security" (see also Neocleous, 2006). Hence, these violent actions do not necessarily constitute a Schmittian (or Agambenian) exception. Instead, they are mostly practised on the grounds of law.

This chapter presented how the research has examined spatiotemporal aspects of exceptional security measures. It has shown that the literature has mainly observed the spaces of exceptional security measures to be either constructed spaces, such as border control posts or camps, or international territories where human rights do not apply, as proven by international invasions that defied the fundamental rights of the civilian populations inhabiting these territories. The feature that emerges in most of the research on this subject is that they position the spaces in question outside the field of law and politics (while criticising this situation). Besides the literature on exceptions and emergencies, this chapter has also drawn upon the studies from the fields of postcolonialism and gentrification that inquire about the different security regimes imposed upon specific territorial spaces within the

national territory. These studies have found racial dynamics as the determinants of exceptional security measures in specific geographies. While the cases of border control posts and refugee camps within the national territory have been discussed around the notion of unwanted migrants in the literature, the national territorial spaces have been examined around the notion of imperial logic, which results in the exclusion of those migrated from former colonies to their former colonisers' territories. Studies of gentrification highlighted that the state is spatially selective in its security measures based on racial and capital-related dynamics.

After overviewing the literature in relation to the analytical framework, the chapter examined the literature that studied exceptional security measures in the context of Türkiye. It discussed that while the focus was on civil-military relations and militarism until roughly the 2000s, the post-9/11 era has influenced the discussions on Türkiye. Scholars have primarily focused on the AKP era while discussing exceptional security policies in Türkiye, with few exceptions that pointed out the historical continuity of security politics from the establishment of the state.

Based on the conceptual and analytical framework discussed in this chapter, in Chapter 3, I will examine the case of the Republic of Türkiye in its formative years, between 1923 (the establishment of the state) and 1948 (the *de facto* abolition of the Inspectorate-Generals). I will discuss how state authorities framed threats and legitimised exceptional security measures against these threats. I will show that such measures assumed varying juridico-political conditions and different spatiotemporal aspects in different territorial spaces.

CHAPTER 3

1923-1948

This chapter examines Türkiye between 1923 and 1948 regarding the means through which the state restricted or suspended constitutionally recognised rights and liberties. These means comprise two categories: constitutional emergency responses and state practices that present aberrances from the constitutional norm by contradicting the constitutional rights and liberties regime. As such, the state did not necessarily employ the constitutional provisions to curtail rights and liberties. 1923 was the year the Republic of Türkiye was founded. The late 1940s witnessed changes in the insecurities of the state alongside the social and political dynamics, and 1948 marked the dissolution of the Inspectorate-Generals, through which the state authorities exercised extraordinary powers in southeastern Türkiye. In the period under research, the government imposed martial law three times. The total duration of martial law encompassed the periods between 24 February 1925-23 December 1927, 1 January-9 March 1931, and 23 November 1940-23 December 1947.

As part of the analysis, alongside the constitutional emergency response of the state (martial law declaration), this chapter will examine eight pieces of legislation and their enforcement. It will underscore that the security measures that interfere with the constitutional norms of rights and liberties were practised at the intersection of law and politics and through state authorities' discretionary actions and inactions. I will first introduce the constitutional norm

on restricting or suspending rights and liberties in what follows. Then, I will examine the incidents/situations after which the state practices led to the restriction or suspension of rights and liberties due to how the decision-maker(s) defined the threat and the enemy.

3.1. The 1924 Constitution: Rights and Liberties and the Means to Curtail Them (1924-1960)

From the state's inception in October 1923 until April 1924, when the Republic's constituent power established the new constitutional order, the 1921 Constitution (*1921 Teşkilât-ı Esasîye Kanunu*) was in force. This Constitution was enacted by the cadres that established the Republic. While it bore the name 'constitution,' it is controversial that the 1921 Constitution is a constitutional text, considering it did not have any regulations concerning the rights and liberties of citizens (Gözler, 2000), nor did it regulate emergency responses. This short legal text only introduced some basic principles as the principles of the state, although it regulated no mechanism to check the constitutionality of the decisions made by the constituent power that proclaimed the Republic. For these reasons, until the 1924 Constitution (*1924 Teşkilât-ı Esasîye Kanunu*) came into force, the state's actions existed in a legal vacuum where there was no reference, according to which the constitutionality of the state's actions could be disputed.

The 1924 Constitution, enacted on 20 April 1924 and remained in force until 1961, was in line with liberal constitutionalism. The Constitution recognised several rights and liberties, such as the freedom of conscience,

the right not to be condemned for personal views and religious beliefs and the right to perform religious rites within the legal framework (Art. 70, 75), freedom of the press (Art. 77), freedom of thought, expression, publication and travel (Art. 70, 78), the freedom of making contracts, working, owning property, and immunity of domicile (Art. 70, 71, 73), freedom of assembly and association (Art. 70), right to privacy of communications (Article 81), and right to legal remedies (Art. 59, 60). The Constitution also regulated the conditions of restricting or suspending the rights and liberties. It introduced martial law as the state's emergency response against a threat to the nation/state. Article 86 of the Constitution regulated martial law as follows:

When the Council of Commissioners takes cognizance of the danger or imminence of war, or of internal sedition or conspiracy or intrigues directed against the nation or against the Republic, it may decree martial law, which shall not exceed the duration of one month, in all or part of the Turkish territory. This measure shall then be submitted to the Assembly for its approval as soon as possible. The Assembly may prolong or diminish the duration of martial law. ... Martial law consists of the suspension or temporary restriction of the inviolability of the person, the home, freedom of the press, correspondence, association and incorporation. The zone placed under martial law, as well as the provisions to be applied and the procedure to be followed in this zone, shall be determined by special law. The suspension or restriction of personal liberty and personal inviolability in time of war likewise shall be regulated by law (Earle, 1925).

According to the Constitution, rights and liberties could be restricted or suspended when martial law is declared. Valid reasons for the declaration of martial law by the Council of Commissioners, the executive, were listed as war, the possibility of going to war, a revolt against the state, and definite indications of conspiracy and plots against the nation/state. The Constitution assigned the Grand National Assembly as both the legislature and the executive (Art. 5). Therefore, the parliamentary check was ostensible, considering the powers to legislate and execute the legislation were in the

same hands. Due to the unity of powers between the legislative and the executive and the fact that the formative decades passed under the one-party rule, the distinction between the government and the state was blurry (see Bora, 2017, pp. 139–140). The constitutionality of decisions to declare martial law and martial law practices were not subjected to a judicial constitutionality check, either.⁴ As such, the inherently limited political supervision of the Parliament was the only constitutional way to keep the executive under control.

The 1924 Constitution, like every other constitutional text in line with liberal constitutionalism, comprised norms on the rights and liberties regime and norms concerning state security, in the name of which rights and liberties would be compromised. However, the state practices went beyond this inherent contradiction that emanates from the coexistence of norms (citizens' having rights and liberties) and exceptions to these norms, which are essentially legal-repressive measures. Even when the state's actions bore undisputably extraordinary character in response to an incident framed as a threat to the nation/state, such as the bombardment of the national territory by the national army, the state did not necessarily resort to the constitutional norms concerning state security. In what follows, I will look into an example of this.

⁴ The Constitutional Court of Türkiye was established with the 1961 Constitution (see Chapter 4).

3.2. The Nestorian (Assyrian) and the Bayt Shabab Revolts in 1924

This section examines the state's responses to two revolts initiated by the Nestorians in Hakkâri and the members of the Kurdish nationalist organisation Azadi⁵ (The Society for Kurdish Freedom) in Bayt Shabab against the newly established constitutional order. When the Republic of Türkiye was incepted, the geography surrounded by the national borders was home to many religious and ethnic communities. The Nestorians constituted a religious community in eastern Türkiye. Azadi members in Türkiye were "mainly experienced military men who formed the nucleus of this organization" (Van Bruinessen, 1992, p. 280). The Nestorian revolt broke out on 7 August 1924 and was suppressed on 28 September of the same year. The Bayt Shabab revolt lasted between 3 and 4 September 1924 before it was also quelled. Even though the suppression of the revolts presented exceptional conditions in terms of the means of suppression, and the citizens inhabiting the areas where the revolts broke out were subject to exceptional security measures, the state did not choose martial law as the means to carry out these actions.

The two revolts shared geography. Hakkâri, an eastern province in Türkiye, was densely populated by the Nestorian and Kurdish tribes when the state was founded (Van Bruinessen, 1992, p. 180). The Nestorian and the Kurdish communities had many similarities "but language and religion" (Van Bruinessen, 1992, p. 108). Bruinessen reports (1992, pp. 54–55) that before WW1, the south of Lake Van was densely populated by Armenians,

⁵ The Azadi was established in 1923 with the aim of establishing a Kurdish state. At the first congress of the Azadi in 1924, it was argued that "the Ankara government's policies had become increasingly threatening to the Kurds", and organising a revolt against the Turkish state and a "declaration of independence" would be the beginning of an independent Kurdish state (Van Bruinessen, 1992, p. 280).

Chaldeans, and Nestorians. However, most of these people were killed, deported, or fled to another country during the war. The Nestorian population in Hakkari in 1924 was a community that survived the war and remained in the national territory. Between the Nestorians and Kurds, the former had better social and economic conditions (Reynolds, 2011, pp. 51–52). The two communities' interests conflicted, considering they were to claim the same piece of land in case one of the communities established a new state (Soleimani, 2016, p. 242). For these reasons, the relations between the Nestorians and Kurds were tense by the 1900s. These relations deteriorated, especially after 1915, as the French and the British "further exacerbated tensions between these Christians and the Kurds by recruiting police forces from the former to keep the latter in check" (Van Bruinessen, 1992, p. 25).

The desire of ethnic and religious communities to gain independence from the Turkish state and the foreign influence over the national territory were significant sources of Türkiye's security concerns for territorial integrity (see Geri, 2016, pp. 29–30). These security concerns had national and international aspects simultaneously. In January 1923, The British requested Türkiye to guarantee the liberty and autonomy of the Nestorian language, culture, education, and religion at the Lausanne Conference. The Turkish delegate, due to its conviction that Nestorians had nationalist sentiments, did not agree to it (Joseph, 2000, pp. 167–168). In May-June 1924, at the Haliç (İstanbul) Conference, Britain requested Türkiye leave Hakkâri to Iraq, a British mandate, as a Nestorian homeland (Anzerlioglu, 2010, p. 55). The Turkish delegate argued that Iraq was not the Nestorians' homeland; they were expelled from Hakkâri to Iraq because of their armed revolts against

Muslims during WW1. At the Conference, the British requested Türkiye to recognise the Mosul province, which a considerable amount of the Nestorian population inhabited, as a part of the Iraqi territory. However, the Turkish delegate insisted that Mosul was integral to its national territory (Shield, 2004, pp. 53–54).

As Türkiye and Britain agreed on neither of the issues discussed (Hakkâri and Mosul), Britain submitted the issue of the Mosul province to the League of Nations to resolve the problem. The next day after the submission, on 7 August 1924, the Nestorians in Hakkâri revolted against the Republic of Türkiye to seek independence from the Turkish state. The military force in the area of the revolt fought against the rebels. Due to the inadequacy of the existing military presence in the area to suppress the revolt, additional troops were dispatched to eastern Türkiye. A significant proportion of the regiment officers sent were members of the Azadi (Gündoğan, 1994, p. 283). On 3 September, the Azadi members, who were military officers and viewed the Nestorian uprising as anti-Kurdish (Gündoğan, 1994, pp. 121–122), commenced their own revolt in the Bayt Shabab district near Hakkâri.⁶

The state suppressed both revolts by military means – land and aerial operations (Hallı, 2012a, p. 67). The executive authorised the General Staff to take all the necessary precautions to suppress the unrest (Hallı, 2012a, p. 66). Regarding the Nestorian rebels, the Governor of the Hakkâri province was convinced that they were English-trained and “the English have incited these homicides against our government” (Hallı, 2012a, p. 59). As a result of

⁶ Van Bruinessen (1992, p. 282) notes that the Kurds seeking independence from the Republic of Türkiye had Britain's support.

the violent conflicts between the armed forces and the rebels, individuals residing in areas where the revolts broke out but who did not participate in the revolts were unable to exercise their rights and liberties since their living spaces had turned into battle zones. Even though the Constitution stipulated that the state could only interfere with the regime of rights and liberties under martial law and by law, the extraordinary circumstances arising from the revolts and their suppression were not managed through martial law. The Governor of the Hakkâri province considered the Nestorian revolt as an opportunity to deport the Nestorians as he stated that the revolt “has given our government a real reason to ... expel the Nestorians from their lands” (Hallı, 2012a, p. 60). After the revolts were suppressed, the Nestorians left were deported to Iraq. Two leaders of the Bayt Shabab revolt and their associates were arrested in Türkiye (see Van Bruinessen, 1992, p. 284), and “most of the rebels” escaped to Iraq (Hallı, 2012a, p. 127). The state excluded the non-Muslim rebels from its borders as well as the other Nestorians who did not partake in the revolt, but the Muslim revolters of the Kurdish revolt were kept inside the borders.

3.3. The Sheikh Said Revolt in 1925

The Sheikh Said revolt broke out on 13 February 1925 and was geographically the most extensive revolt the Republic of Türkiye had faced in its formative years. Sheikh Said was a leading Naqshbandi sheikh (Bora, 2017, p. 829; Van Bruinessen, 1992, pp. 211–212; Zürcher, 2004, p. 170) and also a prominent member of the Azadi, which was “the main organizational

force” behind the revolt (Soleimani, 2016, p. 242; see also Gündoğan, 1994, pp. 164–178). Sheikh Said was the leader of the revolt and utilised a religious discourse in condemnation of the secular reforms against the Republic to mobilise the masses (Bora, 2017, p. 829; see Gündoğan, 1994, pp. 170–171). The British aid to the Azadi for a revolt against the Turkish state likely played a significant role in the revolt’s outbreak. Britain was seeking Türkiye’s submittal on the issue of the Mosul province, and a revolt would weaken the Turkish state, facilitating the resolution of the issue in favour of Britain⁷ (Van Bruinessen, 1992, pp. 291–292).

The Turkish state combined its legislative, executive, military, and judiciary powers to fight against the rebels. On 24 February 1925, The government imposed martial law across all the eastern provinces⁸ of Türkiye to stifle the revolt. Besides martial law, the state enacted legislation curtailing citizens’ rights and liberties in the affected areas and beyond. Although martial law was lifted on 23 December 1927, the laws granting extraordinary powers to the government and other state authorities meant that the interference with constitutional rights and liberties extended beyond the two years and seven months of martial law in eastern Anatolia. These laws continued to be in effect for extended periods as part of the legal system, allowing authorities to restrict rights and liberties discretionarily. One such law remained in force until 1929 and another until 1988.

⁷ After the suppression of the Sheikh Said revolt, the Republic of Türkiye accepted the terms of the British regarding the Mosul issue and signed the treaty that acknowledged the Mosul province as an integral part of Iraq in June 1926.

⁸ Muş, Bingöl, Elâzığ, Siirt, Diyarbakır, Mardin, Tunceli, Urfa, Bitlis, Van, Hakkâri, Malatya, and Erzurum.

After the promulgation of martial law, the Parliament enacted the Law on the Maintenance of Order (*Takrir-i Sükûn Kanunu*), no. 578, on 4 March 1925.⁹ Law 578 consisted of 3 articles. The range of the extraordinary powers granted to the executive was highly comprehensive. Article 1 entitled the government to ban all types of organisations and publications deemed a threat to the country's social order, peace, and security. According to the Law, those who committed acts against the nation/state could be entrusted to the Independence Tribunals (*İstiklal Mahkemeleri*) (Art. 1). Through Law 578, the legislature established the legal ground for extensive discretionary powers of the executive allowing it to contravene the freedom of association and the press (Art. 3). When presenting the Law to the Parliament, PM İsmet Pasha (İnönü) justified this law's enactment by stating that the legislation was a necessity due to of the exceptional situations and events arose, and because the reactionaries attempted to destroy the state that would violate security, peace, and public order within the country (Neziroğlu & Yılmaz, 2014, p. 67). Article 2 determined the validity period of Law 578 as two years, whereas the constitutional regulation of martial law limited the use of extraordinary powers to curtail or suspend rights and liberties to one month unless martial law is extended. Through legislation, the state exceeded the limits drawn by the Constitution. Furthermore, the Law eventually remained in force for four years instead of two until it was abrogated on 4 March 1929.

Following the promulgation of the Law on the Maintenance of Order, two Independence Tribunals, one in Ankara and one in Diyarbakır, operated to

⁹ The Parliament did not enact a specific law regarding martial law until 1940, even though martial law was declared twice until then.

prosecute the rebels detained. The rebels survived the armed clashes, and those who were deemed to have supported the revolt were executed upon the decisions of these Tribunals. In 1925, Sheikh Said and 47 other Kurdish leaders were hanged by Independence Tribunals. The Independence Tribunals operated with the logic of war conditions. Rebels and their supporters were tried for the crime of treason. Moreover, several studies have shown that Law 578, as well as the Tribunals, a part of the judiciary, functioned not only to punish the rebels and their supporters but also to silence any opposition to the current state rule (see Üskül, 1997, p. 82; H. Yılmaz, 2008, p. 548; Zürcher, 2004, p. 176). The Tribunals made political decisions and engaged in security politics in compliance with the governmental approach to handling security issues. As Hakan Yılmaz (2008, p. 549) argues, using Law 578, the government could “deal with any person or group which it deemed posing some kind of a danger to the security of the state”. Establishing the Tribunals provided the government with an efficient way of punishing those deemed to have posed a threat to the nation/state and taking preventive security measures, considering the Tribunals’ verdicts could not be appealed. Until their abrogation in March 1927, the Tribunals tried 5010 people and sentenced 420 of them to death (Üskül, 1997, p. 85).

In early April 1925, the revolt was quelled, and Turkish military forces established control over the region. Turkish troops pacified and disarmed the area hosted and affected by the revolt. The suppression took the state around six weeks, but the measures implemented in response to the revolt, including the declaration of martial law, the extended duration of the Law on the Maintenance of Order, and the tenure of the Independence Tribunals,

remained embedded in the constitutional order for a longer period. Moreover, the government pursued further security measures that curtailed constitutional rights and liberties. Following the revolt, it implemented demographic policies aimed at preventing similar events from occurring in the future, such as the public policy of forcibly resettling Kurds from the eastern regions of Türkiye in western Anatolia. “The population of entire districts were deported to the west” in the wake of the Sheikh Said revolt (Van Bruinessen, 1992, p. 291). The government acted to disengage the unity that possibly led the region to support the revolt (İnce, 2012, p. 55).

The policy to resettle the Kurds in the west was soon placed in the domain of legality through two laws enacted. First, the Law on Resettlement (*İskân Kanunu*), no. 885, was enacted in 1926 and remained in force until 1934.¹⁰ The regulation was a preventive security measure against possible future events similar to the Sheikh Said revolt. As such, the Law aimed at resettling Kurdish tribes in western Türkiye (Art. 6). Law 885 gave the executive body the authority to decide on resettlement matters. According to Law 885, the reasons for resettlement were to end nomadism, relocate and combine the villages to facilitate transportation and access to living quarters in the region, and drive out the suspects of espionage from border zones (Art. 3).

Second, the Law Concerning the Relocation of Some Individuals from the Eastern Zone to the Western Provinces (*Bazı Eşhasın Şark Menatıkından Garb Vilayetlerine Nakillerine Dair Kanun*), no. 1097, was enacted in 1927 and remained in force until 1988. This Law, too, was pertaining primarily to

¹⁰ In 1934, another resettlement law was enacted to replace the one enacted in 1926. The 1934 law will be examined later in this chapter.

the southeast of Türkiye and was enacted as a preventive security measure against potential events that would jeopardise territorial integrity. Law 1097 envisioned an intervention in the constitutional right of immunity of the domicile to prevent future unease in the region alongside the resettlement. According to the 1924 Constitution, property and residence could not be interfered with under any circumstances (Art. 71). However, Article 9 of Law 1097 promulgated that lands owned by the people to be resettled in a western province would be transferred to the Treasury, effectively leaving them no property to which they could return. According to Article 11, in case the value of the properties given to the people sent to the west was lower than what they had in the east, the Treasury would compensate the difference to the people.

The expropriation of lands facilitated through legislative actions was a direct intervention in the constitutional regime of rights and liberties. The martial law regulation in the Constitution allowed restriction or suspension of the proprietary right in case of martial law. The Law Concerning the Relocation of Some Individuals, envisaging restrictions and suspensions of constitutional rights and liberties, was enacted approximately five months before the end of the martial law declared upon the Sheikh Said revolt. However, its validity was not limited to the duration of martial law, as it remained in force until 1988. Law 1097 was a part of the security policies developed to be implemented permanently after the Sheikh Said revolt. A prominent indicator of the legislature's and government's security concerns is another piece of legislation on the implementation of Law 1097. The Law Concerning the Disappliance of the Provisions of Law No. 1097 by the

Cabinet (*1097 Numaralı Kanun Hükmünün Refine İcra Vekilleri Heyetinin Mezun Olduğuna Dair Kanun*), no. 1178, stated that whether or not the people sent to the west from the east and southeast were allowed to return depended on whether they were “related to the Sheikh Said incident and the ensuing banditry” (Art. 1). Those who were considered involved in or with the revolt were forcefully displaced. Their proprietary right was violated based on a law that remained in force until 1988. With the embodiment of Law 1097 in the legal system, the restriction of a right became a continuous violation of the constitutional norm through legislative decisions granting state authorities discretion. Based on Law 1097, 1,400 Kurdish landlords were displaced (Başaran, 2017, p. 17).

3.4. The Menemen Incident in 1930

The Menemen incident was instigated by a group of sharia and caliphate supporters on 23 December 1930. On the day of the incident, in Menemen, a small town in Manisa near İzmir, a group called for the restoration of the sharia and caliphate and threatened the crowd around to kill if they did not gather under the green sharia banner the rebels were waving (Sidal, 2022, p. 71; Zürcher, 2004, p. 179). The leader of the company of soldiers dispatched to quell the events was brutally murdered by the sharia-callers. The military officers deployed to Menemen suppressed the incident on the same day of the unrest and apprehended the people involved. The government declared martial law on 1 January 1931 in Menemen, Balıkesir, and Manisa, which remained in force for nearly three months until 9 March 1931.

The events in Menemen were more than mere criminal acts of an isolated group in the eyes of the government, which helps explain why martial law declaration was deemed necessary despite the swift suppression of the incident. According to the government, the incident was a threat to the regime. For PM İsmet Pasha (İnönü), the Menemen incident represented a continuation of the movement “that had exploited religion for political gain for hundreds of years” (*On Yedinci İn’ikat*, 1931, p. 4). The government was concerned that the people in the area consented to the actions of the rebels. PM İsmet Pasha (İnönü) stated that he was surprised at the initial reports on the incident, which showed that “the people present in the incident area remained indifferent and impassive” to the ferocity. The later reports detailed the events revealed that “some bystanders took an affirming stance” (*On Yedinci İn’ikat*, 1931, p. 3). Deputy Mazhar Müfit Bey (Kansu) and his 43 friends directed a question to the PM “about the reactionary event in Menemen,” asking “what kind of measures the government has taken and will take about the incident”. The 44 deputies stated that “the disastrous fate suffered by one of our heroic officers gave the impression that the bandits [rebels] were not just a few vagrants or junkies, but rather a massive and extensive reactionary movement” (*On Yedinci İn’ikat*, 1931, pp. 2–3). The PM led up to the declaration of martial law, defining the Menemen incident as “definite signs of an attempt against the homeland and the Republic” (*On Yedinci İn’ikat*, 1931, p. 4).

As such, the government characterised the anti-secular tendencies within society as a threat to the Republic. However, the government had more to deal with to secure its position and secular policies. Regime security, which

the ruling elite was concerned with, was not solely about the maintenance of the republican government's anti-sharia policies from the government's view. Approaching the time of the Menemen incident, the government lacked popular support. On the one hand, the pressure that the Law on the Maintenance of Order imposed (Ertem, 2013, p. 154), and on the other hand, the adverse effects of the 1929 Great Depression on Turkish society (see Boratav, 2005, pp. 63–64) increased the discontent against the state administration (Emrence, 2000; Zürcher, 2004, p. 178). The anger directed against the CHP (Republican People's Party, *Cumhuriyet Halk Partisi*) turned to considerable support towards an opposition party, SCF (Liberal Republican Party, *Serbest Cumhuriyet Fırkası*), founded upon Mustafa Kemal Pasha's (Atatürk) request (Sidal, 2022, pp. 67–69; Zürcher, 2004, p. 178). The opposition party only lasted less than three months and was closed on 17 November 1930. The founding elite of the Republic considered the extraordinary support granted to the ostensible opposition party as a "betrayal" of the masses who owe their lives to the Republic (Bora, 2017, p. 133). As such, the government associated the security of the Republic with the stability of the CHP's authority.

For one reason or another, the martial law declaration was a political decision with juridical and political consequences. After the Menemen incident, the rebels and those who were deemed to have supported them were tried by court-martial. As the MP Mazhar Müfit Bey (Kansu) argued at the Parliament, court-martial provided speed for the trials (*On Yedinci İn'ikat*, 1931, p. 6). As a result of the proceedings, 28 people were executed, and more than 2,000 people were arrested (Zürcher, 2004, p. 179). After the

Menemen incident, the founding elite and republican intellectuals mentioned democracy less and less in resentment to the people who needed to be educated so that they would not threaten the republican values, hence the regime again (see Bora, 2017, pp. 132–136). For the founding elite, the countenance of the masses in the opposition party and then the Menemen incident proved that Türkiye was not yet ready for parliamentary democracy. The next fifteen years after the Menemen incident, like the seven years before it, passed under the CHP rule in a one-party system. During this period, the decision-making authorities on restricting and suspending rights and liberties were hardly discernible.¹¹ The executive was a part of the legislative, and the administrative and military elite had close ties with the ruling elite, one example being the First Inspector-General.

3.5. The First Inspectorate-General (*Birinci Umumî Müfettişlik*) in the Southeast (1927-1952)

The First Inspectorate-General (First IG) was a state institution with extraordinary powers, integral to public administration between 1927 and *de facto* 1948, *de jure* 1952. The First IG was established to operate in southeastern Türkiye by the Law on the Establishment of Inspectorates-General (*Umumî Müfettişlik Teşkiline Dair Kanun*), no. 1164, enacted on 25 June 1927 without any identification of an imminent threat. The First IG's jurisdiction covered the provinces that had been under martial law

¹¹ In 1939, the fusion of the government and the state into a single entity became official. For example, local state authorities had duties at the CHP (Bora, 2017, pp. 139–140). From 1936, the Inspector-Generals were considered by the PM as officers running political activities of the CHP while serving the public (Koçak, 2016, pp. 275–276).

promulgated following the Sheikh Said revolt.¹² Law 1164's preamble expressed the need for "strict inspection and control" in the geographical area under the jurisdiction of the Inspectorate (Koçak, 2016, p. 65). According to the Law, the Inspectorate was to ensure "public order and discipline" (Art. 3). In their evaluation of the Law, the Budget Committee (*Bütçe Encümeni*), which took part in drafting the law, stated that they considered the First IG to be established in the east as a permanent measure for the amelioration of the provincial organisation and that this institution was necessary due to "extraordinary needs" (Koçak, 2016, p. 65). The Committee of Internal Affairs (*Dâhiliye Encümeni*) presented its opinion that the First IG would be responsible for the security and discipline and for ensuring the continuity of public order (Koçak, 2016, p. 66).

As Engin Çağdaş Bulut (2015, p. 90) highlights, the Inspectorate-Generals was a kind of decentralised administration tool used by the ruling class in the Ottoman Empire period, mainly during emergencies and under martial law. The Republic inherited this institution from the Ottomans but modified its features. Instead of serving decentralisation, the Republic's Inspectorate-Generals were a provincial extension of the central government. Five Inspectorate-Generals were established at different times across the country between 1927 and 1952. The First IG was institutionally one of the five, though it had distinctive features and the longest tenure. A report written by an Inspector-General, İbrahim Tali (Öngören), stated that the core of the First IG was public order, police, and intelligence, yet in other regions, there was no need for large cadres as there was in the First IG (Koçak, 2016, p. 118).

¹² Ağrı (Ararat) was added to these later.

While the First IG functioned mainly to provide public order and security, the other Inspectorates had varying policy areas, such as economy, development, and agriculture.¹³

The official documents regarding the security concerns of the state authorities show that the First IG was established in the southeast as a preventive security measure to keep the area under control. After the Sheikh Said revolt, in a circular sent to the provinces under martial law in June 1925, the Ministry of Interior expressed concern about the possibility of future rebellious events in the region. In the circular, provincial administrators were advised to collect weapons in the area and take precautionary measures against those threatening “obedience to the state and peace” (Hallı, 2012a, pp. 226–227). In the Report for Reform in the East (*Şark Islahat Raporu*), prepared in September 1925, the state specified the precautionary measures against a possible future threat similar to the Sheikh Said revolt. The government was advised to take preventive security measures, such as “[r]euniting and governing all of the provinces located on the east bank of the Euphrates River via the military administrative unit of ‘Inspectorates-General’ by martial law for an unspecified period of time” (Yadirgi, 2017, p. 169). Near the end of the martial law declared in 1925, newspaper reports discussed who would be appointed as the First Inspector-General before the establishment of the First IG was initiated (Tunçay, 1981, p. 179). As planned, the First IG was established shortly after the abolition of martial law. Divergently from the

¹³ The Fourth Inspectorate-General, established in 1936, also had something to do with the state’s security concerns. The Fourth IG will be examined later in this chapter.

recommendation in the report, the First IG replaced martial law rather than operating with it.

The extraordinary powers of the First IG went beyond the constitutional limits of security measures. According to the Constitution, only in the case of martial law declaration, rights and liberties such as personal immunity, immunity of domicile, freedom of the press, correspondence, and association could be temporarily restricted or suspended (Art. 86). However, without martial law declaration, all of the exceptional powers that could be granted to the government and the martial law commanders only under martial law were vested in the Inspector-General. Law 1164 and other regulations on the First IG assigned the Inspector-General as almost the sole decision-maker in southeast Anatolia. As Yadirgi (2017, p. 169) argues, The First IG's "authority prevailed over all civilian, military and judicial institutions under their domain in large areas of the Turkish Republic". According to Law 1164, the First IG was responsible to the Ministry of Interior (Art. 3). Its area of specialisation was internal security and public order — the policy areas for which the Ministry of Interior was responsible. Although it was designed as a civil authority in terms of its hierarchical position, the First IG combined military and civilian means in its organisation. By decree¹⁴, it was provisioned that "as many military personnel as necessary" would be appointed to serve the First IG (Koçak, 2016, p. 84).

¹⁴ The Decree Concerning the Entry into Force of the Instructions About the Duties and Powers of the Inspectorate-General, Arranged According to Law No. 1164 Concerning the Organization of the Inspectorate-General (*Umumi Müfettişlik Teşkiline Dâir Olan 1164 Numaralı Kânun Mûcibince Tanzim Olunan Umumi Müfettişlik Vazife ve Salâhiyetlerine Dâir Olan Tâlimatnâmenin Meriyete Vâzı Hakkında Karamâme*).

The First Inspector-General effectively had immunity from judicial review. The 1924 Constitution stipulated that state administration was accountable to a state institution (*Şûrâ-yı Devlet*) responsible for administrative proceedings (see Karahanoğulları, 2005). However, there are no records of proceedings against the First Inspector-General or his personnel. This lack of legal action is not surprising, as the First Inspector-General functioned as an unofficial judicial authority. For instance, he had the power to dismiss any public officer, including governors, if he deemed their presence objectionable to public order (Koçak, 2016, p. 65). Furthermore, the Parliament decriminalised several acts under the First Inspector-General's rule, including the killings during the suppression of Kurdish revolts, ensuring that the Inspector-General could not be held accountable to the judiciary (Bulut, 2015, p. 106).

The justification of Law 1164 stated that the area, subject to the authority of the First IG, would be composed of provinces with similarities and associations in terms of “economic, social and geographical aspects” (Koçak, 2016, p. 86). Abidin Özmen, who served as the First Inspector-General for eight years, offered his views on the extraordinary character of the geography under the jurisdiction of the First IG, which was once under his jurisdiction:

Following the Sheikh Said incident, which had a direct impact on the southern area of Anatolia, especially in the provinces of Genç, Diyarbakır, and Elazığ, and spread into other provinces, a need for thinking, an idea, administration, and cooperation arose in these provinces, and this necessity had essentially emerged spontaneously. (Özmen, 1947, p. 237)

By virtue of his duties being principally related to security and policing, the Inspector-General was essential in deciding on the restriction or suspension of constitutional rights and liberties in the eastern regions. During the tenure of the first Inspector-General, several Kurdish revolts erupted. Despite the

extreme measures taken to suppress these revolts, including the bombardment of affected areas, the government never declared martial law in response to them (see Olson, 2000). The correspondence between the First IG and other administrative units within the state organisation demonstrates the Inspector-General's decisive role in the decision-making processes to suppress these revolts. The Inspector collaborated closely with the government, which was part of the legislature. As he exercised sovereign power due to his discretionary decision-making authority in his jurisdiction, his practices were based on the law and governmental decisions. The following section will examine a case showing how the Inspector-General practised his authority during the suppression of a revolt.

3.6. The Unrest and Revolts in Mountain Ararat (1926-1930)

The unrest in the Mt. Ararat area became apparent in 1926, and it incrementally intensified until 1930. Armed clashes occurred between the Turkish state and Kurdish rebels in and around Ararat for nearly four years, with all revolts being suppressed through military force. The severest of multiple revolts broke out on 20 June 1930. This Kurdish revolt shared characteristics similar to those of earlier Kurdish revolts in southeast Türkiye. According to Martin van Bruinessen (1992, p. 291), it “presented an even more formidable threat to the Turkish government than Shaikh Said’s rebellion had ever done”. The leader of the revolt, Ihsan Nuri Pasha, who had also led the Bayt Shabab revolt, was a former officer in the Turkish military and a member of Azadi. After the Republic suppressed the Bayt Shabab revolt, he

fled to Syria under the French mandate (Gündoğan, 1994, p. 178). The organisation 'Khoybun,' established in 1927, provided organizational and logistical support to the rebels in Mt. Ararat (Bora, 2017, p. 829; see Sarınoy, 1998, pp. 213–214). This organisation was founded by those who fled to Iran, Iraq, and Syria following the suppression of the Sheikh Said revolt (Sarınoy, 1998, p. 213).

Following the unrest and intermittent armed clashes costing human and financial resources from 1926 onward, the government declared a general amnesty in 1928 for those involved in the rebellious acts in and around Ararat. This move aimed to end the conflicts by reaching an agreement with the Kurdish rebels (see Bora, 2017, p. 829). After the general amnesty proclamation, many armed rebels agreed to surrender their arms and come down from the mountains (Van Bruinessen, 1992, p. 291). However, Mt. Ararat was not under complete control of the government (Van Bruinessen, 1992, p. 291; Yadirgi, 2017, p. 175), and the Khoybun members did not comply with the government's security prospects, including the general amnesty (Bora, 2017, p. 829). Moreover, the Khoybun sent additional Kurdish fighters to Ararat from other countries (Van Bruinessen, 1992, p. 291). Consequently, armed clashes between the state and Kurdish nationalists continued despite the general amnesty.

On 13 February 1929, Ararat was included in the First IG's jurisdiction with decree no. 7640 due to the government's security concerns, based on "necessity", as the First IG was considered an effective instrument in providing public order and security (see Koçak, 2016, p. 103). The same year, the state took preventive security measures in the region through the statutory

decree no. 8692 issued by the Council of Ministers on 29 December. This decree left the authority and responsibility to take extraordinary measures in the suppression of a revolt in the Ararat region to the General Staff. Upon the decree, the General Staff ordered the army corps entitled to suppress rebellious acts in the Ararat region to invade the villages and shelters of the rebels and deprive their livelihood base (Şener, 2012, p. 395). According to the order, no dwellings would be left in the area other than those required by the gendarme. This order would leave no choice for the area's inhabitants but to move to other parts of the country and for the rebels to take refuge in Iran (see Şener, 2012, pp. 395–396). The First IG and the General Staff collaborated on logistics and strategies, as the Inspectorate had authority over the military, allowing the Inspector-General to mobilise troops within his jurisdiction (see Hallı, 2012a, p. 437). As a crucial decision-maker in the region, the Inspector-General alerted the Ministry of the Interior and the General Staff about the security of the borders with Iran and Iraq (Hallı, 2012a, pp. 432–436). He expressed concerns about the potential for a revolt in “Hakkari, whose population is very primitive,” warning that Iraqi and Iranian tribes might join the uprising if the borders were not secured (Hallı, 2012a, p. 433).

The preventive security measures implemented to avert another revolt in the area failed to stop the most extensive one in Mt. Ararat that broke out on 20 June 1930. To suppress the revolt, the General Staff coordinated the army corps with the support of the First Inspector-General (see Hallı, 2012a, pp. 455–456). The state quelled the revolt via land operations and aerial bombardments (see Hallı, 2012a, pp. 471–472). *Cumhuriyet* newspaper

reported that “the amount of the exterminated bandits” who “declared they would give independence to all Kurds by establishing a Kurdish government” was more than fifteen thousand (Cumhuriyet, 1930). “[T]he air fire continu[ed] without interruption, [and] Ararat constantly explode[ed] and groan[ed] in fire” and that Zilan river in the area was “filled to the brim with corpses” (Cumhuriyet, 1930). The pro-Kurdish party confirmed the number of people killed as fifteen thousand at the Parliament in 2010 (TBMM, 2010, p. 602).

The government viewed the Mt. Ararat revolt in June 1930 as “political and reactionary” (‘Hükümetin Tebliği’, 1930). Following the suppression of the revolt, the government and legislature implemented preventive measures aimed at the sociopolitical restructuring of the area through law and practice to rid Mt. Ararat of its’ residents “political and reactionary” features.

3.7. The 1934 Law on Settlement (*İskân Kanunu*), No. 2510

As part of preventive measures mainly targeting southeastern Türkiye, the legislature enacted the 1934 Law on Settlement on 14 June 1934, interfering with the rights and liberties inhabiting the geographies targeted. The purpose of the enactment was stated in Article 1 of Law 2510: resettling the population to ensure “adherence to Turkish culture”. This purpose led to state practices contradicting the constitutionally recognised principles and rights, such as equality before the law and the immunity of domicile. Law 2510 concerned the forced displacement and resettlement of people so that their languages and practices could be assimilated into the Turkish culture and language within the national territory.

The Law granted the decision-making power on whom and how to resettle the population to the Ministry of Interior (Art. 1). Article 2 divided the Turkish territory into three settlement zones. Zone 1 was where the legislature aimed to grow the population possessing Turkish culture. The areas designated for resettling those who did not possess Turkish culture and were to be assimilated into Turkish culture constituted Zone 2. Zone 3 comprised the areas to be evacuated and where settlement and residence were prohibited. Law 2510 forbade a neighbourhood or a village to be comprised of people who do not speak Turkish (Art. 11). Per the Law, the Ministry of the Interior was responsible for taking necessary measures, such as resettlement and deprivation of citizenship, for military, political, social, and disciplinary reasons, about those who do not possess the Turkish culture or those who speak a language other than Turkish (Art. 11).

The content of Law 2510 shows us that the legislature had security concerns regarding the heterogeneity of cultures in the territory. Measures were instituted to counteract the spatial proximity of those practising a culture other than Turkish culture and speaking a language other than Turkish. The settlement policies of the state were decided and implemented through the cooperation between the legislature, the government and the First IG. According to Inspector-General Özmen, the First IG was a tool to ensure the control that was vacated when martial law ended in 1927. The government deemed it necessary to keep this area under control and aimed to ensure security and order through the First IG (see Özmen, 1947, pp. 237–238). Then PM İnönü's notes in 1935 give insights into the government's security concerns regarding the demographic structure of the eastern regions:

If the Muş plain remains empty, it will be dangerous. Settlement [in the plain] would be a solid foundation of Turkishness. In its empty state, apart from external danger, sooner or later, the Kurds will fill this place. Then, indeed, Kurdistan will come into being as one piece. ... [Inspector-General] Özmen said something agreeable today. Penetrating into Kurdish areas through mobile doctors – I embrace the idea.” (İnönü, 2017, p. 131)

As Ülker (2008, para. 2) argues, “[d]esigned in accordance with the security interests of the state”, Law 2510 had “provisions concerned with the goal of changing the demographic structure of certain areas in favor of the Muslim-Turkish population”. Based on Law 2510, until 1947, 25,831 people in 5,074 households from eastern regions of Türkiye were resettled (Bilgin & İnce, 2015, p. 123). The assimilation policies were deemed instrumental in homogenising the nation and eliminating what was portrayed as a threat to territorial integrity, in this case, the spatial proximity of Kurds. However, Law 2510, as a preventive security measure, proved inadequate in forestalling rebellious incidents in the southeast.

3.8. The Dersim Issue in the 1930s and the Revolt in 1938

This section looks at the 1930s exceptional security policies targeting the Dersim region¹⁵ in southeastern Türkiye and the state’s response to the Dersim revolt, which broke out in 1938. Dersim, subject to specified legal regulations and state authorities’ discretionary powers to interfere with the rights and liberties regime, was not easily accessible by the governmental

¹⁵ Dersim later became a province, and its name was changed to Tunceli. This process as a part of security policies targeting Dersim will be looked at in this section later.

authorities and security forces due to its mountainous landscape. Unlike the rest of the southeast, most of the inhabitants of Dersim were Zaza, not Kurdish, and adhered to the Alevi sect instead of the Sunni sect of Islam.

Because of Dersim's geographical and socio-cultural conditions, relations among its people were primarily guided by cultural and economic norms developed within the inter-tribal organisation of the community rather than legal and governmental prospects. As the tribal and religious leaders in Dersim were relatively autonomous from the central government, the state authority and control over the inhabitants were weak (Van Bruinessen, 1994, p. 145). The fact that the government and the legislature created legal regulations specific to Dersim and the content of these regulations indicate that ruling authorities deemed the Dersim region a security problem. In response, they interfered with the constitutional norms by enacting state power and exercising sovereign power.

Two statutory decrees targeting Dersim, promulgated in 1930 and 1931, included regulations contradicting the rights and liberties regime. These decrees laid out provisions for the resettlement of the "unreliable elements" inhabiting "the mountainous areas of Dersim (Tunceli) to the Elazığ plain", where it was easier to keep those who could pose a security threat under control (İnce, 2012, p. 56). While Dersim was already subject to these regulations in the decrees, it also became subject to the 1934 Law on Settlement when it came into force in 1934. Article 10 of Law 2510 provisioned that the state did not recognise any administrative or legal authority of tribal sheikhdoms or chiefdoms and that it abolished all the rights they had been granted officially by the state or gained based on custom.

According to Law 2510, all real estates, officially registered or non-registered, belonging to the tribes or the chiefs, beys, aghas and sheikhs of the tribes would be transferred to the state treasury (Art. 10). These legal provisions directly affected Dersim, whose population consisted mainly of tribes.

Even though Law 2510 provided the government with vast discretionary powers to shape the demographic composition of spaces such as Dersim, the legislature and the government must have seen it as inadequate. Such that, a law solely targeting Dersim was enacted, and an Inspectorate-General was established to operate in and around the Dersim region. A set of preventive exceptional security measures were taken through the Law on the Administration of Tunceli Province (*Tunceli Vilayetinein İdaresi Hakkında Kanun*), no. 2884, which came into force on 2 January 1936. Per the Law, through various changes to the provincial borders in the area, the Dersim district of Elazığ province was turned into a province, and its name was changed to Tunceli as a part of the government's assimilation policies.¹⁶ Law 2884 established a special governance framework for the Tunceli region, authorising the government to appoint a governor-commander tasked with administering the region. It gave this military officer with bureaucratic affiliations exceptional powers to decide on citizens' rights and liberties. According to Law 2884, the governor-commander could change the borders and centres of counties and subdistricts in the Tunceli province (Art. 2). As he was entitled to make decisions concerning the provincial organisation, the governor-commander possessed the authority to determine the resettlement

¹⁶ "Dersim is the name of an ancient region in history. It is narrated to mean 'silver door' in Kurdish and 'walled' in Zazaki" (Aygün, 2007).

of individuals within the province or their migration to other provinces within the country whenever he deemed it necessary (Article 31). As such, he was entitled to act against the constitutional principle of the immunity of domicile.

Articles 19, 31, and 32 of Law 2884 equipped the governor-commander with the authority to bypass constitutionally determined judicial processes. For instance, he could remove individuals from public office without a court verdict. He had a say in the life and death of the people in his jurisdiction. He could decide where someone was to spend the rest of their life or whether or not to suspend someone's death sentence (Art. 33). As Law 2884 did not specify whose rights and liberties could be restricted and on what grounds, the inhabitants' fate was left to the governor-commander's discretion. When the Fourth Inspectorate-General (*Dördüncü Umumî Müfettişlik*, Fourth IG) was established by a decree four days after Law 2884 came into effect, the governor-commander also became the head of the Fourth IG because Law 2884 provisioned that the governor-commander of Tunceli province would serve as the Inspector-General once the Inspectorate is established (Art. 1).

The Fourth IG was established on 6 January 1936 by decree no. 2/3823. The jurisdiction of the Inspectorate covered Tunceli, Bingöl, and Elazığ¹⁷. Decree 2/3823, in compliance with Law 2884, also assigned the governor-commander as the Inspector-General. Through this decree, the jurisdiction of the governor-commander expanded both geographically and in scope. The number of provinces under the rule of the Inspectorate-Generals in eastern

¹⁷ Elazığ was in the jurisdiction of the First IG before it came under the authority of the Fourth IG.

Anatolia increased to 15.¹⁸ The centre of the Fourth IG was Tunceli. The law concerning the establishment of the Fourth IG was brought to the National Assembly on 11 November 1935 (Koçak, 2016, p. 233). The preamble of the law draft stated that it was necessary to ensure security and discipline in some provinces by developing them in terms of economy, culture and public works (Koçak, 2016, p. 233). Like the First IG, the Fourth IG was designated to have vast discretionary powers and the decision-making authority to restrict or suspend rights and liberties. The archive reveals that, like the First IG, the Fourth IG also have distinctive features in the eyes of the government and security-related tasks. As such, when the Inspector-General of the Third IG complained to the PM in November 1935 that his institution was less powerful than the Fourth IG (Koçak, 2016, pp. 236–237), the government responded by saying that there were reasons for the Fourth IG to have “extraordinary powers” as the Dersim region presented an exceptional character, and it was a “necessity” for the state to take “extraordinary measures” against the “threat posed against public order and security” in the Dersim region, while the Third IG lacked such conditions (Koçak, 2016, pp. 240–241).

The martial measures taken by the Fourth IG aside, the Inspectorate’s practices of administrative and simultaneously military actions contradicting the rights and liberties regime concentrated primarily on two public policy areas: resettlement and public works. Of these, resettlement policies were a part of what was aimed with Law 2510. Fourth Inspector-General Hüseyin Abdullah Aydoğan, in his speech in December 1936, talked about the

¹⁸ Then it increased to 16 after Erzincan was also included in the jurisdiction of the Fourth IG (Özmen, 1947, p. 241).

necessity for “centralising and strengthening the Turkish culture” by adopting the inveteration of Turkish culture as a policy in the Dersim region and stated that this policy was necessary for security (Koçak, 2016, pp. 274–276). Public works, as another policy area, was integral to the Fourth IG rule, as they were considered essential in providing security and public order in Dersim. In the eyes of the founding elite as well as the bureaucracy, military mobilisation required roads and bridges to access the districts of the mountainous landscape; public and security officers and their families needed housing, schools, and infrastructure (see Koçak, 2016, pp. 254–274).

While Dersim was under the Fourth G rule, in March 1937, a bridge was burned down by (an) unknown perpetrator(s), and a resistance formed against the state forces in the area. State forces acting on the incident and seeking to punish those who committed the arson were blocked by the tribes in Dersim, and resistance to the central authority grew quickly. Starting from May 1937, the military launched a comprehensive operation in the region, and the struggle between the state and the rebels intermittently continued until the end of 1938, when the state contained long-lasting unrest. Similar to the role of the First IG in suppressing the Ararat revolt, the Fourth IG was a primary actor in the decision-making mechanisms of the suppression process (see Hallı, 2012b, pp. 103–206). For instance, according to the decree, no. 2/9409, issued on 6 August 1938, included the operation plan and was later declassified, “the tribal chiefs, Sayyids [Alevi leaders] and their relatives [would] be banished to the west based on the list to be determined by Fourth IG” (Art. 3). Moreover, unlike in all other Inspectorates-General, the Fourth Inspector-General was already a commander, a lieutenant general.

Dersim was an idiosyncratic region with characteristics different from those of other provinces in the southeast, as discussed earlier. According to the then PM, the cause of the revolt was the opposition of some sheikhs to the reform programme the government was carrying out (Neziroğlu & Yılmaz, 2014, pp. 247–249). By the reform programme, the PM meant public works carried out in the area, which, as discussed above, were a part of preemptive security measures to keep the district of Dersim, later the Tunceli province, under control. Similarly, the Fourth Inspector-General described the rebels as “some empty-headed felons who think that the good and favourable deeds [done by the government in the Dersim region] are harmful to their own interests” (Hallı, 2012b, p. 222). The revolt was suppressed by military means – land and aerial operations (see Olson, 2000). According to official reports, “almost 10 percent of the entire population of Tunceli was killed” (Van Bruinessen, 1994, p. 148), and thousands were forcefully resettled (Zürcher, 2004, p. 174). After the Dersim revolt was suppressed, southeastern Türkiye remained quiet roughly until the 1960s.

3.9. The Second World War (WW2) Measures (1940-1947)

This section examines the Republic of Türkiye’s exceptional security measures in response to the insecurities WW2 caused and analyses how it dealt with what it framed as threats. During WW2, Türkiye developed all its foreign policy with the aim of avoiding getting involved in the war. For this reason, its foreign policy moves changed and shifted according to the course of the war. As concerns, the Republic disengaged from Germany and the

Allies, while the victor was unpredictable. In February 1945, it declared war on Germany and Japan when it became clear these countries were headed for defeat. This declaration did not result in Türkiye's participation in the war. Although Türkiye was not engaged in the conflict, the government and the legislative branch developed security policies that resulted in the restriction or suspension of constitutional rights and liberties during and after WW2. These measures included the imposition of martial law and some other exceptional security measures, primarily through legislation and law enforcement.

By WW2, the government declared martial law twice, and the state practices contradicting the rights and liberties regime during martial law were carried out through legal-repressive measures and institutions, such as decrees, legislation, Independence tribunals, bureaucrats and security professionals. However, no law was enacted to regulate the institution of martial law specifically. On 22 May 1940, the National Assembly passed the Martial Law Act (*Örfî İdare Kanunu*), no. 3832, which detailed extraordinary martial measures, and the Act came into force on 25 May 1940. The Act provided power transfer from civil authorities to martial law commanders in all the aspects that the Ministry of the Interior deemed necessary (Art. 2). The martial law commanders were granted authority to restrict or suspend every constitutional right when they deemed necessary (Art. 3). They could suspend the right to communication by censoring telegrams and letters, intercept or restrict all means of communication and media in their jurisdiction. They could remove people from the martial law zone based only on suspicion and restrict and prohibit entry into and exit from the martial law zone (Art. 3).

According to the Constitution, it was at the government's discretion to declare martial law when there was a risk of going to war. Based on this provision and due to the possibility of entering WW2, martial law was declared western Türkiye, in İstanbul, Kırklareli, Edirne, Tekirdağ, Çanakkale, and Kocaeli¹⁹ on 20 October 1940. Martial law remained in force for approximately seven years, encompassing nearly an extra two years after the war ended.

While martial law regulations served as the legal ground for restricting or suspending constitutional rights and liberties for the seven years that martial law was imposed, exceptional security measures were not limited to the measures of the martial law regime. The legislature, mainly in matters concerning the economic problems during the war, also took part by enacting laws intervening in the constitutional regime of rights and liberties. Even though Türkiye did not fight in WW2, the country's military resources were mobilised and kept ready due to the probability of having to go to war. Türkiye increased the number of its soldiers from 120 thousand to 1.5 million in the course of the war (Zürcher, 2004, p. 199). Besides the economic arduousness the military expenditure caused, the country still suffered from the impacts of the Great Depression. Moreover, every policy towards economic progress paused throughout WW2 (Boratav, 2005, p. 81). Under these circumstances, the National Assembly passed the National Defence Law (*Millî Korunma Kanunu*), no. 3780, which came into force on 26 January 1940, and the Wealth Tax Act (*Varlık Vergisi Hakkında Kanun*), no. 4305, which came into force on 12 November 1942. These two pieces of legislation regulated some

¹⁹ All provinces are in Türkiye's northwest and neighbouring one another.

economic and national defence measures contradicting the rights and liberties regime.

President at the time, İnönü, put forth the exceptional character of Law 3780 in his justification for why this law was a necessity. He stated that WW2 left all countries under extraordinary conditions: “[A]lmost everywhere, governments responded [to the crisis] by taking extraordinary measures”. According to President İnönü, even though Türkiye was not at war, the state was “obliged to prevent the effects of these exceptional circumstances in our national life and to take preventive and curative measures in economic terms as well as in other respects” (*Yirmi Beşinci İnikad*, 1940, p. 1). The aim of the National Defence Law was stated in Article 1: “to strengthen the state structure in terms of economy and national defence in extraordinary circumstances”. Law 3780 granted almost unlimited powers to the government to make and implement decisions affecting economic relations. The government was entitled to decide whether or not the conditions were exceptional so that the implementation of the Law was necessary (Art. 2 and 3). The discretionary power of the government included the capacity to take measures such as the temporary seizure of private businesses by the state (Art. 6), obliging citizens to paid work (Art. 9), and extending working time (Art. 10).

The government in office exercised restrictive control over the market between 1940 and 1942, and Law 3780 was a ground for these restrictive policies. This government was replaced with a new government in 1942. Although the new government relatively loosened the market restriction (Boratav, 2005, p. 84), it, too, developed restrictive economic policies that

curtailed or suspended constitutional rights and liberties. A 1937 amendment to Article 74 of the 1924 Constitution authorised the legislature to compel the citizens to provide money and labour in extraordinary circumstances. This constitutional provision enabled the legislature to restrict or suspend rights and liberties for reasons beyond those for which martial law could be declared as long as the legislature deems the situation extraordinary. By not defining the 'extraordinary', the constitutional provision left the issue to the whim of the legislature. Based on its whim and legally on Article 74 of the Constitution, the Parliament enacted the Wealth Tax Act, no. 4305. Act 4305 put a one-time tax on property and capital and obliged those under tax liability to pay their debt within a time as short as one month (Art. 12). It provisioned that those who could not pay their debts would be compelled to do public or municipal work for the state (Art. 12).

During the implementation of Act 4305, the discretionary power of both the legislature and the executive (already a component of the legislature) extended to the assessment committees responsible for determining the tax amounts. While the language of Act 4305 was not discriminatory, the assessments of the amounts to be paid by tax-payers revealed that Act 4305 targeted non-Muslim citizens and foreigners, as the assessments disadvantaged and discriminated against the non-Muslim citizens and residents (Clark, 1972, p. 206; İnce, 2012, pp. 74–75; Zürcher, 2004, p. 200). Even though the Constitution recognised the freedom of religion and conscience (Art. 75) and equal citizenship (Art. 69), there is evidence that then PM Şükrü Saracoğlu "had drawn up separate lists of Muslim and non-Muslim businessmen and tax-payers" (Clark, 1972, p. 207). Assessment

committee members were the decision-makers on citizens' property rights and socio-economic conditions. The tax debtors who did not deliver the payment on time were forced to pay their debts by manual labour at labour camps (Aktar, 2008, pp. 196–200). The debtors were made to shovel snow, break stones for road construction, and live like soldiers during their confinement at the camps (Aktar, 2011, pp. 7–8). “Out of 40,000 tax debtors across Turkey, about 1,400, all of whom were minority citizens, ended up in labour camps” (Bilgin & İnce, 2015, p. 125). Act 4305 introduced a taxation policy to combat “war-inflated profits” and to “body-blow to long-standing advantages held by the non-Muslim in the Turkish business world” (Clark, 1972, p. 205). As such, the implementation of Act 4305 led to administrative aberration from the constitutional norm to the extent that the assessment committees were the decision-makers on the restriction and suspension of rights and liberties.

After the war, until it was lifted on 23 December 1947, the extraordinary regime of martial law in specific territorial parts of the country was utilised to interfere with citizens' political rights. As such, based on martial law regulations, three political parties founded after the war in 1946 were closed down by the martial law commandership based on allegations of communism (Zürcher, 2004, p. 202) or Islamism (Uyar, 2021). After the declaration of martial law due to the risk of going to WW2, the country underwent a social and economic transformation during and after the war. This transformation took place while the constitution was in force and through exceptional security measures taken through the enactment of state power (declaration of martial law and legislation) and exercises of sovereign power (discretionary actions of the government and public officers).

3.10. Conclusion

This chapter looked at the security measures that restricted or suspended constitutional rights and liberties in the formative years of the Republic of Türkiye. The examples analysed indicate that restrictions and suspensions of rights and liberties in the name of security can take different forms depending on the juridico-political context, as Chapter 1 discussed. The security measures that interfered with the constitutional norm of rights and liberties were taken through the tools of the powers the state institution provides (legislative, governmental, judicial, bureaucratic, and military powers). The examples provided in this chapter help us argue that all the security measures examined allowed state authorities to use their lawful discretion to make decisions that lingered at the intersection of law, politics, and state violence. The governmental and legislative policies to eliminate what they framed as a threat did not connote anti-politics even when power was transferred to the military. The basis of discretionary decisions of dispersed state authorities was constructed, legitimised, and often legalised through parliamentary politics.

In contrast to the understanding of exceptional security as extralegal and a phenomenon external to politics, let alone being exceptions to the law, the period under research shows that measures of exceptional security may be taken within the law, based on the law, while the constitutional order is in place. That being said, Schmitt's conceptualisation of the state of exception as the suspension of the constitution in its entirety to eliminate an existential threat to the nation/state does not explain any of the interventions in Türkiye's rights and liberties regime between the enactment of the 1924 Constitution

and 1948, as all the examples provided show that the security measures that restrict or suspend rights and liberties are produced and implemented where the law and parliamentary politics coalesce within the constitutional order.

The National Assembly of Türkiye opened in 1920 and was the constituent power that established the state in 1923 and a new constitutional order in 1924. In line with Schmitt's conception of the self-ordained unaccountable sovereign power, the National Assembly was the constituent power and a monarchical figure deciding to expose those who were seen as irreconcilable with the type and form of the nation's political existence to deprivation of their rights and liberties (see Schmitt, 2008, p. 125). It was a monarchical figure in the sense that its actions were free from judicial or political review. All the institutions established after the enactment of the 1924 Constitution were constituted powers: the powers that were constituted by the constituent power and regulated within the constitution or legislation based on the constitution. Even though the state curtailed or suspended constitutional rights and liberties throughout the period under research, after the enactment of the 1924 Constitution, none of the security measures existed in a legal vacuum. After the constitutional order was established, the constitution was never suspended, and no authority emerged as the constituent power that could alter the constitutional order. None of the security measures taken in the formative years were juridically extraconstitutional.

During the period under research, martial law was only one of the ways in which the state authorities interfered with the rights and liberties regime. Enacting laws was also a prominent way to curtail or suspend the rights to enjoy constitutional liberties. Besides, the enforcement and implementation of

the laws examined were carried out by the actors and institutions that were part of the state organisation. The examples in the chapter show that the practices of the state administration could also lead to the restriction or suspension of rights and liberties. Despite the provision in the 1924 Constitution that rights and liberties could only be restricted by law, the power transfer from the government to the military resulted in the military making unilateral decisions concerning rights and liberties in specific geographies at certain times, and such was the case, for instance, with the suppression of the Dersim revolt. However, this was not a consequence of the state of exception or the military being the 'decision-maker' of a decisionist political system. Instead, the authorities made discretionary decisions, which were enabled by constitutional tools allowing these authorities to carry out discretionary actions. The power to interfere with the rights and liberties regime was not accumulated in a single source. Instead, decision-making powers were dispersed among various authorities throughout the country.

Evidence provided in this chapter shows that Türkiye's 'postcolonial subjectivity' and fear of the disintegration of the national territory were significant factors shaping the Republic's security policies. As Bilgin (2019, p. 86) puts it, "[p]ostcolonial subjectivities' refer to those whose subjectivity has been shaped (though not determined) by the experiences with colonialism and beyond." Following WW1, the "threat of direct or indirect rule by outsiders" (Bilgin, 2019, p. 86; see also Bilgin & İnce, 2015, p. 130) and the fear that foreign powers would use Türkiye's ethnic and non-Muslim communities for the country's partition were significant factors in how the ruling elite shaped Türkiye's security policies in the Republic's formative

years. In this context, how the ruling elite defined the threat determined the 'enemy'. As the concern for territorial integrity concretised within a specific territorial space, the security practices that restricted or suspended rights and liberties were spatially selective.

Put differently, the security concerns regarding the borders of the national territory led to the security policies primarily targeting the eastern regions of Türkiye. Southeastern Türkiye, mainly populated by Kurdish tribes, was a constant target for these practices. As the policies targeting the Ararat and Dersim regions show, the governmental prospects aimed to dismantle the tribal power structures in the eastern regions and establish complete control over the national territory – the space assumed by the state as a sovereign political entity. The Sheikh Said revolt seems to be a turning point in terms of the security policies applied permanently roughly until 1948 and of the spatial selectiveness of the security measures that restricted or suspended rights and liberties in the southeast. In this context, a specific space within borders was excepted from the regular functioning of the constitutional order to the extent that state authorities, including the government, the IGs, and the military, made discretionary decisions, which contradicted the norms of the Constitution, concerning citizens' rights and liberties.

In western Türkiye, on the other hand, the spatial aspect of security measures became more apparent, particularly during WW2. Within the formative years, the threat WW2 posed led to the restriction and suspension of citizens' economic and political rights and liberties. Even though six provinces were placed under martial law, the extraordinary rule did not function in the same way in each province. İstanbul, mainly through

legislation, was the prominent target of security measures that restricted or suspended constitutional rights and liberties due to being home to non-Muslim citizens and residents. However, the spatiality of the state practices that presented aberrances from the constitutional norms on rights and liberties in western Türkiye presented characteristics different from those of the space of these practices in the east. As such, while cultural Turkification of Kurds was an integral part of the security policies targeting the southeast, the state practices in the west targeting non-Muslims did not have such an aspect. While there were cultural and developmental policies in the southeast, the measures were mainly about the exchange of capital in favour of Muslims in the west, as these measures targeted the non-Muslim bourgeoisie.

The conjuncture after WW2 changed Türkiye portrayed the threats to the nation/state and its enemies, domestically and internationally. The next chapter will analyse the period between 1948 and 1971 regarding the (means of) restrictions and suspensions of rights and liberties.

CHAPTER 4

1948-1971

This chapter examines the restrictions and suspensions of constitutionally recognised rights and liberties in Türkiye between 1948 and 1971: the end of the Inspectorate-Generals rule in southeastern Türkiye and the 1971 military intervention that changed the legal framework for rights and liberties and the means for their restriction.

Türkiye was not immune to the wave of democratisation that swept through various regions of the world after WW2. The establishment of the DP (Democrat Party, *Demokrat Parti*) on 7 January 1946 marked the end of Türkiye's one-party period.²⁰ In the aftermath of WW2 and the transition to a multi-party system in 1946, the Republic of Türkiye shifted its security policies in accordance with national and international developments. The eastern regions were silent after the state forces suppressed the Dersim revolt in the southeast. The Inspectorate-Generals ceased to function *de facto* in 1948 and were legally abrogated in 1952. The DP, an opposition party from 1946 to 1950, assumed power in 1950 and maintained its position until 1960. However, in 1960, the military forcefully overthrew the DP government, resulting in Türkiye's first experience of a state of exception since the establishment of the constitutional order in 1924. Following

²⁰ The DP was founded under martial law conditions. Other political parties founded in the same year as the DP were closed down by court-martial.

the return of civilian rule after the military intervention, the 1960s saw a rise in socialist movements, leading to more stringent government policies and culminating in the military intervention of 1971.

During the period under research, the spatiality of the security measures contradicting the constitutional rights and liberties regime presented itself mainly in metropolitan areas and the provinces geographically near them. Exceptional security measures targeted the eastern regions between 1959 and 1961. The total duration of martial law in the period under research encompassed between 7 September 1955-7 June 1956, 28 April 1960-1 December 1961, 21 May 1963-20 July 1964, and 16 June 1970-16 September 1970: 1,407 days. Between 1948 and 1971, similar to the state's formative years, state authorities' arbitrary actions and inactions did not derive only from martial law declarations but also from legislative, judicial, and administrative actions contradicting the constitutional norms on rights and liberties. Between 1960 and 1961, the military emerged as the constituent power and practised a state of exception by suspending the constitution in its entirety.

In this chapter, I will begin by examining the security policies that led to interference with the rights and liberties regime between 1948 and 1960. Then, I will look at the state of exception experience between 1960 and 1961 and introduce the new constitutional framework of the emergency response and the norms of rights and liberties as regulated in the 1961 Constitution (*1961 Anayasası*) by the second constituent power in the history of the Republic of

Türkiye. Finally, I will analyse the state authorities' practices that curtailed or suspended rights and liberties from 1961 until 1971.

4.1. Restrictions on the Freedom of the Press and Expression (1948-1960)

This section will examine how the governments between 1948 and 1960 developed policies restricting the freedom of the press and freedom of expression. As the media became a prominent instrument of controlling and convincing the masses of public policies, the struggle with the opposition media became a pillar of security policies for the CHP and DP governments. The CHP government implemented legal-repressive measures over the press that sided with the DP after its establishment in 1946, and the DP did the same to the press, criticising the policies of the DP after it came to power. The DP's policies towards the press became increasingly restrictive over time, rendering the freedom of the press ineffective by categorising a segment of the press as a security threat to the nation/state and systematically curbing freedom of expression.

The 1924 Constitution (Art. 77) provisioned that the press was free within the legal framework and could not be controlled before publication or release. The first regulation that restricted freedom of the press was materialised through legislation when the 1931 Press Law (*Matbuat Kanunu*), no. 1881, was enacted. This law gave the government, rather than independent courts, authority to close press and broadcasting organs when deemed disturbing to public policy by the government (Art. 50). The legal framework for the press allowed discretionary

restriction over the freedom of the press. Law 1881's use for political gains became evident mainly after the DP was founded. For, the CHP government, following the establishment of the DP, closed down newspapers that disturbed, according to the government, the "security of the country, [and] the authority of the Great National Assembly" (N. Yıldız, 1996, p. 484). In fact, the closed-down newspapers had promoted the DP against the ruling party, the CHP (see N. Yıldız, 1996, pp. 484–485). When the DP seized power, promising freedom to the press in 1950 with a landslide victory, Türkiye transitioned from tutelary authoritarianism to parliamentary democracy. However, the DP, too, adopted authoritarian means involving effective restriction of the press over time in the 1950s. Between 1950 and 1960, 2300 press cases were opened, resulting in the conviction of 867 journalists. Between 1956 and 1960, journalists were sentenced to a total of 57 years in prison (N. Yıldız, 1996, p. 504).

The DP emerged victorious in the 1950 elections, described the oppressive legal regulations they had suffered in the 1946-1950 period as "anti-democratic" in its government programme and promised to abolish them (Dağlı & Aktürk, 1988, p. 163). Indeed, on 21 July 1950, the Parliament abolished the restrictive regulations regarding the press and enacted the 1950 Press Law (*Basın Kanunu*), no. 5680. However, the same government programme that promised to liberate the press left a section of society out of this liberation. The DP defined this section of society as "the extreme left" and fixed it as a security threat. As such, the government programme ensured that the government would "not mistake by discussing extreme left movements' freedom of thought and

conscience” (Dağlı & Aktürk, 1988, p. 164). The DP government would “take all the necessary legal precautions to root out the extreme left that wants to destroy the country from the inside” (Dağlı & Aktürk, 1988, p. 164). According to the government, those from this ideology intended to maintain their press-related activities “under the guise of humour and political criticism” while, in fact, attempting to destroy all liberties “with blood and fire” (Dağlı & Aktürk, 1988, p. 164).

To maintain the support of the press that was already aligned with the DP and to sway the opposition press to support it, the DP adopted a strategy of rewarding the friendly press in kind and cash and punishing the press that criticised the DP. This approach strengthened the DP’s hold on the media landscape by incentivising positive coverage and discouraging dissent (see N. Yıldız, 1996, pp. 488–491). These practices were administrative actions that *de facto* restricted the constitutional rights and liberties concerning the press and violated the principle of equality as a constitutional principle. In the process, the power to make arbitrary decisions to restrict the press was placed in the legal domain through legislation starting in 1953. First, the DP made an amendment to the Turkish Penal Code (*Türk Ceza Kanunu*), no. 6123, in July 1953. With the amendment, it became possible for the prosecution offices to *ex officio* act in initiating criminal investigations against publications that humiliated the ministers, which required the minister’s complaint before the relevant amendment (Art. 273). Then, the Law on Some Offenses to be Committed through Broadcasting or Radio (*Neşir Yoluyla Veya Radyo ile İşlenecek Bazı Cürümler Hakkında*

Kanun), no. 6334, which came into force in 1954, facilitated severe restrictions over the press, which practically turned into the suspension of the freedom of the press and expression. Article 1 criminalised the news and broadcasts that violate or insult honour and dignity and discredit or damage fame or fortune. Making “fake news of a nature that will discredit the political or financial reputation of the state or cause the incitement and excitement of the public” (Art. 3) also became a crime. The journalists or the broadcasters accused of making fake news were not given the right to prove their claim or the accuracy of the news. The law provisioned imprisonment and fines for those who committed these crimes (Art. 1, 3).

As the public resentment against the DP government due to political and economic reasons was reflected in the press (Emre Kaya, 2010, p. 105; N. Yıldız, 1996, p. 505), the Parliament, where the DP deputies formed the majority, further restricted the freedom of the press with two other regulations in 1956. Two pieces of legislation amended Laws 6334 and 5680. With the amendments, the freedom of the press was restricted to the extent that the new provisions introduced the basis for indirect and covert censorship, suitable for all kinds of interpretations (see N. Yıldız, 1996, p. 495). The regulations brought heavy fines, prison sentences, and new publication bans. Corrupting the country’s morals, making publications that may incite a sense of question against those who hold official titles or that may invite ambiguous and deceitful publications became a crime, and absolute discretion in these matters was granted to the prosecutors (see Eroğul, 2003, p. 192). The laws amending the two laws regarding the press

were enacted on the day martial law was lifted (see Section 4.2), during which the freedom of the press was already severely violated. While the former PM İnönü, then in the opposition, criticised the DP government for turning the state into a “police state”, the PM of the time, Adnan Menderes, defended the restrictive regulations on the grounds that “democratic order [would] be ensured only through these laws” (N. Yıldız, 1996, p. 494).

Finally, the Parliament enacted a law that suspended the freedom of the press entirely on 28 April 1960. The Law on the Duties and Powers of the Assembly Investigation Committee (*Meclis Tahkikat Encümeni'nin Vazife ve Salahiyetleri Hakkında Kanun*), no. 7468, authorised an Investigation Committee formed from the DP deputies to ban any publication and broadcast, close down publishing houses, take measures and decisions against meetings, demonstrations and similar activities of a political nature, use all means of the government to take any measures the Committee deemed necessary (Art. 2). Along with the previous restrictive regulations, Law 7468, too, was used actively by the executive and the judiciary, considering many journalists were imprisoned and fined, and newspapers were closed down (see N. Yıldız, 1996, pp. 499–504).

In the second half of its term, the DP implemented security measures that contradicted constitutional norms on rights and liberties, aiming to silence any opposition to its rule. The DP's hostility toward communism (“the extreme left”) became intertwined with its hostility toward opposition to its governance. The definitions of threats and enemies, influenced by both national and international

contexts, were bolstered by an anti-communist discourse. Türkiye's international relations and position in the Cold War were significant determinants of the security policies it developed and implemented within the national territory. While the DP remained in power between 1950 and 1960 until the military overthrew it, Türkiye's "ideological atmosphere was aggressively anti-communist and pro-western", as Örnek (2012, p. 941) highlights. With the utilisation of an anti-communist and nationalist discourse by the DP, the security measures inside prominently addressed the DP's position of power. One consequence of the nationalist discourse and policies adopted was the harm done to Türkiye's non-Muslim citizens and residents. The following section will turn to examine this.

4.2. The 6-7 September 1955 Riots (The Istanbul Pogrom)

The Istanbul Pogrom targeted Türkiye's non-Muslim citizens and caused the disruption of public order on 6-7 September 1955. On 6 September 1955, the state radio announced that Mustafa Kemal Atatürk's house in Thessaloniki was bombed. The first newspaper to pass the news was *İstanbul Ekspres*. The newspaper that normally had only a morning edition made more copies of that same edition later that day, providing the news to a wider audience. Cyprus is Turkish Association (KTC, *Kıbrıs Türktür Cemiyeti*), which worked with government-affiliated unions alongside student associations that supported the government (see Güven, 2005, p. 69), called for demonstrations in Istanbul to protest the bombing. The demonstrators destroyed whatever they thought belonged to the non-Muslims, mainly Greek citizens, including their workplaces,

houses, graveyards, temples, and schools (Güven, 2005, pp. 12–13, 2011, p. 4; Hür, 2015). Following the riots, the government declared martial law on 7 September 1955 in the three largest provinces, Ankara, İstanbul, and İzmir. Martial law declared was repeatedly extended until it was lifted on 7 June 1956.

The occurrence and quelling of the riots and the security measures undertaken and neglected by the DP in the aftermath intersected with Türkiye's international relations concerning the Cyprus issue with Greece, anti-communism, and the DP government's domestic insecurities about its power position. Hence, the incident prompting emergency measures bore both international and national security implications. The following subsections will examine these.

4.2.1. International Security Concerns Impacting the Course of Events

The course of the events before and after the İstanbul pogrom and the government's response to the violence against non-Muslims in İstanbul can be better explained in light of the government's international security concerns. The process that led to the pogrom was closely related to the Cyprus issue, in which Türkiye got involved in the 1950s. Türkiye's Cyprus policy in the Cold War was significantly shaped by anti-communism as Türkiye was in alliance with the capitalist victors of WW2 (Özkan, 2015, p. 542).

In 1947, Türkiye became a member of the World Bank, the IMF, and the OECD, established in the scope of the Marshall Plan to reconstruct Europe destroyed by WW2, adopted the Universal Declaration of Human Rights in 1949,

and became a member of NATO in 1952 under the DP rule. Per the requirements of the side on which Türkiye positioned itself in the Cold War, the DP carried out oppressive policies on socialists and communists. The USSR was pictured as an external threat, while Turkish socialists and communists were the enemies within (see Bora, 2017, pp. 290–292). As such, the Cyprus issue was portrayed as an external security problem and became part of the government's anti-communist security discourse (Özkan, 2015, p. 543). As Behlül Özkan (2015, p. 544) underlines, “Turks who took a hawkish position on Cyprus pointed out the role the left had played in the Cypriot independence movement; in this way, Turkey's claims over Cyprus were portrayed as an anti-communist struggle.” As such, the Cyprus problem served a dual function: the solution of the Cyprus problem (constructed as an international threat) in favour of Türkiye was a part of Türkiye's fight against communism (constructed as an international and national threat) within the national borders.

Cyprus was an island under British rule between 1878 and 1960. In the 1950s, the Greek-Orthodox majority living on the island demanded and worked for enosis (unification with Greece). Whilst the Cypriot Greeks sought self-determination, the Turks favoured British rule over the island. Twenty per cent of the population of Cyprus island was Cypriot Turks. Throughout the first half of the 1950s, student associations defining themselves as nationalist and organisations supporting the DP foreign policy over Cyprus, including the KTC, organised demonstrations against enosis with the support of the DP government (see Özkan, 2015, p. 547). When Türkiye, Greece, and Britain negotiated over the

future of Cyprus in August and September of 1955 (see Zürcher, 2004, p. 230), the Cyprus issue was dominating Türkiye's domestic political agenda (Güven, 2005, p. 162; Hür, 2015). As such, the pogroms against the non-Muslim citizens, especially Greeks in Istanbul, had much to do with the Cyprus issue. Indeed, in his statement regarding the events of 6-7 September, PM Menderes reasoned the extent of the violence and destruction by stating that the Cyprus issue was "inciting" the nation (Cumhuriyet, 1955).

4.2.2. Domestic Security Concerns Impacting the Course of Events

In the first half of the 1950s, several societal and institutional dynamics formed the DP's insecurities at the national level. By 1954, the government was losing popularity among the masses as the failure of the economic policies to provide prosperity for the public caused the people to question the government's success (Güven, 2005, pp. 162–163; see Boratav, 2005, pp. 108–109; Zürcher, 2004, pp. 228–229). As the press reflected the resentment of the people and criticised the government, the press was restricted, especially after 1954, as discussed earlier. As Dilek Güven (2005, p. 163) highlights, the "government silence[d] the opposition and the press with dubious methods to prevent the dire economic conditions from being exposed." In the face of the economic and political dilemmas it faced, the DP aimed to engage the public in the Cyprus issue rather than its own governmental and political activities (Güven, 2005, p. 162). Government-sponsored and supported associations and the press that

supported the DP held the Cyprus issue aloft (Güven, 2005, pp. 162–163; Özkan, 2015, pp. 545–547; Zürcher, 2004, p. 230).

After 1945, the Turkish state effectively carried out a witch hunt against socialist and communist people and institutions. The CHP and the DP agreed that “there was no room for the left”, and based on this consensus, state authorities “ruthlessly crushed” the parties of the left following WW2 and did not allow their political activities until the 1960s (Ahmad, 1993, p. 109). During the 1950s, as Özkan (2015, p. 543) argues, “the ‘Soviet threat’ was no longer such a pressing issue, ... the Cyprus question provided common ground for Turkey’s ruling elites” to create a threat to fight against and gain public support. The Cyprus issue, placed in the anti-communist discourse, functioned as a tool for the government to keep the government’s popularity and secure its position of power.

4.2.3. The Course of Events and the Aftermath

The 6-7 September incidents were a product of the complex and intertwined relations between the government, the associations that organised the demonstrations, the press that spread the news of the bombing, and the Turkish National Security Service (MAH, *Milli Emniyet Hizmetleri*)²¹. According to its founders’ explanations, the KTC was established to “defend the Turkish minority

²¹ The MAH served as a unit of the military agency. For this reason, its role in the materialisation of the incidents was not questioned in the trials after the 1960 military coup, and it was not held responsible in any way for the pogrom (Güven, 2005, pp. 77–78).

in Cyprus against the United Nations and other organisations” (Güven, 2011, p. 7). The DP leader and PM Menderes expressed pleasure in the establishment of the KTC as this Association carried out several activities with state authorities while being financially supported by the DP (Güven, 2011, p. 7). For the DP, the KTC was “expected to reflect the Turkish public opinion on the Cyprus issue” (Güven, 2011, p. 7). A journalist named Kâmil Önal was a member of the KTC’s executive board and simultaneously a member of the MAH (Güven, 2011, p. 7, see also 2005, p. 58). The newspaper *İstanbul Ekspres*, which spread the bombing news with an exceptional effort by making the second copy on the day, had organic ties with both the KTC and the MAH (Güven, 2005, p. 62; Hür, 2015). The KTC’s and the MAH’s member Önal criticised the bombing in his statement to the second edition of *İstanbul Ekspres* and distributed the edition himself during the riots in Istanbul (Güven, 2005, p. 62). However, as later it was revealed, the MAH was behind the bombing in Thessaloniki, not the Greeks (Güven, 2005, p. 72), and Turkish agents carried out the bombing on orders from the DP government (Zayas, 2007, p. 138). The perpetrator of the bombing was a Turkish student and a MAH member in Greece, who was brought to Türkiye after the bombing and assigned to senior bureaucratic positions by the DP government a few years after the bombing (Güven, 2005, pp. 71–72, 2011, p. 10).

Events planned by the government due to international and national insecurities got out of the government’s control (Güven, 2005, p. 73; Zayas, 2007, p. 138). According to several accounts, the security forces spectated the

destruction of the properties of non-Muslim citizens and the violence against the people instead of preventing crime or taking any adequate precautions (Güven, 2005, p. 20, 2011, pp. 4–5; İnce, 2012, p. 104; Üskül, 1997, pp. 127–128; Zayas, 2007, p. 138). The opposition MPs later brought this issue to the parliamentary agenda (see TBMM, 1955, pp. 669–671). Further, the police occasionally helped perpetrators damage non-Muslim citizens' properties (Güven, 2005, p. 21). The military rather than the police quelled the events in Istanbul (İnce, 2012, p. 104). The government declared martial law on 7 September 1955 due to “the violation of public peace and order” in three provinces (‘Başvekâletin Tebliği’, 1955). The PM Menderes presented the basis of the martial law declaration to the Parliament, stating that “given the Cyprus issue and the encroachment against the house where Atatürk was born, and our Consulate in Thessaloniki is”, citizens had been provoked, and they resisted “the government forces against the high interests of the country” (TBMM, 1955, p. 668).

The KTC was closed down on 7 September 1955 due to being the organisational force behind the violence against the non-Muslims. The trials related to the events were conducted by the court-martials established in İstanbul, chaired by the generals, and then maintained by civil courts after martial law was lifted in 1956. While almost 3000 of the 5174 arrested in Istanbul were members of the KTC, the rest comprised primarily the members of the unions and associations that carried out activities in cooperation with the KTC and the DP (Güven, 2005, pp. 59–63, 2011, p. 8). However, the DP pointed at the communists as the perpetrators of the destruction. For example, an MP from the

DP declared at the Parliament that “this disaster [was] the result of the plans and programmes of the communists alone. ... [T]he communists were secretly and elaborately prepared to put the government and the country in a difficult situation” (TBMM, 1955, p. 671). Forty-eight at first and then more people, considered communists by the police, were arrested on the charges of provocation and destruction without any proof that they participated in the pogroms or the destruction (Güven, 2005, p. 55; İnce, 2012, p. 105). All these ‘communists’ were ultimately released as they were found innocent (Güven, 2005, pp. 55–56). Based on martial law, the government banned the press from questioning and investigating issues related to the pogroms (Güven, 2005, p. 55). In 1957, at the end of the proceedings of the 6-7 September events, the judiciary released all the accused based on the justification that “the provocative actions against Turks in Greece and Cyprus caused the events to break out” and “the defendants did not have criminal intentions” (Güven, 2011, p. 10). In other words, Greek nationalism and enosis demands in Cyprus were considered a legitimate cause for the killings of non-Muslims and the destruction of their properties and places of sentimental value in Türkiye.

The scope of the September 6-7 was the chain of organised crimes committed against a part of the society against whom the state authorities constructed animosity. The inaction of the security forces during the riots, as well as their actions, had consequences in terms of the regime of rights and liberties. The attitude of the law enforcement officers, whose duty was to maintain public order, paved the way for harming the lives and property of non-Muslim citizens.

While the proclaimed martial law currently presupposed an extraordinary regime of rights and liberties in the three provinces where it was declared, the extraordinary powers of the state authorities were used to silence socialists, the opposition, and the press. The court verdict in 1957 and the opinion of the court also limited the area of rights and liberties of non-Muslims in the country permanently in a way that would affect their future by legitimising the crime committed against non-Muslims. The government's international and national security concerns significantly affected how the 6-7 September protests were organised and unfolded.

During the DP period, the events of 6-7 September were not the only example of international events determining the extraordinary at the national level. I will examine another example of this in the subsequent section.

4.3. The Killing of Turkmens in Iraq by Kurds in 1959 and the “Threat of Kurdism”

This section looks at the case historically known as ‘the case of the 49’ (*49’lar Davası*) that illustrates the judiciary's potential impact on the regime of rights and liberties through politically influenced rulings. It exemplifies how such decisions are intertwined with how other constituted powers, such as the legislative and the executive, frame and define a threat, which was ‘Kurdism’ (*Kürtçülük*) in this instance (see Bardakçı, 2012).

Following a series of interactions between state institutions, authorities, and the protests and criticisms voiced by Kurdish citizens towards the end of the

1950s, 40 individuals of Kurdish origin were apprehended on 17 December 1959. Additionally, ten individuals were slated for trial without arrest. One of the detained individuals died while in custody. Subsequently, two more individuals were implicated in the case (Çamlıbel, 2007, p. 82). The prisoners were held without trial for fourteen months until they were released due to the lack of evidence. The trials began in January 1961. The 51 people were accused of attempting to jeopardise territorial integrity with the help of foreign states and undermining national unity (Alış, 2012, p. 64; Çamlıbel, 2007, p. 84; Güneş, 2017, p. 705). The judicial process continued until 1967, when the case reached the limitation of action. For, there was no legal possibility for the penalties, if any, to be imposed.

After the suppression of the Dersim revolt in 1938, the southeast fell into complete silence until the 1960s (see Bora, 2017, p. 834). In the DP era, “many Kurds and Islamists made their peace with the idea of a modernizing state” as the DP pursued policies “to maximize their votes by harnessing the population’s resentments” (Barkey, 2000, p. 95). Let alone defining the Kurdish population as a threat, the founding president of the DP, Celal Bayar, stated that the people of the southeast believed that the state treated them as if they were a colony during the one-party rule. Bayar implicitly promised to end this situation (Bora, 2017, p. 834). As such, the southeast was not a spatial target of DP’s security measures. However, there is evidence that towards the end of the 1950s, the policies of the DP towards citizens of Kurdish descent underwent some changes.

Several international and national events prompted the government-enabled discretionary actions and inactions by law enforcement and the judiciary regarding the 'case of the 49'. Records indicate governmental apprehensions regarding 'Kurdism' by the late 1950s. It was disclosed by a columnist in 2012 that President Celal Bayar commissioned a report on 'Kurdism' in 1959, titled "The Emergence of the Kurdish Idea and Movement in Contemporary Türkiye" (*Türkiye'de Bugünkü Kürtçülük Fikir ve Cereyanının Doğuşu*) (Bardakçı, 2012). The report stated that the idea of Kurdism in Türkiye was defended by tribal chiefs such as Aghas, Beys and Sheikhs until WW2 and that foreign states exploited the idea of Kurdism to revolt the "ignorant masses of people" against the state, but today, Kurdistans adopted methods other than armed struggles (Bardakçı, 2012). For the 1959 conjuncture, the report advised the state to "strengthen its intelligence activities ... in the east", take measures to "make the difference between Turkish and Kurdish culture invisible" by assimilating the latter, and censor Kurdish correspondence and publications "on a wider scale" (Bardakçı, 2012).

While there is such a context at the national level, in March 1959, political clashes between Kurds and Turkmens in Iraq turned into armed conflicts, and forces loyal to the Kurdish leader Mustafa Barzani killed a group of Turkmens. Deputy Asım Eren from the CHP directed a question to PM Menderes, asking for governmental action: "Kurds killed our brothers, come let us kill as many Kurds as they killed Turkomans. Are you not going to repay with interest?" (McDowall, 2004, p. 405). In his speech, MP Eren urged the government to take revenge for

the Turkmen in Iraq by doing the same as what was done to them in Iraq to the Kurds of Türkiye (Güneş, 2017, p. 705). A group of students organised to protest MP Eren's statements and sent critical telegrams to state officials, including MP Eren, and state institutions. The telegrams bore the signature "Kurdish Youth Studying in Istanbul" (Milliyet, 1959). It was so unusual for citizens to speak openly of their Kurdish descent that a newspaper reporting the protest wrote that "some Turkish students claimed to be Kurds" (Akşam, 1959). Following the telegram protest, the Parliament passed a law that banned people "from declaring themselves to be Kurdish, or publishing in Kurdish" (İnce, 2012, p. 108). On 31 August 1959, a Kurdish intellectual defied the prohibition on publishing in Kurdish and released a political satire in the Kurdish language through *İleri Yurt*, a publication based in Diyarbakır. The writer was arrested the next day after releasing his satire, and *İleri Yurt* was shut down (McDowall, 2004, p. 405).

The 51 citizens' struggle with law enforcement and the judiciary began in December 1959 following this string of national and international events. Once the judiciary process had started, the state authorities' response mainly formed around judicial practices involving the state authorities' action and inaction simultaneously, intervening in the rights and liberties of 51 citizens of the Republic of Türkiye. This process resulted in approximately eight years of continuous violation of their rights and liberties through the practices of authorities, such as the judicial police, prosecutors, and judges assigned to the case. The 1960 military coup took place before the defendants were brought to

trial. Although the generals who carried out the coup issued a general amnesty in October 1960, those who were on trial for the case of the 49 were exempted from the amnesty. The detainees tried with execution (Çamlıbel, 2007, p. 84), imprisoned under the DP rule, were kept in prison by the generals who overthrew the DP at gunpoint in 1960 (see section 4.5.).

4.4. The Investigation Commission (*Tahkikat Komisyonu*) (1960)

This section focuses on the culmination of the repressive policies implemented by the DP regime. Particularly during the second half of the 1950s, the DP government considered the critical and the pro-opposition press a threat, as discussed earlier. On 18 April 1960, the DP established the Investigation Commission (*Tahkikat Komisyonu*), consisting of 15 DP members. The duty of the Commission was to investigate the activities of the opposition and the press. The Law on the Duties and Powers of the Assembly Investigation Committee (*Meclis Tahkikat Encümeni'nin Vazife ve Salahiyetleri Hakkında Kanun*), no. 7468, came into force on 28 April 1960, was in violation of all the basic principles of the 1924 Constitution. By legislation, vast extraordinary powers were granted to the Investigation Commission. Law 7468 assigned a 15-person committee as a more substantial authority than the Parliament, the government, and any judiciary authority.

As the 1960s approached, Türkiye experienced increasing political and social polarisation. In February 1958, PM Menderes stated that the legislation that

restricted citizens' rights and liberties was a necessity to defend the DP. He stated,

[t]he opposition's forcing us to take some measures is not a result compatible with democracy. If they had not pushed, it would not have been possible for many laws that they did not like to be passed today. [But] [i]f someone confronts you, you will, of course, take defensive measures" (Bayar, 1969, p. 168, quoted in Emre Kaya & Avşar, 2013, p. 401).

The DP government, adopting increasingly authoritarian policies not only in the political and social fields but also in the economic field, reinforced the National Defence Law, which was enacted by the CHP in 1940 during WW2 (see Chapter 3). The restrictive policies over the market, though benefiting the peasants to some extent, caused an inflationist trend in the economy, worsening the financial conditions of citizens (Borataş, 2005, p. 110; see also Zürcher, 2004, p. 231). The DP was against the press discussing economic hardships and criticising the government's economic policies. For this reason, it increasingly took legal-repressive measures through legislation and administrative practices to silence the press. In the communique of the CHP group in the Parliament dated 3 June 1958, the DP was criticised with the statement that "instead of taking effective measures to address growing financial hardships and inward suffering of the citizens, the DP government is seeking unconstitutional and illegal measures to silence the opposition" (Cumhuriyet, 1958a). In response, the DP attempted to justify the security measures it had implemented through legal and other means by arguing that the nation was internally and externally threatened. For instance, on 21 September 1958, PM Menderes claimed that the collapse of the Baghdad Pact presented a significant international threat to the

state. He accused the opposition of engaging in political blackmail during a time of danger and warned that the DP would take necessary measures, even if it meant halting democracy (Cumhuriyet, 1958b).

For, on 12 October 1958, defining the opposition as a “front of hatred and hostility”, PM Menderes called on citizens to create a “Homeland Front” (*Vatan Cephesi*) against the opposition (Cumhuriyet, 1958c). The establishment of the Homeland Front demonstrated the growing polarisation and hostility between the government and the opposition, as it aimed to antagonise and intimidate the opposition. For PM Menderes, the Homeland Front was against the enemy, which he called the “discord front” (*nifak cephesi*). As such, according to him, “the continuation of our citizens in joining the Homeland Front [was] the only way to prevent the damages and possible blows to our national unity by the discord front and domestic issues” (Cumhuriyet, 1960a). How the Homeland Front worked was simple: the DP announced countless names from the radio daily as the members of the Homeland Front to demonstrate how large the number of DP supporters was so that the DP was strong. Numerous newspaper news reports show that the DP provincial and district organisations pressured and blackmailed people into becoming members of Homeland Front (see Emre Kaya & Avşar, 2013, pp. 406–409). Moreover, alongside the actual members of the Homeland Front, the radio announcements included babies, children, deceased people, people who did not consent to be a part of the Homeland Front, and even fictitious names (Emre Kaya & Avşar, 2013, pp. 404–405; Zürcher, 2004, p. 239).

In such a context of antagonism, the DP established the Investigation Commission as an institution provided with unconstitutional and extraordinary powers. The establishment of the Investigation Commission was, too, presented as a necessity by the DP. According to the DP, “the CHP’s destructive, illegitimate, and illegal activities” were taking place across the country (TBMM, 1960b, p. 189). As per the justification provided for the duties and jurisdiction of the Investigation Commission, the CHP posed a threat to the nation/state. According to the DP, the CHP was engaged in a “struggle based on the idea of overthrowing the legitimate power of the Turkish nation through illegitimate and unlawful means” (TBMM, 1960b, p. 190). As such, the DP expressed concern that the CHP would use “all kinds of oppression, [and] illegitimate measures in the election” and that some press was colluding “with the CHP seeking the achievement of this illegitimate goal” (TBMM, 1960b, p. 190). According to the DP, the Investigation Commission was necessary as Türkiye was experiencing such a time “when the safety and security of the country, peace and order are exposed to dangers”, and therefore, “it has become an inevitable necessity for the Grand National Assembly of Türkiye equip itself with all the rights granted to it by the Constitution” (TBMM, 1960b, p. 191).

The Parliament, which was formed with a majority of the DP members, acted on these statements and passed The Law on the Duties and Powers of the Assembly Investigation Commission on 28 April 1960, creating the Investigation Commission to serve for three months. In passing this legislation, the Parliament

went beyond its constitutional boundaries, granting unconstitutional authority to the established institution. According to Law 7468,

The Investigation Commission of the Turkish Grand National Assembly and the subordinate committees that will act as regent have all the rights and authorisations granted to the public prosecutors, the coroner judges, the magistrates, and the judge advocate by the Law of Criminal Procedure, the Press Law and other laws. (Art. 1)

The Investigation Commission was authorised to enforce press restrictions, shut down printing establishments, confiscate documents and other items, prohibit gatherings and protests, and exercise all the powers held by the government (Art. 2). Any investigation conducted by the Investigation Commission was to be kept confidential (Art. 5). Those who would violate the confidentiality were subject to imprisonment (Art. 5). Those who opposed any measures or decisions of the Commission in any way were also subject to imprisonment (Art. 3). No higher authority or legal recourse was available to challenge the Investigation Commission's decisions.

The Investigation Commission's powers to make decisions contradicting the Constitution permitted the Commission to take judiciary actions without a court verdict. The Commission banned the publication of parliamentary talks, the holding of all kinds of congresses and meetings of political parties after taking office, and closed down newspapers (Kaynar, 2021). In this context, the Commission served as the government's tool to serve the DP's political gains and crush the opposition and the critical press. The government justified the measures that curtailed and suspended political, social, and press-related rights and liberties on the grounds of necessity. The DP's repressive policies first faced

social opposition, particularly in Istanbul and Ankara, resulting in the declaration of martial law. Then, the Investigation Commission's three-month tenure was cut short as the military overthrew the government. The following section will turn to examine this.

4.5. The 1960 Military Coup

Upon the enactment of Law 7468 on 28 April 1960 and the subsequent day, student protests erupted in Istanbul and Ankara against the DP government. During these protests, police brutality was inflicted on the Rector of Istanbul University, Sıddık Sami Onar, which further fueled the unrest. The police used weapons to disperse the protesters and caused the death and injuries of some students (Kaynar, 2021; see also TBMM, 1960a, pp. 315–316). Since the police failed to contain the situation, military troops were called in for reinforcement. Consequently, on 28 April 1960, the government declared martial law in Istanbul and Ankara and received parliamentary approval the next day. Despite the imposition of martial law, the tension and turmoil persisted throughout May. On 27 May 1960, the military carried out a coup and started the first experience of a state of exception since the establishment of the constitutional order in Türkiye's history. It seized control of the entire state administration, marking the beginning of a series of military interventions in civilian politics.

PM Menderes declared the reason for the promulgation of martial law as “the resistance against the state forces who were seeking to quell the protests” and that the situation “could violate public peace and security” (TBMM, 1960a, p.

315). The opposition parties in Parliament were against the martial law declaration. An MP from the opposition, Nüvit Yetkin, for example, referring to the Investigation Commission, stated that martial law “is a legal regime. It is not an illegal and arbitrary regime like the one you [the DP] created two days ago” (TBMM, 1960a, p. 317). MP Yetkin argued that “martial law is an exceptional regime” that allowed state authorities to restrict citizens’ social and political rights. However, the protests in question could not be considered one of the reasons the 1924 Constitution provisioned in its 86th Article (TBMM, 1960a, p. 317).

Despite the objections and criticisms, the Parliament, with the predominance of the DP members, approved martial law promulgation. Following the student protests in Istanbul and Ankara, based on martial law, curfews were imposed at night, entertainment venues were closed, sports activities were cancelled, all kinds of demonstrations, and all kinds of broadcasts and publications about events were banned (Cumhuriyet, 1960b, 1960c). Even though the declaration of martial law giving exceptional powers to the military commanders was seen as a solution to the internal security issues defined by the DP, the exceptional empowerment of the military hoisted the DP with its own petard. For, on 27 May, the military forcefully overthrew the DP.

The generals that carried out the coup named themselves ‘The National Unity Committee’ (*Milli Birlik Komitesi*, MBK). The leaders of the military coup who forcefully overthrew the elected power justified the military intervention by stating that the DP acted unconstitutionally and became illegal (Cumhuriyet, 1960d). The President of the MBK, General Cemal Gürsel, in the first General Assembly

meeting of the MBK, accused the DP that during its rule, “the human rights and liberties of the Turkish nation was abolished, the opposition control was rendered inoperative, the independence of justice, freedom of communication, and university autonomy were destroyed”, and that the future of the nation/state was put at peril (MBK, 1960, p. 2).

The MBK maintained the martial law order in Istanbul and Ankara until it lifted it on 1 December 1961. Despite the creation of a legislative body, this institution was far from a liberal parliament. The military regime continued utilising martial law as a tool for implementing exceptional measures, even though the MBK had abolished the 1924 Constitution that provided the legal framework for martial law. As such, the military, the new ruling power of the country, suspended the constitutional order in its entirety and dissolved the Parliament. Until the power to legislate was transferred to the democratically elected civilians with the elections of 15 October 1961, the MBK functioned as a constituent power and established a new constitutional order in the meanwhile. Since there was no constitutional framework guiding the actions of the MBK, the decisions made and actions taken by the ruling group of generals occurred in a legal void. Following the coup, the military administration established a special court during the period of martial law and handpicked the court members themselves. During the trials, the death penalty was requested for 288 of 592 defendants, and the court sentenced 15 defendants to death (Aktan, 2022). Alongside the arrests of many people, 235 generals and 3,500 officers were retired, 147 lecturers, 520 judges and prosecutors were dismissed (Aktan, 2022).

4.6. The Sivas Camp of 1960

On 1 June 1960, only four days after the coup, hundreds of Kurdish aghas and sheikhs residing in the eastern regions of Türkiye were confined in a prison camp that was converted from a barrack in Sivas. Sources contain different information about the total number of people confined. For example, David McDowall (2004, p. 406) reports the number to be 248, Tarık Ziya Ekinci (2010) reports it to be 550, Nevzat Çiçek (2012) and Ayşe Hür (2008) state the number as 485, while it is 244 according to the official accounts (Öztepe, 1960). The Sivas camp's situation was exceptional not only because it was created as an exceptional space of incarceration while the state's regular prisons were in use but also because the persons incarcerated spent months in the camp without evidence of a crime or a court verdict. At the end of the confinement, 55 people were forcefully resettled outside the eastern regions. For the decision-maker, the MBK, the ground for the imprisonment of the hundreds was that those in the camp were part of Barzani's activities against Türkiye's territorial integrity. According to the MBK, Barzani, the leader of the Kurdish national movement in Iraq, was conducting separatist activities in eastern Türkiye to establish an independent Kurdistan (see Hür, 2008; Öztepe, 1960).

When the 1960 military coup was carried out, the Kurdish nationalist movement in Iraq was gaining strength (McDowall, 2004, p. 406). In the aftermath of the coup, the MBK's discourses indicate that the decision-makers had security concerns regarding territorial integrity and communism. For, on 31 May 1960, it was reported by the press that the MBK accused the DP of

operating for a Kurdistan to be established in southeastern Türkiye, and it grounded its argument with the claim that the DP let Sheikh Said's son tour the eastern provinces in a Russian-made jeep in an attempt to spread propaganda in favour of an independent Kurdistan to be established (Cumhuriyet, 1960e). As such, the accusation simultaneously addressed several security concerns and related them to each other. The name 'Sheikh Said' connoted religious and tribal relations in eastern regions and separatism while riding a Russian-made jeep, marking the support of the USSR, an international security threat. With the accusation, the DP, an ousted power, was therefore declared to be the facilitator of internal and external enemies. The next day after the news was published, Sivas detainees were put in the camp.

The future of the people confined in the camp was determined through extraconstitutional but legal-looking legislation. The MBK, acting as the legislature, enacted the Additional Law to the Settlement Law No. 2510 (2510 *Sayılı İskân Kanununa Ek Kanun*), no. 105, on 25 October 1960. The preamble of Law 105 openly stated that the regulation was enacted as a preventive security measure against the threat of separatism. For,

with this draft prepared in addition [to Law 2510 of 1934 (see Chapter 3)], it is thought that by transferring those who carry out separatist activities and act against the high interests of the state and their relatives, the evils that were made into a habit by these people can be prevented. (NCU Commission Report No. 103 / *MBK 103 No'lu Komisyon Raporu*)

The preamble stated the targets of the legislation as tribal leaders of eastern Türkiye, who were deemed to be "maintaining a socially feudal system", "representing the very harmful character of theocratic backwardness", and

“representative of the medieval mentality under the names of bey, agha, and sheikh”. Article 1 of Law 105 regulated who could be compulsorily resettled within the country. Those who acted to disturb the peace by exerting their influence in the region they lived in, who hindered the exercise of individual rights, and those who harmed national interests would be transferred and settled elsewhere in the country without ever coming back to their original area. The assets of the persons to be resettled would be expropriated, and they would receive compensation equivalent to the value of the expropriated goods to help them start a new life in the provinces to which they were sent. (Art. 2).

Approximately a month after Law 105 came into force, in November 1960, military judges began investigating the conditions of those detained in the Sivas camp. The investigation included determining who would be resettled based on the provisions of Laws 2510 and 105 (Öztepe, 1960). On 21 November, 189 detainees were discharged, and 55 were subjected to compulsory resettlement (Cumhuriyet, 1960f).

The enactment of Law 105 can be seen as the MBK’s attempt to legitimise its actions by placing the generals’ decisions in the realm of the law despite them simultaneously being the legislative and the executive under a state of exception, during which there was no constitutional order. As a matter of fact, instead of addressing the general public, the legislation was a result of an unmitigable decision of the ruling power targeting a specific geography of the national territory through a piece of regulation that authorised the MBK to alter the lives

and futures of the citizens subjected to Law 105. Law 105 was repealed in 1962 under a democratically elected legislature.

4.7. The 1961 Constitution: Rights and Liberties and the Means to Curtail Them (1961-1980)

The MBK abolished the 1924 Constitution and introduced a new constitutional order in 1961, which remained in force until the 1980 military coup.²² The 1961 Constitution defined the Turkish state as a “democratic, secular, and social state of law” (Art. 2). It strengthened parliamentary democracy and established a robust system of separation of powers (Art. 5 & 6). The 1960s were when substantial social and political changes occurred in Türkiye. In the era of mass migration from the rural to the urban due to industrialisation, like several other welfare states, the new constitutional order recognised workers’ and association rights (Art. 40-48). The Constitution brought the legal system in Türkiye closer to the ideal of the rule of law. The Constitutional Court was established as a judiciary institution to check the constitutionality of the laws enacted (Art. 145). The 1961 Constitution sought to prevent power monopolisation in one of the state institutions, such as the government, and the unlimited strengthening of the executive. The Parliament ceased to be the only body exercising its right to sovereignty and became one of the competent institutions exercising national

²² Following the 1971 memorandum, the military coerced the Parliament into enacting constitutional amendments regarding the regime of rights and liberties. These amendments attributed particular importance to the regulations concerning martial law (see Chapter 5).

sovereignty. As the Constitution provisioned a parliamentary democracy, it stipulated that the presidents would cut ties with their political parties (Art. 95).

Like the 1924 Constitution, the 1961 Constitution regulated martial law as the extraordinary method of governing in case of a threat to the nation/state. Article 124 provisioned:

In the event of war, or of a situation likely to lead to war or in case of the emergence of definite indications of a serious and active uprising against the homeland and the Republic, the Council of Ministers may proclaim martial law in one or more than one region of the country, or in every part thereof, for a length of time not exceeding one month, and shall immediately submit such proclamation to the approval of the Turkish Grand National Assembly. The Assembly when it deems necessary may curtail the period of the martial law or abolish it altogether. ... The extension of martial law, not exceeding two months each time is subject to the decision of the Turkish Grand National Assembly. ... In the event of martial law, or war in general, the specific provisions to be enforced, the manner in which government operations shall be conducted and the manner in which freedoms shall be restricted shall be defined by law. (Balkan, Sadık; Uysal, Ahmet E.; Karpaz, 1961)

The 1961 Constitution's martial law regulation, while not significantly different from that of the 1924 Constitution in terms of content, enhanced the legislative authority. The Parliament's only power in the 1924 Constitution was to prolong or shorten the martial law period, but the 1961 Constitution granted the Parliament the additional power to end martial law. Unlike the previous regulation, Article 124 did not specify which rights and liberties could be restricted or suspended. However, fundamental rights and liberties were recognised and elaborated in other chapters of the Constitution, and whether they could be restricted or suspended was stated in provisions concerning the constitutional rights and liberties regime.

The 1961 Constitution increased the military's power and influence over civilian politics. It established the National Security Council (*Milli Güvenlik Kurulu*, MGK) to comprise the Ministers designated by law, the General Staff, and the commanders of land, sea, and air forces (Art. 111). According to the relevant regulation, the president of the state would preside over the MGK. In their absence, this task would be fulfilled by the PM. The MGK was responsible for assisting the government in making decisions related to national security. As such, it became involved in decision-making processes related to martial law declarations, as these declarations concerned the security of the nation and the state, according to the Constitution. Military courts, which had *de facto* existed under martial law since the foundation of the Republic, became a constitutional institution with the 1961 Constitution (Art. 138). In the aftermath of the coup and until the 1971 military intervention, the government resorted to martial law declaration twice. I will examine these in the following sections.

4.8. The 1963 Coup Attempt

Following the general election on 15 October 1961, the military transferred political power to civilians. After this transition, a group of military officers, led by a retired Colonel, attempted to overthrow the elected government twice, in 1962 and 1963. These officers represented a faction within the armed forces that resisted the shift to democratic politics, as the 1961 election demonstrated that public support for the DP remained strong (see Hale, 1994, pp. 154–155). The leader of the coup attempt and his partisans were pardoned after the 1962 coup

attempt but were executed after the one in 1963. In response to the attempt to destroy the political system in 1963, the government, with the consultancy of the MGK, declared martial law in Ankara, İstanbul, and İzmir on 21 May 1963.

Participants in the coup attempt were swiftly tried by two court-martials established after the declaration of martial law. Despite both the military and the government announcing soon after the 1963 coup attempt that it had been quickly suppressed (Cumhuriyet, 1963f), martial law initially declared for a month was repeatedly extended until it was lifted on 20 July 1964.

The 1960 military coup aimed to undermine the political influence of the DP by dissolving the party and executing PM Menderes along with two ministers. The coup also involved detaining Celal Bayar, who had served as President of Türkiye from 1950 to 1960 and was a founding member of the DP. However, after the DP's dissolution, two new political parties emerged in a similar vein to the DP: the AP (Justice Party, *Adalet Partisi*) and the YTP (New Türkiye Party, *Yeni Türkiye Partisi*). The competition to dominate the political sphere was between the CHP, the parties founded from the remnants of the DP (the AP and the YTP), and the CKMP (Republican Peasants' Nation Party, *Cumhuriyetçi Köylü Millet Partisi*), which was established in 1958 and survived the coup. None of the four parties prevailed with a parliamentary majority in the 1961 election. The YTP and the AP received a combined total of 48,5 per cent of the votes. The CHP received 36,7 per cent (Ahmad, 1993, p. 137). The results indicated that the military's efforts in engineering the political domain in antagonism to the DP were not corresponded by the public.

The public support for the DP became even more visible when former President Celal Bayar was conditionally released from prison on 22 March 1963. Bayar's release was met by "triumphant" demonstrations of the DP grassroots, which the AP embraced in the Parliament (Hale, 1994, p. 166). The military expressed concerns to the public about the potential threats posed by the demonstrations of public joy following Bayar's release from prison. For, the demonstrations were defined as "unauthorised", "political demonstrations suitable for all kinds of harmful encounters", and "events that tend to damage the spirit of May 27 and the national unity" (Cumhuriyet, 1963a). As an indication that the military considered the support for Bayar as a national security issue, the MGK ordered an emergency meeting (Cumhuriyet, 1963b). As the AP appreciated and embraced the public's reception of Bayar, counter-demonstrations in favour of the CHP and the 1960 military coup were organised. During the demonstrations, students from opposite political stances clashed (Cumhuriyet, 1963c). As more demonstrations and unrest were expected in Ankara, heightened security measures were put in place, including distributing guns to students at the gendarmerie school and revoking their leave rights. Additionally, Police College students were placed under the authority of the Police Department, while all garrisons in Ankara were instructed to be on standby (Cumhuriyet, 1963d).

The attempt on 20-21 May 1963 to overthrow the government was carried out in this context, shaped by political polarisation and animosity. The fraction of the military in favour of the continuity of the democratic regime suppressed the fraction seeking to seize power (Cumhuriyet, 1963e). The government and MGK

published a statement after their meeting, where they decided to declare martial law, legitimising the declaration by stating that they sought “the consolidation of peace in the country and the salvation of the democratic regime” (Cumhuriyet, 1963f). In his speech on 25 May 1963, again-PM İsmet İnönü defined the 1960 military coup as “the May 27 revolution, which was a legitimate movement against the mentality that did not see the Turks as worthy of a democratic system” and defined the 1963 coup attempt as “an inglorious anti-patriotic uprising” that engaged in “conspiracies against the regime under the guise of being against the government” (TBMM, 1963, pp. 31–32).

Until it was lifted on 20 July 1964, constitutional rights and liberties were restricted for several reasons through the means of martial law declared in response to the coup attempt. For, based on grounds such as “provoking students against public officers” and “encouraging teachers to strike” (Cumhuriyet, 1963g), martial law commanders decided to shut down papers temporarily, as the newspaper reports were considered against internal security and public order. A newspaper that was deemed to have violated the martial law bans (the martial law commander did not detail the nature of the violations) was closed down permanently (Cumhuriyet, 1963h). Furthermore, martial law was utilised to monitor and control the activities of the Muslim Nur movement (*Nur Cemaati*), a religious community. The CHP Spokesperson defended the use of martial law against the religious movement, arguing that it was a duty of the Parliament to use martial law “to fill legal voids” against those who pose a threat to the state by seeking a theocratic order. The Spokesperson stated, in contrast

to the arguments to limit the use of martial law with its initial purpose, not using martial law now against these “ignorants” who were “acting with political purposes” would have been unconstitutional (TBMM, 1964b, p. 268).

The government repeatedly asked the Parliament to approve its martial law extension requests but avoided legitimising them and explaining why they were still necessary (see Üskül, 1997, p. 160). On 19 February 1964, an opposition MP stated that they were still struggling to reconcile “the government’s understanding of [m]artial [l]aw with the legal provisions and reasoning that necessitated such a measure” (TBMM, 1964a, p. 83). During the discussions on the extension of martial law, the opposition accused the government of exploiting martial law for their own political gains (see TBMM, 1964a, pp. 82–90, 1964b, pp. 256–259; see also Üskül, 1997, pp. 171–172n9). The CHP, however, defended every extension of martial law by denying the opposition MPs’ accusations and even calling the criticisms “dangerous” (Üskül, 1997, p. 161).

To recapitulate, the process that started with the 1960 military coup and ended with the abolishment of martial law was a period of struggles between civilian and military power groups that desired the means to dominate the political and administrative sphere. The martial law declared in 1963 provided the government and the military fraction in favour of the government with extraordinary powers, hence advantaging one side in the struggle while disadvantaging the other. As such, martial law, as an extraordinary regime constitutionally regulated, became instrumental against what the government defined as a threat in the process rather than being solely used against the 1963

coup attempt, which the government considered a security threat. The utilisation of martial law beyond constitutional reasons and limitations showed that the ideal of the rule of law could not be achieved solemnly through a constitutional text, as the way in which martial law was resorted to made martial law a tool that was used to facilitate and legalise the interference with constitutional rights and liberties. After martial law was lifted in 1964 and before the military coup of 1971, martial law was declared once more following workers' and students' demonstrations in 1970. I will examine that martial law experience in the following section.

4.9. 15-16 June 1970 Protests

On 15 and 16 June 1970, the DİSK (Revolutionary Workers' Unions Confederation, *Devrimci İşçi Sendikaları Konfederasyonu*) and the TÜRK-İŞ (Confederation of Turkish Trade Unions, *Türkiye İşçi Sendikaları Konfederasyonu*), organised demonstrations to protest the proposed amendments of two pieces of legislation concerning unions, workers' right to collective bargaining, strikes, and lockouts (Cumhuriyet, 1970). During the protests attended by tens of thousands of people, the police and military troops were deployed to quell possible unrest. As a result of the violence that erupted between the state forces and the protestors, three people were killed, and 92 were injured (TBMM, 1970, p. 211). PM at the time, Süleyman Demirel, accused the protestors of "exploiting the rights the Turkish law recognises" and "being an instrument to lawlessness" (Cumhuriyet, 1970). The Minister of the Interior

blamed the DİSK for organising the protests and inciting the violence, accusing them of attempting “to destroy the democratic rule of law ..., to disrupt our national unity and solidarity, to divide our homeland by creating a sense of class, to tear our country apart” (TBMM, 1970, p. 209). The government imposed martial law on 16 June 1970 in İstanbul, Kocaeli, and Gebze – the most populous province of Türkiye and two of its neighbouring provinces.

The 15-16 June protests were led by a process during which socialist movements in Türkiye gained momentum. In the relatively liberal environment provided by the 1961 Constitution, “anti-capitalist, anti-imperialist, and anti-American organizations grew in power as their dynamism coincided with the workers’ movement” (Beyribey, 2022, p. 8). Socialist organisations before the 1960s were never strong enough to impact domestic politics (see Ahmad, 1993, p. 139), but then, the working class and youth movements concentrated in cities impacted Türkiye’s social and political life. During the 1960s in Türkiye, new socialist political and labour movements emerged, such as the TİP (Workers’ Party of Turkey, *Türkiye İşçi Partisi*), founded in 1961, and the DİSK that began operating in 1967. The Law on Labour Contract, Strike, and Lockout (*İş Sözleşmesi, Grev ve Lokavt Kanunu*), no. 275, enacted in 1963, recognised the right to strike and collective bargaining. Several socialist journals were established during this decade, including *Yön*, *Devrim*, *Aydınlık*, and *Ant*. The growth of the student population in urban areas and the lively discussions in these publications helped spread socialist ideas to the public (Zürcher, 2004, pp. 254–255; see also Bora, 2017, p. 595). The country experienced an

unprecedented surge of protests from 1968 to 1971, encompassing several segments of society, including students, workers, teachers, state officials, and peasants (Alper, 2015, pp. 63–64).

As socialist movements gradually grew, so did anti-socialist movements and governmental discourses. Anti-communism of the 1960s was built on a discourse of “*enemification, demonisation, and criminalisation*” (Bora, 2017, p. 294, italics in original). As Tanıl Bora (2017, p. 295) argues, during the 1960s, the masses, under the auspices of the police, were mobilised to intimidate socialist movements. As such, the anti-imperialist students’ protest of the arrival of the 6th Fleet of the US Navy to Istanbul on 16 February 1969 marked a turning point in terms of the “armed radicalization of both left and right” (Söyler, 2015, p. 115). During the 6th Fleet protests, the socialist protesters were met by counter-protesters. Each group was estimated to have 15 thousand people (Kural, 2013). Two groups clashed, and two socialist students were killed (Cumhuriyet, 1969). The police, who came to suppress the events, reportedly attacked the socialist students along with the anti-socialist group (Kural, 2013). Anti-communist violence sought to agitate its nationalist identity through a civil war discourse (Bora, 2017, p. 297), which was also utilised by the government officials condemning the 15-16 June protests in 1970 (see below).

The leader of the AP, the PM between 1965 and the 1971 memorandum, Demirel occasionally referred to “the Islamic character of the Party” and consistently engaged in anti-communist propaganda and the “harassment of leftist movements” (Zürcher, 2004, p. 251). The AP, which held the parliamentary

majority following the 1965 and 1969 elections, characterised communism as a security threat through its anti-communist discourse. The legal adjustments narrowing down the workers' legally recognised social and political rights and liberties were a move against the 'enemy', who was, for the government, embodied in socialist organisations, particularly the DİSK. Regarding the law amendments, the Minister of Labour, Seyfi Öztürk, displayed animosity towards the DİSK by stating that by these amendments, the government were "going to put a spoke in the DİSK's wheels" (BİA Haber Merkezi, 2021). As such, the Minister of the Interior, Haldun Mentешеoğlu, delivered a speech following the 15-16 June incidents and defined communism and the communist associations, such as the DİSK, as a threat to the nation/state (see TBMM, 1970, pp. 209–215). These institutions were, according to Minister Mentешеoğlu, some "conspirators who aim to undermine the integrity of the nation and homeland" (TBMM, 1970, p. 216). He argued that the organisations seeking communism were preparing for a civil war in Türkiye (TBMM, 1970, p. 219).

Martial law was declared in response to the 15-16 June incidents, which lasted three months. The constitutional reasons upon which a martial law declaration would be constitutional lacked in the protests. As such, none of the participants or organisers of the demonstrations was tried for any of the reasons related to the constitutional basis for a martial law declaration. Instead, these people were tried for violating the Law on Meetings and Demonstrations (*Toplantı ve Gösteri Yürüyüşü Hürriyeti Hakkında Kanun*), no. 171 (Üskül, 1997, p. 53). Both amendments initiated by the government and protested by the

masses were later found unconstitutional by the Constitutional Court and repealed (Üskül, 1997, p. 53).

4.10. Conclusion

This chapter explored Türkiye's experiences with security measures that interfered with the constitutional rights and liberties regime from 1948 to 1971. Similar to the Republic's formative years, state authorities between 1948 and 1971 restricted rights and liberties through various means, including the declaration of martial law and various legislative, governmental, and administrative actions and inactions. In addition to the extraordinary measures taken while the constitutional order was in place, Türkiye experienced a state of exception lasting about one year after the 1960 military coup. During this period, the constitutional order was entirely suspended and replaced by a new one established by the 1961 Constitution, which set forth new rules and principles for Türkiye's political system and institutional relations.

Throughout the state's formative years, the CHP and its cadres dominated and regulated the state administration. However, between 1948 and 1971, there were different sources of power aiming to obtain political power: several political parties and military cadres. Some of these entities managed to become part of the political power or monopolise it and had the power to restrict or suspend rights and liberties. When the periods between 1923-1948 and 1948-1971 are compared, we see that in the latter period, Türkiye's insecurities, as defined by the decision-making authorities, underwent some changes while some of the

notions were inherited from the formative years. As such, there is evidence that Türkiye kept having anxiety over its territorial integrity after WW2, despite this not being the prime concern in the post-war period. At the national level, the quiet of the eastern regions, and at the international level, Türkiye's international positioning in world politics affected how Türkiye shaped its security policies within the country. These factors also played a role in determining the reasons why decision-makers restricted or suspended citizens' rights and liberties through their discretionary actions and inactions. The end of WW2 and Türkiye's involvement in the capitalist bloc during the Cold War appeased the anxiety and the security concern regarding territorial integrity, as Türkiye's transition to democracy was accompanied by the endeavour to become one of the fellow countries of the 'west'.

Although eastern regions of the national territory were not the prime target of security policies during the period under research, the decision-makers of the examined period, the examples show, still had concerns about the cultural distinctions between the southeast and the rest of the country and Türkiye's territorial integrity. Alongside the 1959 report on Kurdism, the examples of 'the case of the 49' and the Sivas camp indicate that the eastern regions of the territory were still of particular concern. While the 'case of the 49' presented governmental, administrative, and judicial actions that contradicted the constitutional norm on rights and liberties, the Sivas camp was created through a sovereign decision on the exception following the military coup of 1960, after which the constitutional order was repealed. Regarding the compulsory

resettlement of the camp detainees, neither the provinces where the exiles were sent nor Sivas where the campsite was located under martial law. The MBK decided the people's confinement in the camp without a court verdict, and these citizens were deprived of their *habeas corpus* rights in the camp. The camp, as examined as the zone of exclusion in contemporary literature, was created by the sovereign power through a sovereign decision by suspending the law and excluding the people from the social and political domain.

The sovereign of the state of exception, for Agamben (1998), creates the zones of exclusion, where the state of exception prevails, to exclude *bare lives* (the lives that can be taken but not be sacrificed). As such, camps (such as the detention camp in Guantanamo) exist as “the modalities of sovereign power” in the Agambenian sense (Gregory, 2006, p. 405). However, the Sivas camp example was different from those examined in contemporary literature, where people are considered to be seen by state authorities as “disposable” (see Biswas & Nair, 2010, p. 39). Even though the camp practice in Sivas must be accounted for as a zone of exclusion and the detainees exhibited the features of excepted bodies, they were not *bare lives*. In this camp experience, the bodies over which the means of the exception are employed were not *bared*, yet the ethnic unity among them and the space in which this unity is located are targeted by the sovereign power. The bodies kept in the camp were thought of as a threat source because of the space they occupied, the eastern regions of Türkiye, considering that all the bodies captured in the camp were later sent to different geographies of the very same country rather than being tortured or disposed of in

the camp, the zone of exclusion. This situation shows that the Sivas camp experience was about the geography of the exception in Türkiye - about the exception being used to exercise sovereign power in a specific territorial space of the country.

Besides the two examples, 'the case of the 49' and the Sivas camp, which show the relation between the sovereign power and the spatiality of state sovereignty, until the subsequent military intervention in 1971, the security measures' spatial pattern presented itself in metropolitan areas and the provinces geographically near them during the period under research. The empirical evidence this chapter provided shows that the main targets of the exceptional security measures were non-Muslims and individuals and associations who were deemed communists or socialists. Before the 6-7 September pogroms, the government sought to keep its popularity inside to keep its own position of power by engaging the public with the Cyprus issue, which was defined as a possible threat to the national and international security of the country. The government's dual aim (securing its own position and eliminating the threat of the enosis) addressed communism as a threat and the organisational force behind the incidents. Communists, then, were the enemy within. When Türkiye's international reputation in the world of 'civilised' countries after the pogroms was a matter of debate at the Parliament (Üskül, 1997, p. 127), the government turned to blame communists for the violence for which the government officials were responsible. As such, martial law in 1955 was mainly used against the opposition and socialists. During the period under research, the

state authorities considered the communist associations and the opposition party politics a threat and a matter of survival of the state and social integrity, and antagonistically, they linked communism with terrorism (see Beyribey, 2022). As such, the cities, as the hubs of socialist thought and action, were targeted through security measures that restricted or suspended citizens' constitutional rights and liberties.

State authorities' interference with constitutional rights and liberties through their actions or inactions in Türkiye between 1948 and 1971 shows the intertwinement between politics and law regarding security issues. As such, every source of power desiring to dominate the political domain resorted to discourses of the legal legitimacy of their opponents. While the DP blamed the CHP for being illegal and acting illegally, the CHP directed the very same criticism of the DP. The military actors that carried out the 1960 military coup condemned the DP's actions, calling them illegal, and the political figures maintained the political line of the DP after the military coup called socialist movements illegal as well. On the one hand, its own position of power depended on popular support for the DP, for which it sought to please the masses by adopting policies that were against the secular reforms made by the CHP during the formative years of the state. As such, the DP lifted the ban on reciting the Azan in Arabic, permitted broadcasts of Quran reading on the radio, and enhanced religious education in schools. On the other, the CHP officials made statements identifying the DP as anti-Republican (see Hale, 1994, p. 106). The military considered the DP a threat to Republican values (see Zürcher, 2004, p.

234) and declared the DP as a threat to democracy, the state and Atatürk's legacy (see Karpas, 2015, pp. 286–287). It stepped in antidemocratically to take over the power to rule and, allegedly, save the state. As such, every power centre claimed to provide public order and state security whenever they intervened in the rights and liberties regime while taking exceptional security measures against what they defined as a threat. These examples help us argue that as understandings of security vary between different actors and decision-makers, the security decisions are political and made politically. When security measures concern the threat to the nation/state, there is not an agreed upon threat out there in the world, but rather, the threat definition as well as who fits in this definition are politically determined, depending on the security understanding of the decision-maker(s).

Towards the end of the 1960s, the political atmosphere of the period caused even peaceful demonstrations to result in violence, raising the curtains for the Turkish military one more time in the history of Türkiye. Following 1971, Türkiye's understanding of security underwent changes. After the military coup of 1971, the eastern regions of Türkiye, again, became the main target of the security measures that deprived citizens of their rights and liberties. Chapter 5 will turn to examine this.

CHAPTER 5

1971-2002

This chapter examines the exceptional security measures in Türkiye between the 1971 military memorandum and the 2002 general election. In 1971, the military intervened in civilian politics in Türkiye once again, despite not leading to a state of exception. The 1971 military memorandum and the 2002 general election brought about shifts in Türkiye's understanding of security and legal responses to the security concerns of decision-makers within national and international contexts. Following the military memorandum of 1971, the constitutional order was shaped with a focus on national security as an overarching value at the expense of rights and liberties. The legal framework amended per the military's views favoured governmental authorities (and the military during emergencies) in decision-making.

Between 1971 and 2002, over 80 per cent of the entire duration was spent under martial law or a state of emergency in specific parts of the national territory. Southeastern Türkiye was exposed to constitutionally determined exceptional security measures for approximately 25 years of the 31 years under research. The state of emergency rule uninterrupted continued between 1987 and 2002 in southeastern Türkiye and came to an end in 2002 following the AKP's victory in the November 2002 general election. However, the emergency responses to what was framed as a threat constituted only one of the ways in which state authorities interfered with the rights and liberties regime.

As such, the juridico-political conditions of the security measures that interfered with Türkiye's rights and liberties regime between 1971 and 2002 exhibited various manifestations. Several state authorities carried out the enactment of state power and the exercise of sovereign power. In the given timeframe, martial law was declared four times (1971-1987), Türkiye experienced a state of exception (1980-1983), a method of executive-initiated norm-making through emergency decrees was embedded in the legal system (1982-present), the State Security Courts (*Devlet Güvenlik Mahkemeleri*) were established as a decision-maker on security-related issues (1973-1976, 1982-2004), and a bureaucrat with broad discretionary powers became almost the sole decision-maker over the entire southeast (1987-2002). Martial law lasted within the following periods: 26 April 1971-26 September 1973, 20 July 1974-2 September 1975, and 16 December 1978-19 July 1987. The enactment of state power through emergency decrees was enabled through parliamentary actions and inactions, which were political decisions of the legislature. The state of emergency rule encompassed the following period in different geographies: 19 March 1984-30 November 2002. The State Security Courts made rulings based on legislation enabling vast discretionary decision-making power of the judiciary. Lastly, emergency powers were granted to a bureaucrat, the head of the State of Emergency Regional Governorate (SoERG), who cooperated with other state authorities.

In what follows, I will examine these state practices restricting or suspending rights and liberties and introduce the legal frameworks created after the two military interventions, the 1971 military memorandum and the 1980 military coup.

5.1. The 1971 Military Memorandum

Martial law imposed in response to the 15-16 June protests (see Chapter 4) was abrogated on 16 September 1970. However, acts of violence and crimes with political motives remained a domestic problem. On 12 March 1971, the military forced the government to step down via a memorandum. It accused the government of jeopardising the country's future by driving it into "anarchy" and "political and economic turmoil" and threatened the government by seizing the state administration in its entirety (Cumhuriyet, 1971a). Even though the Parliament was not dissolved and political parties were not shut down, the military sought political ends, as was the case with the 1960 coup. As such, the PM and the leader of the AP (Justice Party, *Adalet Partisi*), Süleyman Demirel, resigned, and the new government was formed according to the suits of the military (Üskül, 1997, p. 192). Following taking office, this new government declared martial law in eleven provinces: İstanbul, Kocaeli, Sakarya, Zonguldak, İzmir, Eskişehir, Ankara, Adana, Hatay, Diyarbakır, and Siirt. The justification for the declaration was presented as the presence of a "strong and threatening uprising against the homeland and the Republic" (Cumhuriyet, 1971b), which was allegedly initiated by "resistance groups against the forces of order" (Council of Europe, n.d.). Martial law remained in force until 26 September 1973.

The 1971 martial law declaration placed the major cities and the southeast of Türkiye under extraordinary measures based on how the decision-makers defined the threat and the enemy. Prior to the 1971 intervention, cities had been targeted through exceptional security measures mainly due to hosting high numbers of students and workers who organised several mass

demonstrations against governmental policies (see Chapter 4). Following the 1971 coup, southeast provinces, previously secondary in the security agenda, became the prime target of the security practices contradicting the rights and liberties regime (see TBMM, 2023, pp. 145–147). Both national and international contexts seem to have affected the decisions on exceptional security measures.

Barzani's leadership in the Kurdish movement in Iraq influenced the revival of the Kurdish movement in Türkiye (Bora, 2017, p. 842). In the 1960s, the Kurds and socialists persistently addressed southeast Türkiye's social and economic underdevelopment in their political actions and protests, even though there was no ideological unity between them (Bora, 2017, p. 843). In this context, Kurdish intellectuals within socialist organisations brought dynamism to the southeast²³ (see Bora, 2017, pp. 842–844). The quiet in the southeast in the past few decades ceased, and the Kurdish movement's political revival revived the state's security concerns regarding its territorial integrity. For, the 'enemy' was, as defined by the Minister of the Interior of the government that declared martial law, extreme right (those who desire to establish a religious state by destroying the democratic and secular Republic), extreme left (those who desire to establish a Marxist, Leninist, Maoist state through a civil war by inciting workers, villagers, and the youth), separatists (those who want to tear off a part of Turkey with international support), and those who keen on autocracy (not defined) (TBMM, 1971a, pp. 297–298). All

²³ An apparent dissolution between the socialist and Kurdish movements began after 1984 due to the war between the PKK (Kurdistan Workers' Party) and the state (H. Bozarslan, 2013, p. 382).

the political parties at the Parliament but the TİP (Workers' Party of Türkiye, *Türkiye İşçi Partisi*) approved the martial law declaration (TBMM, 1971b).

The declaration of martial law essentially served political ends and was used to eliminate the 'enemy' within, and the ambiguous definitions of the threat facilitated the use of wide discretionary powers by martial law commanders. For, according to the parliamentary decision on the martial law declaration published in the Official Gazette,

[t]he attitude of self-seeking circles and anarchic actions and behaviours that have been observed in our country for a long time have not only aimed at disrupting public order and security but have actually taken the nature of a strong and active uprising against the basic order of the [s]tate, the unity of the country, the homeland and the secular Republic for ideological purposes. (TBMM, 1971b).

The "anarchic actions and behaviours" were attributed to socialists and socialist organisations at the Parliament, and anti-communism was portrayed as counterterrorism (see Beyribey, 2022). The "self-seeking circles" as a threat to the nation/state were never defined, leaving martial law commanders the power to decide who would be a part of them (see Üskül, 2014, p. 21). During martial law, the government initiated a witch hunt targeting those they deemed as a threat. This period was characterised by severe restrictions on constitutional rights and liberties, including the right to assemble and demonstrate, freedom of the press, and freedom of expression (see Üskül, 2014, pp. 10–22). For example, the commandership in Siirt banned the possession of records in Kurdish and Arabic and the speaking of languages other than Turkish in state institutions (Üskül, 2014, pp. 14–15). Several student associations were considered the reason for which martial law was declared and shut down by martial law commanders (Üskül, 2014, p. 14).

Alongside martial law commanders, the Parliament also played a part in the restriction of rights and liberties through its legislative activities. The following subsections will examine the parliamentary actions concerning the rights and liberties regime in the aftermath of the 1971 memorandum.

5.1.1. Military-Imposed Constitutional Amendments Concerning the Rights and Liberties Regime (1971-1973)

Under martial law, the legislative body actively narrowed down the scope of rights and liberties. An amendment to the 1961 Constitution increased the legitimate reasons for declaring martial law, making such declarations largely dependent on discretion. The criteria for declaring martial law in the 1924 and 1961 Constitutions were identical: state of war, a situation that necessitates going to war, and an uprising or the existence of strong and active intrigues deemed to be against the nation/state. With the amendment, vague grounds such as the “emergence of certain indications about widespread acts of violence that endanger the indivisibility of the country” became a foundation for martial law declaration (Art. 124). For, the state did not need to observe acts of violence; “signs of acts of violence” would suffice (Üskül, 1997, p. 32). As such, the possibility of declaring martial law against non-violent but alleged-to-be-violent events became established within the legal system.

The 1961 Constitution recognised citizens’ fundamental rights and liberties and defined them as “inviolable, inalienable, and indispensable” (Article 10). According to the 1961 Constitution, fundamental rights and liberties could only be restricted by law and in accordance with the word and spirit of the

Constitution. Article 11 secured rights and liberties with the constitutional regulation that “the law cannot touch the essence of a right or liberty, even for reasons such as public interest, general morality, public order, social justice, and national security”. However, the 1971-1973 amendments made every fundamental right vulnerable to restriction or suspension when the security issue concerned the integrity of the state with its territory and nation, national security, and public order. What the Constitution sought to protect was such overarching values for which rights and liberties would be sacrificed. Article 11 no longer ensured fundamental rights and liberties, as, after the amendment, exercising rights and liberties was envisaged to have limitations when protecting “the integrity of the state with its country and nation, the Republic, national security, public order, the public interest” and “general morality” were concerned. The ambiguous language in Articles 11 and 124 granted the state administration extensive discretionary power through the law’s ambiguity so that different decision-makers could interpret the provisions in various ways.

In addition to the amendments directly concerning rights and liberties, some other amendments addressed state institutions in a direction that ultimately led to severing the rights and liberties regime. As such, the 1971-1973 amendments broadened the executive’s (Art. 61, 64) and the military’s (Art. 30, 124, Prov. Art. 21) jurisdiction while narrowing down the Constitutional Court’s (according to the amendment, the Court could only check the constitutionality of laws in terms of their form, not content) (Art. 147) and established State Security Courts (Art. 143), which tried more than 3 thousand people until they were closed down by the Constitutional Court in 1976 (Söyler, 2015, p. 116). An amendment severed university autonomy

(Art. 120), while another removed the autonomy of the Turkish Radio and Television Corporation (*Türkiye Radyo Televizyon Kurumu*, TRT) (Art. 121). In each amended constitutional provision concerning the rights and liberties regime, the necessity of protecting “the integrity of the state with its country and nation”, “national security”, “public order”, and “general morality” was stated. Per the constitutional amendments, the Parliament passed a new regulation on martial law and abolished the Martial Law Act, no. 3832, enacted in 1940 and all the decrees issued based on Act 3832.

5.1.2. The Martial Law Act of 1971 (*Sıkıyönetim Kanunu*), No. 1402²⁴

The Martial Law Act came into force on 15 May 1971 and assigned the martial law commanders as almost the sole decision-making authority in their jurisdiction. Act 1402 entrusted martial law commanders with procuring general security and public order in areas where martial law was in force (Art. 3). With the provision, the commanders were authorised to restrict or suspend freedom of the press, immunity of domicile, freedom of communication, right to strike, assembly and demonstration. The commanders could relocate persons over suspicion. Article 3 ensured all kinds of censorship powers of the military over the print media and communication instruments, just like the 1940 regulation. The martial law commanders had the authority to censor the TRT’s broadcasts.

²⁴ Martial law was removed from the constitutional text in 2017, and Act 1402, which had been in force with more than 20 amendments, was repealed in 2018 with the Law no. 30495. Fourteen of the amendments were made by the generals that carried out the 1980 military coup. Here, the non-amended version of Act 1402 is examined.

While Act 3832 envisaged the Ministry of the Interior as the responsible authority regarding the security forces employed to provide public order and security, Act 1402 placed all the law enforcement in the martial law zone under the martial law commandship (Art. 2). According to Article 15, the martial law commander, should they deem necessary, could prolong the detention period from 15 days 30 days. Act 1402 violated non-retroactivity and the principle of the natural judge. As such, it authorised martial law commanders to destroy and prohibit written and printed products produced before the martial law declaration (Art. 3). According to a provision, during martial law periods, court-martials would be established (Art. 12). These military courts would proceed with the trials even after martial law was lifted (Art. 123). The cases of those who have committed the crimes that caused the declaration of martial law and those who committed crimes related to any offence tried by court-martials would be subject to trial in the court-martials, even if the crime were committed outside the martial law zone. In line with the 1971-1973 constitutional amendments, Act 1402 repeatedly stated “general security and public order” as overarching values for which martial law commandships would use their power to take discretionary decisions and actions to restrict or entirely suspend citizens’ constitutional rights and liberties.

Until 1987, martial law means, framed by the regulations in question, were used to handle national and international situations and events defined as a threat. The following section will examine an example of martial law declaration based initially on international security concerns, later becoming a means to handle issues framed as internal security threats.

5.2. Türkiye's Military Intervention in Cyprus in 1974

On 15 July 1974, Greek nationalists aiming at enosis overthrew the President of Cyprus, Makarios III, through a military coup. Türkiye held Greece responsible for the coup. The Turkish PM Bülent Ecevit stated that his government would do whatever it would take to protect the interests of Türkiye over the island (Cumhuriyet, 1974). In response to the coup in Cyprus, Türkiye landed troops on the island to allegedly protect the Turkish minority in Cyprus (Adamson, 2001, p. 278). Based on the justification that the military operation in Cyprus constituted the risk of going to war, on 20 July 1974, the government declared martial law in 14 provinces (İstanbul, Ankara, Tekirdağ, Kırklareli, Edirne, Çanakkale, Balıkesir, Manisa, İzmir, Aydın, Muğla, Adana, İçel, and Hatay) (TBMM, 1974b, p. 10). In the process, martial law was gradually removed until it was lifted entirely on 2 September 1975. On the day martial law ended, there had been four provinces under martial law.

The relationship between Türkiye and Greece was rocky during the period leading up to the military operation in Cyprus (see Ahmad, 1993, pp. 137–143). Prior to the military operation, the relations were tense due to disagreements over natural resources in the North Aegean Sea (Ahmad, 1977, pp. 343–344). As such, PM Ecevit highlighted the regional security aspect of the Cyprus issue in Parliament. For, he presented the military operation as an action taken for peace and freedom, as a result of which “our entire region [would] attain a greater peace and repose” (TBMM, 1974b, p. 10). In the memoranda presented to the Parliament by the government, it was stated that the landing of troops in Cyprus was a result of severe conditions brought about by international political events (TBMM, 1974b, p. 8). According

to the government, the purpose of the military action was “to ensure the endangered independence, territorial integrity, and security of the Republic of Cyprus” (TBMM, 1974b, p. 9). On the martial law declaration, the government stressed that unity and internal peace were more robust than ever, and the martial law proclamation had nothing to do with the country’s internal security (see Üskül, 1997, pp. 226–227).

The martial law zone included the provinces geographically near Cyprus and Greece. The governmental discourses regarding international security and explaining the necessity of a martial law declaration with the threat of going to war with Greece complied with the space of the extraordinary measures taken in the provinces under martial law. The declaration initially was an example of what security scholars considered a security issue until the 1990s – an international security problem that is “a matter of ‘high politics’ and statecraft, not the ‘low politics’ of the domestic realm” (A. Neal, 2019b, p. 4). However, over time, ‘high’ and ‘low’ politics merged, making martial law instrumental against the internal ‘enemy’ (see TBMM, 2023, p. 141).

Türkiye’s military action in Cyprus ended a month after the martial law declaration. However, martial law impositions continued for over a year. Three different governments served between the beginning and the end of martial law. The second government was formed in November 1974 and was on duty for over four months. At the parliamentary debates on the extension of martial law, the second government expressed concerns regarding domestic security for the first time (Üskül, 1997, p. 230). Government officials stated that the country needed peace and security, and limiting the appliances of martial law to the Cyprus issue would weaken the state. As such, the Minister of National

Defence, İlhami Sancar, stated that the “extremists and separatists” were in action against the country and the “need for security and peace is increasing day by day” (TBMM, 1974a, p. 43). When the third government brought the extension of martial law to the parliamentary agenda, martial law was discussed almost only in relation to domestic issues. The concerns raised at the Parliament were the threat of communism and the left militia (see Üskül, 1997, pp. 230–236). Accordingly, strikes of professional organisations were postponed or banned under martial law (TBMM, 2023, p. 141). As such, martial law, as a constitutional instrument of restricting or suspending constitutional rights and liberties, deviated from its initially stated purpose.

While martial law was in force, the government declared martial law in 1975 to be imposed in some other parts of the national territory. This declaration was another example of an international security issue leading to the government’s decision to take exceptional security measures in Türkiye. However, martial law could not be promulgated due to lacking parliamentary approval. The following section will look at this.

5.3. The Iraqi Civil War in 1975

The government declared martial law on 27 March 1975 in response to the consequences of the civil war in Iraq between the Iraqi government and Iraqi Kurds. The civil war from 1974 to 1975 resulted in the Iraqi government’s triumph, leaving the Iraqi Kurds stuck by the Turkish border in Northern Iraq, seeking asylum in Türkiye (Milliyet, 1975; TBMM, 2023). The National Security Council (*Milli Güvenlik Kurulu*, MGK) considered the Kurds’ clustering

at the border as a threat to border security and recommended the government declare martial law in four provinces in southeast Türkiye (Diyarbakır, Hakkâri, Mardin, and Siirt)²⁵ (TBMM, 1975). Upon the MGK's recommendation, martial law was declared in the provinces in question and justified based on "the immediate threat to the security of our southeastern borders" (TBMM, 1975, p. 129) and "to prevent some incidents that may arise due to the asylum of 150 thousand people seeking asylum in Türkiye" (TBMM, 2023, p. 132). However, the government faced disagreement from the majority of the Parliament.

At the parliamentary meetings, PM Sadi İrmak stated that tens of thousands of Iraqi Kurds would cross the border in case martial law was not enforced. He argued, "martial law has nothing to do with our citizens living in the east and southeast", and martial law declaration was "[j]ust to protect their safety, and hence the security of the whole country" (TBMM, 1975, p. 130). After the debate on the martial law declaration in Parliament, the discussion on the martial law declaration was moved to a secret session, the content of which is now public. The reasons for the martial law declaration put forward by PM İrmak in the secret session were different from those stated in the governmental proposal. As such, PM declared that the military and the government considered martial law in the southeast as "a complement and facilitator of military measures" that would be necessary to take in the event of a war, considering the possibility of the sudden entrance of "a large mass of around 100-150,000 people, partially equipped with heavy weapons" (TBMM, 2023, p. 134). As such, the martial law proposal was presented to the

²⁵ At the time, four other provinces, Ankara, İstanbul, Adana, and İçel, were already under martial law initially imposed in response to Türkiye's military intervention in Cyprus.

Parliament as a matter of 'high' politics and an external security threat (see TBMM, 2023, p. 145).

However, the parliamentary discussions between those in favour of martial law declaration and those who oppose provide evidence that the government's concerns revolved around the southeast of Türkiye, heavily populated by citizens of Kurdish descent. As such, MP Turhan Feyzioğlu, from a parliamentary group in favour of the declaration, especially avoiding mentioning the ethnic origins of the Kurds gathered at the border, felt the necessity to state that all citizens of the Republic of Türkiye are Turks and that Türkiye consists of Turks, not different peoples living in Türkiye (TBMM, 2023, p. 139). As stated by MP Turan Güneş from the CHP faction, when the government imposed martial law in Izmir, it did not state that the declaration of martial law was not due to "the actions of our citizens in Izmir". However, it could not help but employ this kind of discourse when declaring martial law in southeast Türkiye (TBMM, 2023, p. 143). The opposition thought that there were other motivations for the government to declare martial law other than the stated reasons (the asylum of the Kurds in Türkiye and the possibility of war). According to the CHP group representative, "[t]he power of the Turkish army is suitable to protect the borders of Türkiye. ... If we cannot protect ourselves from the enemy that will march through our borders ... unless martial law is declared, ... [we] must immediately focus on this issue" (TBMM, 2023, p. 144). Deputy İdris Arıkan from Siirt, one of the provinces where martial law was intended to be declared, said that the reason for the government's declaration of martial law was "the distrust against the people of the region [southeast]" (TBMM, 2023, p. 146).

Although martial law could not be promulgated, the case provides insights into the government's security concerns at the time, the involvement of the military in making decisions regarding exceptional security measures, and the role of the Parliament in the decision-making. Safeguarding the borders falls within the regular responsibilities of the military, which typically necessitate standard security measures. Hence, considering the constitutional provisions for martial law, the declaration was unconstitutional. Notably, this marked the first and, thus far, the only instance in the history of the Republic where the government attempted to utilise a constitutional emergency response (such as martial law or a state of emergency declaration after 1987) and did not receive parliamentary approval. This case serves as an example that highlights the dispersion of decision-making authority and the potential divergence between the legislature and the executive, depending on the prevailing political context.

5.4. The Kahramanmaraş Massacre in 1978

Between 19-26 December 1978, a group of far-right nationalists (İnce, 2012, pp. 131–132; Massicard, 2007, p. 63) massacred Alevis residing in Kahramanmaraş, a province neighbouring the southeastern area populated densely by citizens of Kurdish descent. 110 Alevi citizens, according to the official, and hundreds, according to the unofficial accounts, were murdered (Massicard, 2007, p. 63; Subaşı, 2017, p. 14). Following the killing of at least 110 people, the government declared martial law in thirteen provinces (Adana, Ankara, Bingöl, Elazığ, Erzincan, Erzurum, Gaziantep, İstanbul, Kahramanmaraş, Kars, Malatya, Sivas, and Urfa) on 26 December 1978. The

aim of the martial law declaration was stated as to contain violence between “fellow citizens” (Cumhuriyet, 1978) but not to limit rights and liberties (TBMM, 1978, p. 59). The governmental legitimisation of the martial law declaration was “the emergence of definite signs of widespread acts of violence aimed at destroying the free democratic order and fundamental rights and liberties recognised by the Constitution” (TBMM, 1978, p. 40). Over time, nine more provinces, Adıyaman, Diyarbakır, Hakkari, Siirt, and Tunceli (April 1979); İzmir and Hatay (February 1980); Ağrı (April 1980), were included in the list of provinces under martial law - consequently, entire southeastern Türkiye and several provinces in the east.

Alevis were at the intersection of the three notions around which there were social and political cleavages when the residents of Kahramanmaraş were massacred in 1978: religion, ethnicity, and political stance.²⁶ In Türkiye, Alevism has been the largest sect of Islam after Sunnism. Alevis are few compared to the members of Sunni Islam. Even though they identify as Muslim, Alevis’ “religious practices and interpretation of Islam are strikingly different’ from those of Sunnis” (İnce, 2012, p. 130). Regarding ethnicity, “while most Alevis are ethnically and linguistically Turkish, about 3 million are also Kurdish” (İnce, 2012, p. 13). Alevism was politicised in the 1960s and integrated into left-wing politics (Ertan, 2019, pp. 933–934). While hostility to communism was dominating the security politics of the 1970s, Alevi citizens were labelled with designations that had religious and political connotations

²⁶ Communism, Alevism, and Kurdishness were interconnected for those who displayed hostility towards the Kahramanmaraş residents during and after the events, according to the witnesses and victims of the violence (see Akbaş, 2007, pp. 18–20; Tüleylioğlu, 2009, pp. 71–106).

simultaneously, such as “atheists”, “reds”, “immoral people”, and “profanes” (İnce, 2012, p. 131; Massicard, 2007, p. 60). Several case studies show that nationalist militants associated Alevism with blasphemy and communism (among others, see Ertan, 2019, pp. 940–941; see also Massicard, 2007, pp. 60–61).

The Kahramanmaraş massacre ultimately was a part of the political violence dominating streets at the time. Political polarisation and violence were so intense in the 1970s that between 1975 and 1980, according to an account (Massicard, 2007, p. 59), approximately 5 thousand people died in the conflicts between the political right and left. According to another account (Hale, 1994, p. 224), 898 people died between December 1978 and September 1979, and 2,812 in the next twelve months.

The violence at the societal level was not independent of state officials’ and institutions’ political views and actions. Martial law was declared in the territorial space populated heavily by citizens of Kurdish descent.

Parliamentary debates indicate that the martial law declaration and the geography placed under martial law did not take the legislature by surprise, considering the far-right MHP (Nationalist Movement Party, *Milliyetçi Hareket Partisi*) had been demanding martial law in the southeast long before the massacre (Ahmad, 1996, p. 353; Üskül, 1997, pp. 273–274). Upon the martial law declaration, an MP from the MHP offered his views on the territories that host the ‘enemies’ without talking about the killing of Alevis: there were such places where “the Turkish flag is not hoisted, places where the Turkish national anthem is not sung” (Üskül, 1997, p. 276). He was pointing at the territory that the Kurds heavily populated. He was not content with the martial

law in thirteen provinces - he demanded more provinces be placed on the list (Üskül, 1997, p. 277).

According to some formerly confidential documents revealed in the 2000s (T24, 2012), it was brought to light that the National Intelligence Organisation (*Millî İstihbarat Teşkilatı*, MİT) did not provide necessary information to political and governmental authorities and hid information from them about the massacre. In line with the reports revealed, the Minister of Internal Affairs of the time stated that the MİT kept information from the government and planned the massacre to precipitate the martial law declaration (see also Subaşı, 2017, pp. 15–16; Vatan, 2011). A report sent to PM Ecevit stated that the MİT planned the incidents with the involvement of several MPs from the MHP (Subaşı, 2017, p. 16). In the reports sent to the authorities, the MİT defined the incidents as “rebellion” or “civil war”. In one of the reports dated 4 January 1979, the massacre was defined as a “Turkish-Kurdish conflict” (T24, 2012), which helps explain why martial law was declared where it was declared.

The central role of the MİT and the MPs of the MHP in the declaration of martial law brings about the discussion on who the decision-maker on exceptional security is. According to the then-PM, it was not the government. In a 1989 interview, the PM at the time of the massacre argued that the massacre was masterminded to force the government to declare martial law (Milliyet, 1989). The unwillingness of the government to declare martial law can also be traced in the parliamentary meeting minutes (see TBMM, 1978, pp. 41–43; 59). The collaboration between the MHP, a political party, and the MİT, a public institution, steered the government in a direction contrary to its

intentions through the actions and inactions of the NIO, which was legally responsible for providing intelligence to the government. As such, divergent authorities made decisions concerning the rights and liberties regime in the territory under martial law rule.

PM Ecevit, learning from the experience of martial law between 1971 and 1973, aimed to keep the military authority under control after martial law was declared in 1978 to prevent the military from acting independently from the civilian authority (Hale, 1994, p. 233). However, the government could not keep the military from acting independently. According to the subsequent PM who took office in 1979, Süleyman Demirel, the military did not assist the civilian power but instead worked for its own interests (S. Demirel, 1990, p. 4). Consequently, the military took over the political power from civilians once more in 1980.

5.5. The 1980 Military Coup

On 12 September 1980, the military junta consisting of five generals, who called themselves the National Security Council (*Milli Güvenlik Konseyi*, MGK), declared to have seized the state administration “in its entirety” (Eroğul, 2009, p. 307) and embodied the legislative and the executive until 6 December 1983. The head of the MGK was General Kenan Evren, the chief of General Staff. In the declaration broadcasted on 12 September, he said that Türkiye’s independence, unity, and political regime were at extreme peril due to internal and external provocations, and the country was on the verge of a civil war (Cumhuriyet, 1980b). He presented the coup as a necessity and

said they had to intervene (T. Demirel, 2003, p. 265; Türe, 2019, p. 403). He accused the political parties of the sectarian massacre as well as political violence in the streets and stated that they aimed to put an end to anarchy, terrorism, and separatism (Cumhuriyet, 1980a).

Martial law declared following the massacre in Kahramanmaraş had been in force for over 20 months when the 1980 coup was carried out. On the first day after the coup, while martial law declared in 1978 was still in force, the MGK extraconstitutionally declared martial law throughout the country. The declaration of martial law was outside the constitutional order because the authority that declared it was not constitutionally authorised. The declaration that would have been legally null and void under ordinary circumstances became valid through force²⁷. On 15 September 1980, by a decree, the MGK authorised itself to establish and close down court-martials and assign members to and dismiss them from these courts (Eroğul, 2009, p. 307). That being said, the MGK became the decision-maker on judicial matters, as well as embodying the legislative and executive forces. With the Law on the Constitutional Order (*Anayasa Düzeni Hakkında Kanun*), no. 2324, enacted by the MGK on 27 October 1980, the MGK declared itself to be the constituent power, unhinged by positive law. According to Law 2324 (Art. 6), in case the ordinances or decrees issued by the MGK conflicted with the 1961 Constitution, they would enter into force directly as constitutional

²⁷ Evren was prosecuted in 2012 due to the coup, and said the following at a hearing: “There is no law that criminalises to become the constituent power, that is to stage a coup, and it is not possible for there to be a law that criminalises it. We carried out a coup, we did not attempt it” (Cumhuriyet, 2022).

amendments, and in case of conflict with the laws in force, the ordinances or decrees would come into force as amendments to the concerning laws.

After approximately 9-month of absolute arbitrary rule without the code of law and judicial supervision, the MGK formed a constitutive assembly to make a new constitution in June 1981. This assembly consisted of the members of the MGK and 160 other members selected and assigned by the MGK, a monarchical figure making constitutively political decisions and determining the type and form of the nation's political existence (see Schmitt, 2008, p. 126). Under the circumstances where it was impossible to form an opposition, the Constitution was enacted through a referendum. Even after the new Constitution came into force in 1982, until November 1983, the MGK did not leave its monarchical position. Having held unlimited power over the territory and the nation, it abrogated the coded law by placing its decisions as the law. As one of the security measures, it closed down all political parties, workers' unions, and all other associations apart from the three that cooperated with the state (Eroğul, 2009, p. 307). As D'Orsi (2019, p. 647) argues, it "crushed leftist movements, reshaped the political landscape, and fostered a market economy, a new public role for Islam and the de-politicization of subsequent generations". It initiated repressive and restrictive policies concerning the southeast (see H. Bozarslan, 2013, p. 381). As Magnarella (1994, p. 445) argues, "[a]ny criticism of the coup, the NSC [MGK] or its actions constituted crimes". During the state of exception, 650 thousand people were detained, 52 thousand people were arrested, 14 people died in hunger strikes in prisons, 171 people died in torture during interrogation, and 49 people were executed (Euronews, 2022).

Meanwhile, the MGK used its forcefully obtained legislative power to enact and amend laws. For instance, under the state of exception, the Martial Law Act was amended fourteen times, each weakening and narrowing down the domain of rights and liberties even more while strengthening the authority of martial law commanders. To set an example, one of the amendments authorised commanders to dismiss public officers and appoint them somewhere out of the martial law zone if deemed necessary (Art. 2). According to the figures given by the General Staff, 4,891 people were dismissed based on this provision, and thousands were appointed to various institutions as deemed suitable by martial law commanders (Ulusoy & Bora, 2019). Those who had their jobs terminated were not provided with any explanation or opportunity to present their defence (Aybay, 2000, p. 178). Provisional Article 3 of the Act *de facto* precluded judicial review over martial law practices. After the power was transferred to elected civilians, martial law remained in force until 19 July 1987, though in increasingly fewer provinces over the course between 1984 and 1987²⁸.

5.6. The 1982 Constitution: Rights and Liberties and the Means to Curtail Them (1982-Present)

In contrast to the previous two Constitutions of the Republic, the essence of the 1982 Constitution (still in force with substantial amendments) was the state, obedience, and authority rather than democracy and liberties (Tanör,

²⁸ In 1987, four provinces in the southeast, Van, Diyarbakır, Mardin, and Siirt, were under martial law.

1994, p. 154). The 1982 Constitution attributed great significance to extraordinary security regimes by regulating emergency responses in great detail and under two categories: state of emergency and martial law²⁹ (Art. 119, 120 & 122). Article 12 of the Constitution gave fundamental rights and liberties to citizens, and three other articles (Art. 13, 14 & 15) conditioned their use to the “indivisible integrity of the state with its territory and nation”, “national security”, “public order”, “peace environment”, and “public interest”. Most importantly, no fundamental right or liberty was exempt from restriction or suspension in case of a threat to any of these values glorified by the Constitution (Art. 13). While the 1961 Constitution strengthened the legislative in an endeavour to limit the discretionary actions and inactions of the executive in favour of the parliamentary system and the rule of law, the 1982 Constitution attributed a broad authority of rulemaking to the executive.

Before the 1960 military coup, ‘national security’ in Türkiye was exclusively associated with the military’s purview and jurisdiction (Balta Paker & Akça, 2010, p. 327). However, with the constitutional order introduced in 1961, the definition of national security was expanded, resulting in limitations on social and political rights and liberties in the name of safeguarding national security (see Balta Paker & Akça, 2010, pp. 329–332). The enhanced position of the military in the 1961 Constitution and the creation of the MGK (National Security Council, *Milli Güvenlik Kurulu*) as a component of decision-making processes regarding martial law played a role in broadening the understanding of national security (see Balta Paker & Akça, 2010, p. 327; see

²⁹ The ‘state of emergency’ *de facto* became the only constitutional emergency response starting in 1987.

also Tanör, 1994, p. 121). Subsequently, the constitutional amendments of 1971-1973 assigned special significance to the concept of national security by including it as one of the justifications for restrictions on fundamental rights and liberties (*The 1961 Constitution*, Article 11).

The 1982 Constitution altered the legal status of the MGK's decisions. In contrast to the 1961 Constitution, which designated MGK decisions as merely advisory, the 1982 Constitution enhanced the MGK's role in the decision-making process by making it integral to decision-making. As such, according to Article 118,

[t]he 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 Constitution of the Republic of Turkey [1982]*, 2006)

As such, fundamental rights and liberties became vulnerable to the MGK's decisions based on its understanding of security. None of the values for the sake of which rights and liberties would be compromised was clearly defined in the Constitution. The ambiguity of the constitutional framework enabled broad discretionary powers of military authorities. That being said, when the MGK identified an emergent threat to the nation/state, its decision would be the basis for using emergency responses (martial law/state of emergency) for political reasons. The 1982 Constitution divided the conditions that could lead to the declaration of a state of emergency into two separate categories, regulated in Articles 119 and 120. According to these regulations, the executive could declare a state of emergency for up to six months. Article 119 addressed notions such as public health, economy, and well-being of citizens, whereas Article 120 regulated the nation/state as the referent object of

security. The deterioration of public order because of acts of violence involved the MGK in the decision-making, while the governmental decision was sufficient for other possible reasons listed in Article 119. According to Article 119,

[i]n the event of natural disaster, dangerous epidemic diseases or a serious economic crisis, the Council of Ministers, meeting under the chairmanship of the President of the Republic, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months. (*The Constitution of the Republic of Turkey [1982]*, 2006)

According to Article 120,

[i]n the event of the emergence of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council [MGK], may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months. (*The Constitution of the Republic of Turkey [1982]*, 2006)

Thus, acts of violence or strong suspicions of violence could lead to a state of emergency declaration. In the 1961 Constitution, the only emergency response martial law declaration required “definite indications of a serious and active uprising” (Art. 124). An uprising is a subset of violence, and “definite indications” is a subset of “serious indications”. As such, the 1982 Constitution increased the possibility of an emergency declaration by widening the definition of an emergent threat. Article 120 strengthened the capacity of the state authorities to use their discretion to take exceptional security measures by considering the “emergence of serious indications ... of violence” as a valid reason for declaring an emergency.

Unlike martial law, where the military authorities are granted extraordinary powers in the martial law zone, in a state of emergency, these powers are granted to civilian authorities responsible for providing public order and security in their jurisdiction. While regulating an emergency response for which civilian authorities are assigned, the 1982 Constitution made the MGK integral to deciding whether there is an emergent threat to the nation/state. After the military power transferred the political power to civilians in 1983, military actors kept overshadowing civilian political authority, considering General Kenan Evren, the coup leader, served as the President of the state from 1982 to 1989.

The martial law provision in the Constitution listed relatively more serious notions that could be the basis for a martial law declaration. According to Article 122,

[t]he Council of Ministers, under the chairmanship of the President of the Republic, after consulting with the National Security Council, may declare martial law in one or more regions or throughout the country for a period not exceeding six months, in the event of widespread acts of violence which are more dangerous than the cases necessitating a state of emergency and which are aimed at the destruction of the free democratic order or the fundamental rights and freedoms embodied in the Constitution; or in the event of war, the emergence of a situation necessitating war, an uprising, or the spread of violent and strong rebellious actions against the motherland and the Republic, or widespread acts of violence of either internal or external origin threatening the indivisibility of the country and the nation. ... The Grand National Assembly of Turkey may, when it deems necessary, reduce or extend the period of martial law or lift it.

During the period of martial law, the Council of Ministers meeting under the chairmanship of the President of the Republic may issue decrees having force of law on matters necessitated by the state of martial law. ...

Extension of the period of martial law for a maximum of four months each time, shall require a decision of the Grand National Assembly of Turkey. ...

The Martial Law Commanders shall exercise their duties under the authority of the Office of the Chief of the General Staff. (*The Constitution of the Republic of Turkey [1982]*, 2006)

According to the 1961 Constitution, the government could declare martial law for a maximum duration of one month (Art. 122). The 1982 Constitution extended this duration to six months. The Martial Law Act of 1971, no. 1402, stipulated that martial law commanders were accountable to the PM (Art. 6), indicating a level of cooperation between civilian governance and the military, with civilian politics predominating. Although commanders had discretion in their daily decision-making within their jurisdictions, they ultimately answered to the head of government. However, the 1982 Constitution shifted this accountability from the PM to the Chief of the General Staff, granting the military greater autonomy over areas under martial law. As the martial law commanders' discretionary actions and inactions in interference with the constitutional rights and liberties regime were removed from the executive's oversight, the Parliament was entirely left out of the processes concerning the implementation of martial law. As such, parliamentary checks over the executive could not be carried out (see Tanör, 1994, p. 123), considering the government was not in the picture to be checked by the Parliament during martial law.

The 1982 Constitution strengthened the executive in both decision-making and rulemaking. However, the Parliament also enabled the empowerment of the government through its inaction, which was derived from its political decisions. The subsequent section will look into this.

5.7. Emergency Decrees (1982-present)

Statutory decrees of the executive became a part of the constitutional order with a 1971 amendment (*The 1961 Constitution*, Art. 64). Article 64 prohibited these decrees from enacting regulations concerning the rights and liberties of citizens. However, further strengthening the executive (see Tanör, 1994, pp. 115–121), the 1982 Constitution (Art. 91) empowered the government to make legal proclamations concerning exceptional security measures by issuing statutory decrees to restrict fundamental rights and liberties during martial law and states of emergency. Under ordinary circumstances, as these decrees held the legal power of legislation, their constitutionality would be assessed by the Constitutional Court. However, decrees issued during emergencies or under martial law were exempt from judicial review by the Constitutional Court (Art. 148).

The only form of supervision provisioned by the Constitution for the emergency decrees was the political supervision of the Parliament at the time of ratification (Art. 121). Thus, just like in the case of martial law/emergency declarations, the Parliament would control the government's political decisions. As such, the Constitution "distribute[d] the emergency powers between the legislative and the executive ... in favour of the latter" (Göztepe, 2018, p. 526). Parliamentary approval was not the condition of validity of an emergency decree. It would come into effect as soon as it was published in the Official Gazette (*Resmî Gazete*). The ratification statistics show a consensus between the Parliament and that political supervision was ostensible. As such, of the 426 statutory decrees issued between 1976 and 1993, the Parliament approved 114 (these became laws) and rejected four,

and 238 were pending parliamentary discussion (Tan, 1995, p. 336). None but three of the 19 emergency decrees were approved by the Parliament (Öndül, 2003). As a result of political choices, the Parliament enabled executive decision-making by not discussing about half of the decrees. The approved decrees then became laws and were subject to judicial review. Article 91 of the Constitution explicitly stated that fundamental rights and liberties could only be restricted by law. As such, using decrees to interfere with these rights and liberties was unconstitutional.

Despite this constitutional provision against the constitutionality check of emergency decrees, the Constitutional Court began reviewing several emergency decrees after 1990. However, the judicial review was limited to evaluating whether or not the emergency decree was issued as a response to an emergent security threat and to be applied where the state of emergency was declared and within the given timeframe (see Eroğul, 1999, pp. 34–39; Göztepe, 2018, p. 527). When emergency decrees were found compliant with these criteria, the Court judged dismissal.

Between 1983 and 1990, all the emergency decrees that restricted or suspended constitutional rights and liberties converged to the Schmittian understanding of the exception to the extent that the government's decisions in statutory decrees replaced constitutional principles without a constitutionality check. Still, this 7-year was not a state of exception, considering the entire norm-making took place within the constituted order. As Davies argues (2008, pp. 86–87), the Schmittian exception suggests that “the judicial branch of government will adopt and even promote legally dubious practices in order to appease the executive” and “the ‘legal black hole’ that

evolves from such practices will be seen as justified when measured against the threat.” However, in the case of Türkiye, norm-making practices regarding exceptional security measures were (un)constitutional but not extraconstitutional despite not corresponding with the principles of the rule of law. It was 1990 when the Constitutional Court was brought to a case for the nullity of an emergency decree for the first time. Besides, there is no proof that the Court cooperated with the executive (and the legislative), but rather, the legal system facilitated executive decision-making. After the Constitutional Court began reviewing emergency decrees, lawsuits were filed to the administrative judiciary to settle disputes arising from the application of emergency decrees.

Franz L. Neumann (1953, p. 914) argues that “[n]o political system will fully uphold the legal value of calculability and legal security if it deems its own security endangered by it. Power will thus strive to set aside the juristic notion of freedom.” In Türkiye, between 1971 and 2002, political power and law were so intrinsic that the legal security Neumann talks about was either non-existent or achieved late for those framed as threats. Delayed court decisions regarding compensation for rights violations resulted in citizens experiencing irreparable harm by the time resolutions were reached. Moreover, the establishment of courts specifically designed to provide state security brought legal insecurity to citizens. The following section will discuss this.

5.8. The State Security Courts (*Devlet Güvenlik Mahkemeleri*) (1973-1976; 1982-2004)

The 1971-1973 constitutional amendments glorified the security of the state at the expense of rights and liberties. Based on a 1973 amendment to the Constitution (*The 1961 Constitution*, Art. 30), the State Security Courts were established by the Law on Establishment and Proceedings of State Security Courts (*Devlet Güvenlik Mahkemelerinin Kuruluş ve Yargılama Usulleri hakkında Kanun*), no. 1773, “to handle cases concerning the crimes that directly concern the security of the State, the integrity of the State with its country and nation, the free democratic order and the Republic” (Art. 1). Article 9 of Law 1773 listed over 50 provisions from several laws and stipulated that if an action is deemed to be against the security of the nation/state and fell within the definition of a crime as outlined in the mentioned laws, the State Security Courts would handle such cases. The 1982 Constitution (Art. 143) recognised these Courts, which were closed down by the Constitutional Court on 11 October 1976, as a part of the juridical system. The justification of Article 143 of the Constitution was as follows: “There are some actions related to the existence and continuity of the state that, if committed, require special expertise in order to reach a quick and accurate decision” (Türkiye Barolar Birliği, 2011, p. 41). As such, the constituent power established a connection between State Security Courts and the security of the state. Per the Constitution, the legislature reorganised the courts in question with a law with the same name as the one enacted in 1973. The new Law on Establishment and Proceedings of State Security

Courts, no. 2845, came into force on 16 June 1983. The State Security Courts took their first cases in 1984 (Cizre, 2003, p. 220).

The purview of the State Security Courts was essentially related to the provisions on crimes against the state regulated by specific laws. Between 1971 and 2002, three pieces of legislation, the Law of Fight against Terrorism (*Terörle Mücadele Kanunu*), no. 3713, the Turkish Penal Code (*Türk Ceza Kanunu*), no. 765, and the Press Law (*Basın Kanunu*), no. 5680, became (intermittently or continuously) instrumental in restricting or suspending constitutional rights and liberties. As such, the State Security Courts would hear all cases related to crimes coded by the antiterrorism law (Art. 9) and cases regarding the acts criminalised by the provisions of the other two laws concerning state security. Moreover, in 1992, some amendments were made to the Criminal Procedures Act (*Ceza Muhakemeleri Usulü Kanunu*), and with these regulations, it was acknowledged that a substantial part of the regulations concerning citizens' fundamental rights and liberties would not be binding on the State Security Courts (Türkiye Barolar Birliği, 2011, p. 42).

Türkiye's counterterrorism law came into force in April 1991 (still in force with substantial amendments). It defined terrorism (Art. 2) within ambiguous concepts. The vague definition of who is a terrorist and what constitutes a terrorist act facilitated human rights violations, considering "State Security Court prosecutors too frequently accuse[d] persons of being terrorists who share some of the cultural and political goals of terrorist groups. People who [did] not, however, share terrorists' methods" (Yildiz, 1999, p. 449). While aiming at curbing terrorism and separatism, the way in which Law 3713 was used severely impeded freedom of expression and speech. The Law banned

written and verbal expressions and meetings, demonstrations, and marches that are deemed to be against the indivisible integrity of the national territory (Art. 8). This provision was amended in 1995 to seek proof of 'intention' or 'motive' to divide the country. Still, the law remained instrumental in restricting any forms of advocacy of Kurdish rights and freedom of the press (see Cizre, 2003, p. 220; Müftüler-Bac, 1998; Yildiz, 1999).

Alongside the antiterrorism legislation, the Penal Code, in force between 1926 and 2004, was "used most frequently to punish legitimate forms of expression", as Yildiz (2005, p. 51) argues. Article 159 set forth imprisonment from six months to three years for those who dispraise or insult Turkishness, the state, the Grand National Assembly, the Government, the Ministries, the military or security forces of the state, or the Courthouse. The statement in the regulation was so vague that the boundary between criticism and insult was blurry. For this reason, based on interpretation, non-violent statements or actions could be tried in the State Security Courts. The notorious Article 312 criminalised the incitement of the public to hatred and enmity based on class, race, religion, sect, or regional differences. While regulating a broad range of subjects, it mainly constituted the legal ground "to jail many of Türkiye's writers, publishers, intellectuals, and human rights activists for suggesting different ways of putting an end to the armed conflict in the southeast" (Cizre, 2003, p. 220). In this context, as the alleged crimes were prevalently interpreted to be against the security of the state, they came under the jurisdiction of the State Security Courts (see *Law on Establishment and Proceedings of State Security Courts*, Art. 9). For, Law 765 became an

instrument to overcome the situations identified by state authorities as national security issues.

The Press Law came into force in July 1950 and was abrogated in 2004. It promulgated a preventive security measure that prosecutors could stop the publication and distribution of printed materials and confiscate them if they deemed that a publication commits a criminal offence against the indivisibility of the state, national security, public order, and general morality (Supp. Art. 1). As such, prosecutors had the discretion to decide whether or not a publication constituted a threat against the values indicated by the law, considering the preventive action of the state authority did not require a court order. State Security Courts prosecutors “ordered the confiscation of numerous issues of leftist and pro-Kurdish periodicals” based on the relevant provision of the Press Law (Yildiz, 1999, p. 452). As such, like the other two laws examined in this section, the purposeful use of the Press Law served political ends and overlapped with several other exceptional security measures.

A military judge was one of the three State Security Courts panel members (*The 1982 Constitution*, Art. 143). In 1998, the European Court of Human Rights (ECHR) concluded in a verdict that the State Security Courts lacked independence and impartiality, which resulted in a violation of the right to a fair trial due to the presence of military judges serving in the court panel (Atasoy, 2024). Subsequently, with Law 4390 enacted on 22 June 1999, the military member of the court panel was replaced with a civil judge. While this amendment was made for the sake of Turkish law’s compliance with international law, the courts still remained exceptional in character with the

exceptional empowerment of the judges and law enforcement officers' decision-making power concerning the rights and liberties regime. Until they were closed in 2004, the State Security Courts tried hundreds of thousands of people and convicted approximately 82 thousand (BirGün, 2004).

5.9. The 1984 Declarations of State of Emergency for Unspecified Reasons

The State of Emergency Law (*Olağanüstü Hal Kanunu*), no. 2935, regulating the new regime of constitutionally determined exceptional security measures based on the 1982 Constitution, came into force on 27 October 1983 (still in force with amendments). Based on Article 120 of the 1982 Constitution and Law 2935, the government declared a state of emergency on 19 March 1984 in Bitlis, Çanakkale, Çankırı, Gümüşhane, Isparta, Kastamonu, Kırşehir, and Sinop (TBMM, 1984a, p. 6). Divergently from all the martial law declarations thus far, the government did not suggest that there was any danger requiring immediate action. So much so that the Council of Ministers' emergency decision, which stated the necessity of a four-month emergency rule in the eight provinces and envisaged the state of emergency declaration to come into force as of 19 March 1984, was discussed in the Parliament on 2 March 1984. There were 67 provinces in Türkiye in 1984. The martial law declared across the country following the 1980 military coup was lifted in thirteen provinces on 1 March 1984. The government placed eight of these provinces under emergency on 19 March without any identification of an

emergent threat. When the state of emergency was imposed in eight provinces in 1984, fifty-four provinces were still under martial law.

The opposition at the Parliament put forth the lack of information for the state of emergency declaration. As such, saying that the decision was made by the government as a *fait accompli*, an MP from the CHP, Mehmet Turan Bayezit, stated that “we could neither have enough information nor, more importantly, have the opportunity to make an adequate assessment” concerning the conditions that are claimed to require emergency measures (TBMM, 1984a, p. 7). MP Bayezit argued that the government was suggesting the state of emergency as a transition regime from martial law to normality, but nonetheless, a state of emergency declaration based on Article 120 of the Constitution would have negative consequences as heavy as martial law regime concerning citizens’ constitutional rights and liberties (TBMM, 1984a, p. 8). Another MP, Vecihi Ataklı, drew attention to the contradiction in declaring a state of emergency in the provinces where martial law was abolished: “you lift the martial law in some provinces [yesterday] by saying that the conditions are ready [for lifting martial law], and now you want the declaration of a state of emergency in those provinces [today]” (TBMM, 1984a, p. 9).

Despite the objections to the state of emergency declaration, the majority of the Parliament approved the executive’s decision. On 28 June 1984, the state of emergency was abolished in some provinces while it was declared in some other provinces previously under martial law (TBMM, 1984b, p. 595). The government’s use of the state of emergency declaration between 1984 and 1987 indicates that it viewed this measure as less severe than martial law

but more restrictive than normal conditions—a transitional method towards normalcy. However, certain provinces never achieved the normal conditions defined by constitutional norms of rights and liberties, as they remained under an extraordinary security regime until 2002. The following section will examine this further.

5.10. The State of Emergency Regional Governorate (*Olağanüstü Hâl Bölge Valiliği*) (1987-2002)

Until July 1987, martial law and the state of emergency were two different forms of extraordinary regimes within the legal order. On 17 July 1987, the State of Emergency Regional Governorate (SoERG), as an institution that embodied all emergency powers, was established in southeastern Türkiye through an emergency decree, the Statutory Decree about the Formation of the State of Emergency Regional Governorate (*Olağanüstü Hâl Bölge Valiliği İhdası Hakkında Kanun Hükmünde Kararname*), no. 285.

When martial law was lifted entirely on 19 July 1987, it had been in force in four southeastern provinces for over eight years. On the very same day martial law was lifted, without any time gap, the four provinces formerly under martial law, alongside four other provinces, all eight (Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli, and Van) in the southeast, were placed under a state of emergency rule. As three other provinces (Adıyaman, Bitlis, and Muş) were considered adjoints of the provinces where the state of emergency was declared, the number of provinces increased to eleven. In

May 1990, thirteen southeast provinces³⁰ were under emergency. The government stated the reason for the declaration as the terrorist actions taking place in southeastern Türkiye, where the PKK, aiming to establish an independent Kurdish state, “had engaged in substantial terrorist violence” (Yildiz, 1999, p. 445). The state of emergency was extended 46 times before finally being lifted on 30 November 2002. During this period, the SoERG was entitled to be the primary decision-maker concerning the rights and liberties regime in the region.

Law 2935 granted the authority and the responsibility to implement a state of emergency to the governor of the province in case the state of emergency is declared in only one province (Art. 14). According to the Law, the authority and duty belonged to the regional governor if the state of emergency is declared in more than one province under the rule of a ‘regional governorate’ (Art. 14). While the Law was regulating emergencies under a ‘regional governorate’s rule, at the time of the enactment of Law 2935, there was no administrative unit as the ‘regional governorate’ in Türkiye’s rural organisation. First, the State of Emergency Law laid the basis for this new state institution to ensure public order and security during emergencies, and years later, the institution was established. When the law mentioning regional governorship came into force (1983), the PKK had not yet carried out its first attack (1984).

Under Law 2935, the authorities responsible for implementing a state of emergency were entitled to intervene in the constitutional rights and liberties within the designated emergency zone when deemed necessary (Article 9).

³⁰ With a decree (no. 426), Batman and Şırnak provinces were included amongst those under the state of emergency rule in May 1990.

The extraordinary measures that could be employed included imposing restrictions on settlement in specific areas, controlling access to and exit from certain locations, resettling or evacuating specific communities of people, inspecting and closing social and cultural establishments, and utilising these facilities as required during the state of emergency. Moreover, the authorities were authorised to limit or cancel the annual leave of emergency service personnel in the area, utilise all communication tools and equipment within the emergency zone's boundaries, temporarily seize them as needed, and regulate land, sea, and air traffic. As per Article 9, the authorities of the emergency rule were granted the power to confiscate vehicles and regulate or prohibit the entry and exit of vehicles to and from the region.

Article 11 of Law 2935 envisaged further precautions in case the emergency declaration's basis was the Constitution's Article 120. As such, according to Article 11 of Law 2935, restrictions and measures that could be imposed within a state of emergency zone, as well as on residents and individuals entering this area, included the following: implementing curfews, prohibiting people from walking around or gathering in specified areas or during certain hours, conducting searches of individuals' clothing, vehicles, and personal belongings, and seizing any illegal items or evidence discovered, prohibiting the printing, reproduction, publication, and distribution of all printed and written materials, either restricting or granting permission for their introduction and dissemination within the state of emergency zone, collecting and confiscating banned printed materials such as books, magazines, newspapers, brochures, posters, and similar items, exerting control over all forms of broadcasts and transmissions and prohibiting them

when necessary, regulating stage plays and films shown, halting or banning them as required, “denying entry to individuals or groups deemed as potential disruptors of public order or security”, removing them from the state of emergency zone or restricting their access to specific locations within the zone, monitoring all types of meetings and demonstrations and dispersing them if deemed necessary.

After its establishment in 1987, the SoERG was equipped with all these emergency powers. As such, The Regional Governor assigned as the head of the Regional Governorate became the primary decision-maker to take and enforce all these emergency measures, as they were at the whim of the Governor. As such, the Governor was called “Super-Governor” in public due to the breadth of his discretionary powers (Cumhuriyet, 1987). According to Decree 285, the Regional Governor was responsible for the fight against terrorism in the entire region, and for this purpose, he was hierarchically above all administrative and military units (Art. 4). He had complete authority in the region that he could use as much military force as he deems necessary. As such, the military’s involvement in the procedures of the state of emergency led some scholars to rightfully describe the state of emergency as “civil martial law” in the literature (Öztan & Bezci, 2015, p. 166), highlighting the significant influence of the military in declaring emergencies and implementing extraordinary security measures. As Cizre (2003, p. 220) and Yildiz (1999, p. 445) argue, the governor exercised “quasi-martial law powers” in this jurisdiction.

The SoERG shared several similarities with the First IG rule from 1927 to 1952 (see Chapter 3). First, both institutions were created to implement

emergency measures and were initiated through legislation. Second, each institution assigned a bureaucrat to wield all emergency powers within a specific region, primarily covering the same geographic area: southeastern Türkiye, predominantly populated by citizens of Kurdish descent. Third, during both periods (1927-1948 and 1987-2002), the primary security concern of the state was territorial integrity. However, while the First IG operated without a declared emergency, the SoERG was established to manage a declared state of emergency. The First IG's establishment lacked an identified imminent threat, whereas the Regional Governor's authority was justified by the emergent threat of terrorism to the nation/state.

During the 15-year state of emergency from 1987, a duration infamous for excessive state violence and human rights violations (see Magnarella, 1994; see also US Helsinki Watch Committee, 1989), five governors served in the region. Inferentially, 3,500 villages were evacuated by 1999, while the number of forcibly displaced people from the area was around 3 million (Yildiz, 2005: 17). Several institutions reported that severe human rights violations took place under the SoERG rule, such as disappearances of people deemed to be a threat by the government, extra-judicial killings, torture, ill-treatment in police custody, violations of freedom of speech, press, and association, and destruction of properties by governmental authorities (see Magnarella, 1994; Turhan, 2000; Yıldiz, 1999, 2005). Through legislative actions or administrative decisions, state authorities played a role in establishing a systematic environment where security forces enjoyed impunity for allegations of severe human rights violations (see OHCHR, 2017, p. 19). In 2003, the

ECHR convicted Türkiye in 76 cases, most of which were brought to the Court by Kurdish citizens who lived under the SoERG rule (Yildiz, 2005, p. 92).

5.11. Conclusion

This chapter looked at the state practices that led to the restriction or suspension of constitutional rights and liberties in Türkiye between 1971 and 2002. Similar to Chapters 3 and 4, exceptional security measures during the period under research juridico-politically varied, constitutionally defined emergency measures forming only one way of them. Chapter 5 showed the multiplicity of decision-makers even in a constitutional order where the executive is constitutionally favoured in decision-making. During the 1980-1983 state of exception, as the case with the exception between 1960 and 1961, the military took over and monopolised political power through force. It changed the entire constitutional order while acting in a legal vacuum. Apart from the state of exception period, boundaries between decision-making authorities were blurry, considering the potentiality to decide was dispersed. The legislators and the judiciary made decisions compliantly alongside each other when exceptional security measures were passed through legislation. The judicial police, an organisational part of the Ministry of the Interior, was partly the implementor of the legal regulations concerning the security of the nation/state, considering those who were deemed to be a threat were taken to the State Security Courts by the judicial police based on the legislature's decisions, that is pieces of legislation. The potentiality to carry out legal-

repressive measures was embedded in the state's power structure and institutions to handle situations defined as threats by the decision-maker(s).

The empirical chapters so far (Chapters 3, 4, & 5) examined examples of state practices that deviated from the constitutional norms concerning the rights and liberties regime. The data examined shows that while the legislature was more active in taking exceptional security measures between 1923 and 1971, the executive and military powers became more prominent in decision-making between 1971 and 2002. As such, eighteen of the nineteen pieces of legislation examined were enacted between 1924 and 1960. Starting with the 1971 military memorandum, security problems that were addressed as national security issues were dealt with mainly through constitutional emergency responses and emergency decrees. However, the Parliament was still involved in the decision-making process for the ratification of declarations of martial law/emergency and emergency decrees. Regarding the former, the Parliament approved all declarations but one, which was attempted to legitimise by the government based on the consequences of the Iraqi civil war. For the latter, parliamentary action and inaction as a political decision enabled the norm-making by the executive. Furthermore, both the constitutional frameworks established through the amendments of 1971-1973 and the 1982 Constitution and legal regulations such as the Martial Law Act of 1971 and the State of Emergency Law of 1983 aimed at excluding the judicial review of the Constitutional Court concerning the interventions in the rights and liberties regime. The decision-making powers were delegated in an attempt to escape judicial overview, as the Constitutional Court would check the constitutionality of laws. However, both the Constitutional Court and the

administrative judiciary made decisions that did not comply with governmental policies.

This chapter showed that there were two central notions framed as a threat by state authorities between 1971 and 2002: those struggling to obtain political power from the ruling authorities (communism, political parties, and state institutions) and terrorism and separatism (measures against the PKK and the Kurdish-inhabited southeast).

During the period under research, exceptional security measures presented permanency and were spatially selective within the national territory, similar to the duration between 1923 and 1948 (see Chapter 3). The 1960s were the years for the revival of the Kurdish movement in Türkiye (Bora, 2017, p. 842). In this era, the quiet in the southeast ceased, and the Kurdish movement's political revival led to the state's security concerns regarding territorial integrity. Towards the end of the 1960s, the political antagonism between those seeking political power led to instances where even legal protest marches ended in violence. Following the 1971 military intervention, the country's eastern regions, alongside the citizens deemed communists, became the focal point of security measures that infringed upon the citizens' rights and liberties. During the approximately 18-year period from 1984 to 2002, there was no period in which the entire country was entirely free from the state of emergency. Between 1987 and 2002, the entire southeast was placed under the jurisdiction of the SoERG rule. This institution presented similarities to the First IG, which operated in the southeast between 1927 and 1948. However, unlike the First IG, the Governorate functioned through the regulations of the constitutional emergency response, the state of

emergency. While the establishment of the First IG rule was not legitimised based on an emergency requiring immediate action, the establishment of the SoERG was legitimised based on an imminent threat - the PKK terrorism aiming at dividing the country, hence constituting a threat to the territorial integrity of the country and the constitutional order.

Following the ascent of the AKP (Justice and Development Party, *Adalet ve Kalkınma Partisi*) to power in 2002, the state of emergency was lifted within the same year. Due to both the political agenda of the political party in question, which had the majority at the Parliament, and Türkiye's Europeanisation process in the post-9/11 period, security understanding of political power and the methods through which exceptional security measures were taken underwent some changes. The subsequent chapter will examine the period between 2002 and 2019 and analyse the exceptional security measures taken under the AKP rule until the COVID-19 outbreak.

CHAPTER 6

2002-2019

This chapter examines the state authorities' infringements upon the rights and liberties regime in Türkiye in the first seventeen years of the AKP (Justice and Development Party, *Adalet ve Kalkınma Partisi*) era between their lifting of the state of emergency in November 2002 and the COVID-19 pandemic, during which state authorities employed exceptional security measures for reasons other than nation/state security. The AKP won the November 2002 general elections and a majority in the Parliament. One of the AKP's initial actions after coming to power was to lift the state of emergency that had been in effect in the southeast for nearly fifteen years (the duration is over two decades when martial law declared in the southeast in 1978 is taken into account). The period under research in this chapter was significantly shaped by international security politics and the counterterrorism means of the contemporary era after the 9/11 attacks, especially roughly in the first decade of the AKP rule.

On 11 September 2001, al-Qaida carried out a series of attacks on US soil, causing the death of over 3 thousand people (Bergen, 2023). Defining the attacks as an assault on the civilised world, US President George W. Bush declared a global "war against all those who seek to export terror", which would last "until every terrorist group of global reach has been found, stopped and defeated", President Bush stated (*Global War on Terror*, n.d.). The dichotomous positionings during the Cold War that had seemed to have

ceased in the 1990s revived in a different form – this time, the civilised world versus those portrayed as barbarians using the Islamic belief to destroy western civilisation (Gregory, 2010, p. 170; Tsoukala, 2004, p. 426; Walker, 2006, p. 76). Türkiye collaborated closely with the US and the EU in the post-9/11 era and during the global war on terror, which accompanied numerous democratic reforms in line with the EU acquis.

Due mainly to the AKP's democratic reforms during its early years in governance (see section 6.1.), there was significant optimism that the AKP would implement secular, modernising, liberating, and inclusive policies addressing marginalised segments of society (Connelly, 2003, p. 288; Cumhuriyet, 2015; HRW, 2010; Insel, 2003). However, the high expectations for further democratic progress eventually gave way to concerns about the growing presence of authoritarian tendencies. In the process, a security understanding that prioritises state security narrowed the area of rights and liberties and this understanding dominated domestic politics. While Türkiye made its own use of the global wave of counterterrorism legislation, the primary way of restricting or suspending constitutional rights and liberties became based mainly on ambiguous definitions of terrorism and terrorist acts placed in legal texts. Besides, exceptional security practices still had a spatially selective aspect, targeting the southeast and adopting the methods employed during the Republic's formative years. During the two-year duration of the state of emergency declared following the 2016 coup attempt, constitutional amendments were enacted via a referendum, transitioning Türkiye from a parliamentary democracy to a 'Turkish-style presidential system.' As the coup attempt was utilised to justify the government's

oppressive policies, thousands of public officials labelled as ‘separatist’ or ‘socialist’ were dismissed from office without a court verdict, along with members and supporters of the organisation behind the coup attempt, through emergency decrees.

In this chapter, I will first introduce the international and domestic contexts in which the AKP initiated exceptional security measures and the juridico-political frameworks of these measures. Subsequently, I will examine how and on what basis state authorities interfered with the rights and liberties regime. The empirical evidence examined will comprise the Specially Authorised Criminal Courts (*Özel Yetkili Ceza Mahkemeleri*) (2004-2014) as the continuation of State Security Courts (see Chapter 5), the proceedings of *Ergenekon* (2007-2019) and *Balyoz* (2010-2015), strategic lawsuits targeting dissenters as an ever-present threat to rights and liberties and a category of punishment, Gezi protests in 2013, the *hendek* operations (2015-2016) in southeastern Türkiye, during which state authorities acted similar to the formative years of the Republic, the state of emergency (2016-2018), and a piece of legislation enacted in 2018 after the state of emergency was lifted, depriving individuals of their rights and liberties. The examples will include various ways of enacting state power and exercising sovereign power by several state authorities, including all state branches, bureaucrats, and security professionals.

6.1. Counterterrorism Policies and Legislation in the 2000s

This section will discuss the context of the post-9/11 era and Türkiye's security policies against terrorism in relevance to the international context. The legal regulations examined below determined how state authorities would alter the rights and liberties regime for those framed as terrorists in the coming years. As such, the international context and the counterterrorism legislation provided the means for the state's fight against those labelled as terrorists.

6.1.1. The Aftermath of 9/11

During the global war on terror, Türkiye, as a NATO member, was an ally of the US, and it also became a "proactive partner" by becoming a party to "all twelve international conventions and protocols against terrorism" (Sözen, 2006, p. 138). In this period, when security became the overarching value of international politics, the Turkish government used the US framing of the global terrorism threat to reframe its own insecurities. An indicator of this situation emerged at the parliamentary meeting in March 2003, where the issue of Türkiye sending troops to Iraq in support of the USA was discussed. For, governmental authorities stated that they were in favour of deploying the troops as a necessity due to the security threats concerning Türkiye and also as a requirement begotten by being a NATO and UN Security Council member and an EU candidate country (TBMM, 2003, pp. 115–116). Although the 'necessity' was presented as a requirement of Türkiye's international position, the security threats addressed were related to Türkiye's national

security: “the nesting of terrorist elements targeting Turkey’s national unity and territorial integrity in the region” and “the possibility of mass migration from Northern Iraq to our country” (TBMM, 2003, pp. 115–116). As the majority of the Parliament was unconvinced, Türkiye did not deploy its troops to Iraq.

For the USA, Türkiye possessed geopolitical value, as bordering Iraq, it provided the USA with logistical support despite not taking part in the Iraqi war actively (Çakır, 2016; Müftüler-Bac, 2005). However, despite this cooperation, the war in Iraq raised distinct national security concerns for Türkiye, diverging from those of the US. Türkiye had already been in its own war against terrorism since 1984 against the separatist PKK (Kurdistan Workers’ Party). Given the conditions, while the USA considered the Iraqi Kurds as allies against the Iraqi regime under the rule of Saddam Hussain, Türkiye had concerns about the Iraqi Kurds’ possible success, which could lead to the establishment of an independent Kurdish state that could be supported by the Kurds inhabiting the Turkish territory. As such, the USA and Türkiye had different stances on the Iraqi Kurds’ role in the Iraqi war. Besides this disagreement, as Müftüler-Bac (2005, p. 62) argues, the international conjuncture in the post-9/11 era increased Türkiye’s insecurities, considering Türkiye was “the only Muslim member of NATO” and “was directly affected due to the apparent confrontation between the west and the Islamic world”.

While Türkiye was preoccupied with PKK terrorism and concerns for territorial integrity, al-Qaida carried out terrorist bombings in Istanbul in November 2003. The organisation that assumed responsibility for the attack, the Abu Hafz Al-Masri Brigades, referred to Türkiye as a “tail” of “the criminal

Bush” and set Türkiye as one of its target countries (Moore, 2003). The Islamist attacks on Turkish soil affirmed Türkiye’s alliance with the ‘west’ in the eyes of the ‘west’, leading the country to build closer ties with the US and the EU. Attributing strategic importance to Türkiye, the USA was in favour of strengthening the relations between Türkiye and the EU by regarding the potential benefits it could derive from a closer alliance with Türkiye (see Çakır, 2016, pp. 2026–2028). Following an Oval Office meeting with President Bush in January 2004, the Turkish PM of the time, Recep Tayyip Erdoğan, declared his country’s stance in the global war on terror: “It’s very obvious where Turkey stands in the fight against terrorism, ... especially in the aftermath of what happened on September 11th. We are in a common effort to fight terrorism” (The Oval Office, 2004). As Türkiye sided with the US and the EU, in line with the EU acquis, during the early 2000s, legal and institutional reforms, such as abolishing the death penalty and decriminalising the use of the Kurdish language in broadcasting, were implemented to address democratisation and human rights issues. By 2005, there was an optimistic outlook for the Turkish government’s democratisation efforts. In the eyes of the EU, the gradual withdrawal of the military from political affairs and a more inclusive approach towards ethnic and religious minority citizens paved the way for the commencement of accession negotiations between the EU and Türkiye in 2005 (European Commission, 2005).

However, Türkiye’s endeavour to democratise the country and improve the recognition of human rights did not last long. The AKP, which came to power in an international context shaped by 9/11, made its usefulness to the USA but also utilised the global terrorism frame for its own uses. Despite lifting the

state of emergency first thing after coming to power, it made instruments of legal tools to dismay those it framed as a threat to the nation/state. Like many countries worldwide in the post-9/11 era (see Eckert, 2008), extraordinary powers were granted to state authorities through legislation.

6.1.2. The Counterterrorism Legislation

The legislation I examine here constitutes the legal framework based on which state authorities could implement exceptional security measures without declaring an emergency in the 2000s and onwards. In Türkiye, two laws criminalise terrorism: the Law of Fight against Terrorism (*Terörle Mücadele Kanunu*), no. 3713, and the Turkish Penal Code (*Türk Ceza Kanunu*), no. 5237. The Parliament passed Türkiye's counterterrorism law, Law 3713, in 1991 (see Chapter 5) and made substantial amendments to the Law in 2006. The Turkish Penal Code, no. 765, which came into force in 1926, was abolished, and Law 5237 was introduced on 12 October 2004. These pieces of legislation provided state authorities with discretionary powers to take preventive security measures interfering with the rights and liberties regime. While all the countries engaged in the global war on terror framed their anti-terror legislations with a focus on security and preventive measures, “[f]or different governments”, these legislations “served different ends” (Eckert, 2008, p. 9; see also Özkırımlı, 2014, pp. 29–30). In Türkiye, the amendments to the anti-terror legislation broadened the already vague definition of terrorism. As such, the legal reforms carried out in the process of

harmonisation with the EU acquis left out the issue of terrorism by enhancing the Law's ambiguity (see HRW, 2010, p. 18).

The Turkish Penal Code, Article 220, and Sections 4 and 5, entitled "Offences Against the Security of the State" and "Offenses Against the Constitutional Order and Its Functioning", concern terror crimes. Article 220 envisages imprisonment for "those who establish or manage an [armed or unarmed] organisation in order to commit acts deemed criminal by law" and for the members of this sort of organisations (the penalty is heavier in case the organisation is armed). The imprisonment is applicable without necessitating the commission of the organisation's intended crime. As long as the organisation comprises more than two members and "their means and equipment are [deemed to be] suitable for committing the intended crimes," the leaders and the members face imprisonment sentences of varying lengths (see Art. 220). According to the provision in question, those who are deemed to make the propaganda of the organisation or its purpose face imprisonment from one year to three years. If this crime is committed through the press and broadcasting, the penalty to be imposed is increased by half (Art. 220). The Penal Code defines armed organisations intending to commit crimes separately in Article 314. An armed organisation is defined as one that intends to commit offences against the security of the state and the constitutional order. These crimes threaten the territorial integrity and security of the state, the existence and functioning of the legislative and executive branches, and the existence of the constitutional order as a whole (Art. 302-316).

The concept of 'terrorism' has a connotation of outrageous and illegitimate violence (Guelke, 2006, pp. 182–183). The response to an action considered

terrorist has connotations of exceptional security measures. As the concept of 'terrorism' is associated with security-related concepts, such as 'national security', 'territorial integrity', and 'threat to the existence of the state', the labelling as 'terrorist' comes with the 'necessity' of punishing the labelled. The definition of 'terrorism' in Türkiye's counterterrorism law, Law 3713, was already unclear and broad (see Chapter 5). While retaining these features, the 2006 amendments to the Law further broadened the scope of the criteria based on which an act would be considered to constitute a terrorist offence (Art. 3 & 4). As such, Law 3713 referenced 60 offences criminalised by the 2004 Penal Code and several offences in six other pieces of legislation, as well as the 120th Article of the Constitution, which regulates the state of emergency declaration. According to the provision, all these offences would constitute a terror crime if they are committed by a terrorist organisation, which is defined by the Penal Code Article 314. With an amendment to Article 5, the length of imprisonment penalties was increased. The Law facilitated further discretion of law enforcement and the judiciary. Based on the amended Law, state authorities could categorise political crimes as terror crimes, resulting in more severe punishment (Özdoğan & Ersanlı, 2011; Yonucu, 2018, p. 717).

Provisions that allowed discrete interpretations of the laws interfered with the citizens' right to legal security. The courts established in the 2000s to ensure the security of the state were instrumental in this. The subsequent section will examine the maintenance of the judicial system, equipping specific courts alongside law-enforcement officers with broad discretionary powers to interfere with the constitutionally recognised rights and liberties.

6.2. Specially Authorised Criminal Courts (*Özel Yetkili Ceza Mahkemeleri*) (2004-2014)

As part of Türkiye's efforts to adjust its judicial system in line with the EU acquis, Article 143 of the 1982 Constitution regulating the State Security Courts (see Chapter 5) was revoked in 2004. Afterwards, the State Security Courts were abolished on 16 June 2004, with the Law on Amendments to the Criminal Procedures Act and the Abolition of State Security Courts (*Ceza Muhakemeleri Usulü Kanununda Değişiklik Yapılması ve Devlet Güvenlik Mahkemelerinin Kaldırılmasına Dair Kanun*), no. 5190. In their stead, the Specially Authorised Criminal Courts were instituted to handle offences deemed concerning the security of the nation/state. These courts operated until they were terminated on 6 March 2014 with the Law on Amendments to the Anti-Terrorism Law, the Code of Criminal Procedure and Some Other Laws (*Terörle Mücadele Kanunu ve Ceza Muhakemesi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun*), no. 6526.

The Specially Authorised Courts represent a continuation of State Security Courts, with their primary responsibilities centred around matters of state security and exercising their judicial powers based on the legislation concerning the rights and liberties regime. The legal regulations on the functioning of the courts in question granted highly discretionary powers to judicial and law-enforcement authorities. The special courts were established by Article 250 of the Code of Criminal Procedure (*Ceza Muhakemesi Kanunu*), no. 5271, enacted on 17 December 2004. Articles 250 and 252 of Law 5271 set forth the exceptional character of these courts that distinguishes the criminal procedures for the crimes falling under the jurisdiction of these

courts from the routine and ordinary criminal procedures (see Türkiye Barolar Birliği, 2011, p. 46). Although the name of the courts hearing cases assumed to concern nation/state security changed from ‘State Security Courts’, their essence and operating procedures mainly remained the same. Moreover, the cases handled by the State Security Courts were transferred to these Special Courts, and the judges of the old courts continued to serve in these newly established ones.

Legal regulations concerning the Specially Authorised Courts prioritised the investigation and prosecution of crimes falling under the jurisdiction of these courts, referring to the cases deemed relevant to the security of the state (*Law 5271*, Art. 250). Per *Law 5271*, prosecutors tasked with investigating such crimes within their jurisdiction could directly proceed with prosecution (Art. 251). In cases where the crime occurred outside the geographical jurisdiction of the courts or within a military zone, military prosecutors could be asked to conduct investigations. Upon request by the prosecutor and approval by the judge, the twenty-four-hour precautionary arrest period could be extended to forty-eight hours. In regions under a state of emergency, the four-day detention period could be prolonged to seven days (Art. 251).

The authorities that decided whether any crime fell within the jurisdiction of these courts were law enforcement authorities. With the amendments to the Law on Police Duties and Powers (*Polis Vazife ve Salâhiyet Kanununu*), no. 2559, in 2007, the police’s discretionary authority was expanded, and police officers became more capable of intervening in citizens’ rights and liberties on a daily basis (*Law 2559*, Art. 4, 5, 6, 9, 16). As such, alongside the Special

Courts, the discretionary authority wielded by law enforcement became prominent in the state authorities' potentiality to act in contradiction to the constitutional norms of rights. In the judicial processes deemed to be concerning state security, law enforcement decided that the action of an individual or organisation posed a threat to the security of the nation/state, prepared the indictments, and referred the cases that law enforcement authorities deemed concern the security of the state to these courts (see *Law 1412*, Art. 394). As such, the increasing authority of law enforcement and the broad jurisdiction granted to these specialised courts to utilise law enforcement forces empowered the judiciary and security professionals to take and implement exceptional security measures.

According to Article 250 of Law 5271, Specially Authorised Courts were appointed by the High Council of Judges and Prosecutors (*Hakimler ve Savcılar Yüksek Kurulu*, HCoJP)³¹ upon the proposal of the Ministry of Justice. This series of administrative procedures leading to the establishment of the courts included quandaries regarding the independence of these courts. A fundamental tenet of the rule of law is the autonomy of the judiciary and the lack of higher-ranking supervisors for judges. While lower courts are required to elucidate their rulings to higher courts, supreme court justices are meant to remain unanswerable to any entity for their judgments. According to the 1982 Constitution, while judicial matters would be handled autonomously by independent courts, the administrative matters of the judiciary (matters concerning judicial institutions and their employees) would be carried out by

³¹ The name of the institution was changed to 'The Council of Judges and Prosecutors' in 2017.

HCoJP. HCoJP was the decision maker on matters such as promotion, disciplinary punishment, relocation and dismissal of judges and prosecutors (*The 1982 Constitution*, Art. 159). Before the 2010 constitutional amendments, the HCoJP was essentially autonomous from governmental influence as the high courts themselves elected the vast majority of the HCoJP members. The 2010 constitutional amendments changed the formation and decision-making principles of the institution and ultimately subjected the HCoJP to the authority of the government and its allies (see section 6.3.) (see DW Türkçe, 2019; see also Gözler, 2017).

Purposeful use of Türkiye's counterterror legislation by the government, law enforcement, and the judiciary started mainly after 2007 as people were categorised as terrorists in the second half of the 2000s and onwards, often regardless of whether they have organisational ties with any terrorist organisation (HRW, 2010, pp. 18–27; Özdoğan & Ersanlı, 2011, p. 75; Yonucu, 2018). The following section will discuss how the labelling based on counterterrorism legislation led to the administrative and judicial practices that intervened in the rights and liberties of hundreds of people who were, as revealed over time, unrightfully labelled as terrorists and tried by the Specially Authorised Criminal Courts.

6.3. The Cases of *Ergenekon* (2007-2019) and *Balyoz* (2010-2015)

In 2007 and 2008, prosecutors in Türkiye put 46 people under detention on the allegation that these people were members of an armed terrorist organisation, *Ergenekon* (BİA Haber Merkezi, 2019). The trials began in 2008

and continued until 2019, based on indictments in which *Ergenekon* leaders and members were framed as terrorists (BBC Türkçe, 2016). Over the years, the scope of the case was expanded as 23 separate indictments were combined into one case, and the number of defendants increased to 275 (16. Ceza Dairesi, 2016). Another case associated with *Ergenekon*, the *Balyoz* case, started in 2010, and the first hearing was held on 16 December that year. The defendants of both *Ergenekon* and *Balyoz* were tried for crimes against state security and the constitutional order (coup plotting) defined in the Penal Code and the counterterror legislation. Among the defendants in the cases in question were “hundreds of current and retired military officers, journalists, academics, and lawyers, as well as a chief prosecutor and even a former mayor of Istanbul” (Rodrik, 2011, p. 99). As of 2014, “15 percent of all army generals in Turkey” were imprisoned (Yörük, 2014, p. 421). In 2014, the Constitutional Court ruled that the rights of the defendants in the *Balyoz* case were violated. Subsequently, on 31 March 2015, all 236 defendants were acquitted after facing heavy sentences such as life imprisonment (Habertürk, 2015). Similarly, with its decision on 21 April 2016, the Supreme Court of Appeal (*Yargıtay*) overturned the *Ergenekon* case due to substantive reasons such as the restriction of the defendants’ rights to defence, the inability to prove the existence of a terrorist organisation called ‘Ergenekon’, and the illegal collection of evidence (16. Ceza Dairesi, 2016). In the last retrial hearing after the Supreme Court decision, all defendants accused of being terrorists were acquitted on 1 July 2019, after 12 years (BIA News Desk, 2019).

The *Ergenekon* and *Balyoz* trials were extraordinary legal proceedings that reflected the antagonism between the ruling AKP and mainly the secularist military establishment in Türkiye, leading to the violation of the rights and liberties of hundreds once deemed terrorists by the government and the judiciary. Most defendants of both cases in question were known to be against the AKP rule. After the AKP came to power in 2002, the relationship between the secularist military and political rule remained rocky as the military had concerns over the Islamist tendencies prevailing in the government's policies. As such, on 27 April 2007, a statement emphasising secularism and heavily criticising the AKP was published on the General Staff's website. In the statement made, the policies of the AKP were defined as indications of a "reactionary understanding that is anti-republican and has no other purpose than to erode the fundamental characteristics of our state" (Cumhuriyet, 2007). The military opposed the election of Abdullah Gül, a conservative politician who is one of the founding fathers of the AKP, as president of the state. The online statement declared that the military forces saw this matter as a secularism issue and that "The Turkish Armed Forces is a party in these discussions and is the definitive defender of secularism" (Cumhuriyet, 2007). The first *Ergenekon* detentions came only three months after this online ultimatum.

The ultimatum was against the government's prospects and reminiscent of the military interventions in civilian politics that took place in the past. In the face of the military's statement, the government refused to retreat. The Minister of Justice Cemil Çiçek made a statement about the views of the government on the online statement and said that "[i]t is inconceivable in a

democratic state that the general staff would use any phrase against the government on any matter” (Tavernise, 2007). Siding with the AKP government, the EU Commissioner Olli Rehn argued that “[t]his is a test case if the Turkish armed forces respect democratic secularism and the democratic arrangement of civil-military relations” (Tavernise, 2007).

The military’s involvement in politics enabled the AKP to legitimise the *Ergenekon* and *Balyoz* cases with discourses of democratisation and Europeanisation. As such, the governmental discourses revolved around consolidating democracy and eroding the military tutelage over civilian politics and anti-militarisation. The PM of the time, Recep Tayyip Erdoğan, standing behind the *Ergenekon* investigation, expressed that the Republic of Türkiye was decisive in continuing “the march of civilisation with the modern world”, associating the *Ergenekon* case with democracy’s requirements (Vatan, 2008). The EU Commission considered the investigations in its 2010 progress report as “an opportunity for Turkey to strengthen confidence in the proper functioning of its democratic institutions and the rule of law” (European Commission, 2010, p. 7). When heavy penalties rained down on the *Ergenekon* defendants in 2013, then EU Minister and Chief Negotiator Egemen Bağış expressed his satisfaction: “As a country, we are living through a historic day in the name of democracy and the rule of law.” According to Bağış, the *Ergenekon* case “has been a case in line with the determination and will of a country advancing in the EU process” (AA, 2013).

Civilian oversight of the security forces remained an essential criterion in every EU Commission progress report after the accession process started in 2005. In this context, the government officials’ presentation and legitimisation of

the *Ergenekon* and *Balyoz* cases as democratisation and Europeanisation was compatible with the then-current international relations of Türkiye. As such, according to the USA, in the post-9/11 period, under the AKP rule, Türkiye created a good model for other states in the Middle East: moderately Islamic in a secular democracy (see Friedman, 2015; Özkırımlı, 2014, pp. 32–33; Somer, 2007). Accordingly, the judicial cases targeting the alleged coup plotters were presented by governmental authorities as the attempts of an Islamic political party to consolidate secular democracy.

The pledges of democracy and anti-militarism through the lawsuits in question fell silent as the judges decided over time that most of the evidence presented as the basis for the indictments was forged by law enforcement, the prosecutors, and even the expert witnesses of the cases (16. Ceza Dairesi, 2016; see AA, 2015; BBC Türkçe, 2016). Retired judge Köksal Şengün, who tried the *Ergenekon* case and was dismissed due to the votes he cast for the release of the defendants, said in an interview:

We tried people based on documents that were completely made-up and counterfeited. ... I said, 'let us make a trial, but without arrest [so that] ... the lives of these people [defendants] and their families would not be destroyed'. ... But it did not happen. (DHA, 2018)

During the trials, the courts made verdicts by violating judicial procedures.

Secret testimonies entered the judicial practice with the *Ergenekon* case.

While the case was handled, 31 of the 160 witness testimonies were secret (BİA Haber Merkezi, 2019). Based on these secret statements that could not be falsified as the affiants and how they provided the evidence were unknown to the defence, people were sentenced to imprisonment and stayed in prison

for years. Eight defendants died while the trials were in progress (TBMM, 2019, p. 313).

Among the *Ergenekon* defendants were those associated with illegal killings of Kurdish citizens of Türkiye and socialists, unsolved murders, and disappearances in custody in the name of counterterrorism in eastern Türkiye in the 1990s (Arpacık, 2020; Karadaş, 2019; Kısa Dalga, 2021; Korkut, 2008; Polat, 2019; Şık, 2014). The inclusion of the names of these individuals in the indictments provided a glimmer of hope to the families who had lost their loved ones in the unresolved murders and to those who sought a resolution for the killings. According to the official accounts, 4,485 civilians were killed during the state of emergency period (1987-2002) in the southeast (Oral, 2002). Shedding light on the unsolved murders from the 1990s and holding the responsible parties accountable could contribute to the advancement of democracy within the country. In this context, the AKP managed to garner the support of some of the public for the lawsuits (Rodrik, 2011, p. 100). However, as time passed, it became apparent that the allegations would be constrained only to allegations of orchestrating a coup to overthrow the democratically elected government, and the unresolved murders would not be addressed (see Avşar, 2013, pp. 11–13). Besides, during the trials, the names of people who had never been known to be involved in any political violence-related activity in their lifetime were put together with those who enjoyed vast discretionary powers during the state of emergency in the southeast (see Chapter 5) and were never held accountable for state violence and killings. When the trials concluded, as the *Ergenekon* terrorist organisation was

nowhere to be found according to the judiciary, all were acquitted without any attempt to resolve state crimes in the past.

During the *Ergenekon* and *Balyoz* proceedings, the defendants were deprived of their social and political rights. As discussed in the previous section, after 9/11, Türkiye incorporated into its domestic law the legal measures taken under the name of combating terrorism in the US and beyond (see Eckert, 2008; see also Haubrich, 2003). The allegation of terrorism permitted the imprisonment of individuals without a trial, and prolonged legal proceedings and periods of detention could effectively turn into punishment. As such, counterterror legislation served as a tool to infringe upon the rights and liberties of those framed as terrorists. Therefore, it became the basis for exceptional security measures to which, for example, the *Ergenekon* and *Balyoz* defendants were exposed.

It was later revealed that the operations targeting the military and the opposition, the *Ergenekon* and *Balyoz* proceedings, were spearheaded mainly by the members of the Islamist Fethullah Gülen Communion (*Fethullah Gülen Cemaati*), back then a complementary partner of the AKP rule, now defined as the Fetullahist Terrorist Organisation (FETÖ) after its members' military coup attempt on 15 July 2016 (see section 6.7). As stated in a Ministry of Justice document in 2017, "one of the defining characteristics" of this organisation was "infiltration into the Turkish military, judiciary, [and] police corps ... to use the State's means and human resources for their ultimate goal" (Murat, 2017, p. 24). This infiltration was facilitated by the AKP rule as there were organic ties between the AKP and the Gülen communion. For example, in a speech in 2012, PM Erdoğan expressed his longing for Fetullah

Gülen, the religious leader of the Fetullahist movement, and called on him to return to Türkiye from the US (Bianet, 2012). As such, until their relations deteriorated, starting in 2013 after the Gezi protests (see section 6.5), the AKP obtained a significant part of its organisational and bureaucratic support from the Fetullahists. In addition to the anti-terror legislation, the structural foundations for political developments to influence judicial processes and decisions were laid with a series of constitutional amendments in 2010, from which the Fetullahists benefited to fill the judiciary cadres. By virtue of the state power they were exercising, the Fetullahists in law enforcement and the judiciary had the capacity to make decisions concerning citizens' rights and liberties.

In the *Ergenekon* and *Balyoz* cases, the approach employed to eliminate alleged enemies (terrorists) involved both governmental authorities designating the accused as enemies of the state and the misuse of judicial powers, particularly by prosecutors. Differently from other exceptional security measures taken through judiciary practices discussed in this dissertation so far, the circumstances faced by the defendants encompassed the imposition of illicit and unlawful practices through state institutions rather than a deliberate manipulation of the law for political motives. Fabricated evidence presented to the Specially Authorised Criminal Courts was not a result of interpretation. This divergence was so pronounced that the authority held by prosecutors as agents of the state superseded the legal standards they were bound by, and the extent of force employed by the police extended beyond the scope of maintaining public order, thereby exceeding constitutional norms. In distinction from preceding instances, the source of this power did not stem

from legal statutes but rather from an illicit authority concealed within the framework of state power. *Ergenekon* and *Balyoz* trials specifically targeted a particular institution, namely the military and, to a lesser extent, the opposition in general.

During the period under research, these two cases did not stand as the sole instances wherein the state employed legal mechanisms to eliminate or at least dismay those framed as a threat by state authorities. The subsequent section will look at other cases where the judicial system became a means for ensuring security against individuals labelled as terrorists.

6.4. Strategic Lawsuits Targeting Dissenters

This section examines the lawsuits that concern democracy and the rule of law as the proceedings in question concern public participation in the political sphere – exercising political rights such as freedom of expression and the right to assembly and organisation. Such proceedings have been referred to as ‘strategic lawsuits against public participation (SLAPPs)’ in US civil law since the 1980s. These lawsuits “send a clear message: that there is a ‘price’ for speaking out politically” (Pring, 1989, p. 6), and they “are fundamentally different from other types of lawsuits because they seek to stifle legitimate political expression” (Abrams, 1989, p. 33). While loyal to these arguments, I will call these lawsuits ‘strategic lawsuits targeting dissents’ considering they are not against the entire public but against only those who oppose the official views of state authorities wielding power to alter the rights and liberties regime of those framed as a threat.

Even in cases of acquittal, these strategic trials serve as a method of punishment as the defence gets obliged to channel their financial and emotional resources and efforts into these trials, considering the stress experienced and lengthy legal processes. Strategic lawsuits serve two different purposes simultaneously: (i) they criminalise and punish legitimate political actions and, doing so, violate individual rights and liberties; (ii) they aim to make an example of those accused and, therefore, serve as a preventive security measure by dissuading the citizens who might choose to exercise their political rights in a similar way. Such proceedings became increasingly prevalent worldwide, particularly in the post-9/11 era, due to the legislation granting extraordinary powers to state authorities. In Türkiye, too, in the 2000s and onwards, as it became easier to associate an activity or speech with terrorism under the provisions of ambiguous counterterrorism legislation, the judiciary used the counterterrorism law to silence the opposition and civil society with frustrating trials, time in prison, or both (see Arslanalp & Erkmen, 2020a; Yonucu, 2018).

Particularly after the counterterrorism law was amended in 2006, specific communities were systematically targeted through strategic lawsuits contingent upon the prevailing political circumstances in Türkiye. Mainly after 2006, the counterterrorism law functioned as a tool to restrict or suspend the social and political rights of citizens, focusing on spaces with significant Alevi or Kurdish inhabitants, the LGBT+ community, as well as organisations and individuals aligned with left-leaning and pro-Kurdish stances (Arslanalp & Erkmen, 2020a, pp. 956–957; HRW, 2010, pp. 20–21, 2016a, pp. 3–5; Özkırımlı, 2014, pp. 29–32; Yonucu, 2018, p. 717). The lack of clarity in

definitions in the Penal Code and the Law of Fight against Terrorism enabled courts to interpret laws broadly. Before the 2006 amendments to the anti-terrorism legislation, in 2005, there were 273 individuals convicted of terrorism-related charges; however, this figure surged to 12,897 by 2011 (Özkırmılı, 2014, p. 29). Following the amendments to the counterterrorism law, the Kurdish politicians, who could conduct political activities without being outlawed in the first years of the 2000s, began to face hardship in the political and judicial domain because of the new revisions to Law 3713 (Özdoğan & Ersanlı, 2011, p. 62; Sözen, 2006, p. 139). As Günay Göksu Özdoğan and Büşra Ersanlı (2011, p. 75) highlight, the counterterrorism law rendered it possible for the pro-Kurdish politicians to be found guilty when their political party is “(thought to be) in affinity with a terrorist-labeled organization ... even if there was a lack of direct material evidence of use of violence and advocacy of terrorism”.

Türkiye’s counterterrorism legislation constituted an ever-present threat to citizens, as their social and political rights were at the whim of those who get to exercise sovereign power (see Benjamin, 2021; Endicott, 1999; Özkırmılı, 2014, p. x; Yonucu, 2018). As such, statements devoid of violence were classified as acts of terrorism, leading to individuals being linked with terrorist organisations on ambiguous grounds. From 2001 to 2007, the annual count of criminal investigations ranged from seven to nine thousand. However, in 2008, this number surged to 12,564. Subsequently, in both 2009 and 2010, approximately 69,000 individuals each year became subjects of criminal investigations (Amnesty International, 2013, p. 18). A study by the Associated Press in 2011 revealed that of roughly 30,000 legal convictions under global

anti-terrorism laws from 2001 onwards, around 12,000 - which accounts for over a third - occurred within Türkiye (Amnesty International, 2013, p. 18). The data indicates a consistent rise between 2009 and 2012 in the count of journalists held in prisons and individuals prosecuted under anti-terrorism laws, often due only to the expression of their political viewpoints (see Saatçioğlu, 2014, p. 93). Exceptional security measures taken through the judiciary were routinised and normalised due to the purposeful use of the counterterror legislation. The judiciary practices severed the freedom of expression of those who go against the official views on sensitive issues (Amnesty International, 2013, p. 5; Hafıza Merkezi, 2022, pp. 10–14; HRW, 2016a, p. 13).

As such, under the AKP rule and especially after 2006, based on counterterror legislation, strategic lawsuits were utilised to advance political agendas through legal channels. These struggles involved an imbalance, as one side possesses state power and resources. At issue here, the judiciary was one of the decision-makers and the implementer of exceptional security measures to prevent citizens from benefiting from their constitutional rights and liberties. In addition to operating at the individual and group levels, the law targets urban margins with a heavy Alevi population and the southeast of Türkiye, where Kurds make up the majority (see Yonucu, 2018). The law appears to be the power that fights against internal enemies while putting the violence practised through law in a legitimate context through broad and ambiguous definitions of ‘terrorism’ and ‘threat’.

The existence of a constitutional order (political order) does not depend only on the constitutional text. Instead, it is the sum of the conditions in and of

a country. Laws gain their content through interpretation, which may make them relatively independent of their texts. The acquired attributions of a legal text are, too, a result of the conditions in and of a country in which the law was made. The way the government made use of the concept of 'terrorism' was not independent of the context and historicity but a consequence of them. Accordingly, based on the text of the law, the judiciary's verdicts were not free of the country's political atmosphere. Therefore, all three powers embodied in the state authority, the legislative, the executive, and the judiciary, had their parts in restricting constitutional rights and liberties in the name of security. The legislative facilitated people to be easily labelled as 'terrorists' whilst the executive made use of 'terrorism' to securitise dissenters. The judiciary processes, on the other hand, punished people for often enjoying their constitutional rights, such as attending a peaceful protest. The following section will discuss an example of this.

6.5. Gezi Protests in 2013

The AKP-run Istanbul Metropolitan Municipality's project, which included rebuilding the Artillery Barracks (*Topçu Kışlası*)³² on the site of Gezi Park, was approved by the High Council for the Protection of Cultural Heritage (*Kültür Varlıklarını Koruma Yüksek Kurulu*) on 28 February 2013 (Aksu, 2013). The institution, whose decision was final, was authorised to decide on such matters, and it consisted of bureaucrats and Ministry of Culture and Tourism

³² Artillery Barracks, demolished in 1940, was an architectural structure built in the Ottoman period, where Gezi Park is located today.

members. On 27 May 2023, heavy equipment was taken to Gezi Park to demolish the park. Citizens against the Municipality's project were organised over social media, gathered in the park to prevent demolition, set up camp, and refused to leave despite the intermittent police attacks (Cumhuriyet, 2013). After the police burned the tents of environmental activists standing guard in the park on May 30, the protests spread across Türkiye and continued for approximately three weeks, assuming an anti-government stance (Cumhuriyet, 2023; Diken, 2018). According to the police, 5,532 protests were carried out in 80 provinces (only one province, Bayburt, did not host any protests), 3 million 600 thousand people³³ participated in these protests, 5,513 people were detained, and hundreds of people were arrested (BBC Türkçe, 2023; CNN Türk, 2013). Based on data from the Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı*), 121 indictments led to legal proceedings against 6,367 individuals (TİHV, 2016, p. 31). Eight people were killed as a result of police attacks during the protests, and 8,163 people were injured (BİA Haber Merkezi, 2016). In the aftermath of the protests, the protests were defined as "a coup attempt" in the indictment prepared against 16 people as part of an investigation. The defendants were charged with "organising and financing the protests" and "attempting to overthrow the Government of the Republic of Türkiye" (Cumhuriyet, 2023).

Leading to the Gezi protests, the AKP government increasingly adopted authoritarian tones, neoliberal policies benefiting private companies over the public sector, and conservative policies targeting women's rights. As such, the

³³ According to some other accounts, the number of participants was more than double the official figures (see Yörük, 2014, p. 424).

Artillery Barracks project was not simply about transforming the urban space. The result of the project would have been, besides the felling of some 600 trees, the privatisation of a public park and the construction of for-profit buildings and a shopping centre (see Özkırımlı, 2014, pp. viii–ix). Simultaneously, the project reflected Erdoğan's and his party's Ottoman admiration and emulation (see Mikhail, 2020; see also Özkırımlı, 2014, p. ix; Yörük, 2014, pp. 424–425). This Ottoman admiration was intertwined with not only neoliberalism and nostalgia for the Ottoman era but also conservative discourses that aimed at curbing women's rights. As such, in his speeches in 2011 and 2012, PM Erdoğan defined abortion as murder and cesarean delivery as one of the “conspiracies to eradicate the nation” (Berber, 2018) and stated that every abortion was a part of “an insidious plan to erase this nation from the world stage” (BİA Haber Merkezi, 2012). So, he presented his religious prospects in the context of the nation's security. These religious prospects were also instrumental in criminalising the protesters of the Gezi, who were from various segments of society, including women, LGBT+ individuals, Kurds, workers, Alevis, several professional associations, socialists, Kemalists, and nationalists, at a time when the grassroots movements were strong (Özkırımlı, 2014, pp. x–xiii; Yörük, 2014, pp. 421–425). In his ‘Respect for the National Will’ rally organised after the protests were suppressed with excessive police violence, PM Erdoğan said that the protesters “harassed many headscarved women and our girls”, harmed the country's economy and benefited the “interest rate lobby”, and that the main aim of the protesters was vandalism (NTV, 2023).

These allegations, subsequently disproven by court rulings, were not the sole means through which government authorities stigmatised demonstrators exercising their constitutional right to assembly. During the process, these allegations were coupled with the accusation of promoting separatism, leading to the protesters being associated with separatist terrorism. As such, PM Erdoğan, on 15 June 2013, referring to the banners and streamers used at the protests, linked the protests to terrorism: “Terrorist, illegal organisations, illegal organisations that look legal... Rags that insult the Prime Minister. ... The separatists’ poster, the Turkish flag and Atatürk’s poster are side by side” (TRT, 2013). The PM and other governmental authorities joined together in attributing criminal intentions to the protestors. Türkiye’s then-EU Minister³⁴ Egemen Bağış stated, “[f]rom now on [after the 15th of June] the state will unfortunately have to consider everyone who remains there a supporter or member of a terror organization” (Hürriyet Daily News, 2013). According to Minister Bağış, the protests “from now on [would] play into the hands of some separatist organizations that want to break the peace and prioritize vandalism and terrorism” (Hürriyet Daily News, 2013).

The governmental policies and discourses, as well as the conduct of the on-duty police officers during the Gezi protests, contradicted numerous aspects of both the Constitution of the Republic of Türkiye and the principles upheld by the European Convention on Human Rights (ECHR) (see Altıparmak, 2013). As per Article 34 of the Constitution, individuals have the right to organise unarmed and peaceful gatherings and demonstration

³⁴ The Ministry for EU Affairs was abolished in 2018 and its powers were transferred to the Ministry of Foreign Affairs.

marches without prior permission, as also recognised by the ECHR. Without a declaration of state of emergency (even then, a legitimate basis is sought for restrictions and suspensions of rights and liberties), protestors' freedom of expression and right to assembly and organisation were unconstitutionally restricted and oftentimes violated. As such, Istanbul Governor Hüseyin Avni Mutlu described the demonstrations in Taksim as illegal in his statement about the Gezi protests and added: "There is no legal invitation [for these protests]. In this case, I cannot allow you to gather in an area without legal permission. Such action on my part would be in violation of the law" (BİA Haber Merkezi, 2013). Thus, Governor Mutlu sought to legitimise his unlawful statements and actions by presenting them under the guise of protecting the law as if the security measures he decided to take were lawful. The word of law became instrumental in protecting lawlessness, as in unconstitutional activities of state authorities.

During the protests, the police systematically violated the rights and liberties of the protesters, and the purposeful use of the law protected the law enforcement officers. Altıparmak and Salman (2016) underline that police officers who exceeded their authority to use force (*The Turkish Penal Code*, Art. 256) were almost never punished between 2009 and 2014. On the other hand, the penalties for convictions for the crime of resisting the public officer performing their duty (*The Turkish Penal Code*, Art. 265) increased exponentially. While "in 2006, 100 citizens were convicted for every law enforcement officer", "in 2013, approximately 10 thousand citizens were convicted for every law enforcement officer" (Altıparmak & Salman, 2016). The Council of Europe Anti-torture Committee (CPT), in their report prepared

upon the Committee's visit during the Gezi protests, documented several "forms of ill-treatment (including verbal abuse) of persons deprived of their liberty" (CPT, 2015, p. 12). According to the report, detainees stated that they were beaten with kicks, punches and sticks, tear gas was sprayed in their faces while handcuffed, and almost all women stated that they were verbally abused. The Committee concluded that "[a] significant number of persons interviewed in Ankara and Istanbul displayed visible injuries which were consistent with the allegations made" (CPT, 2015, p. 12).

The Gezi protests serve as one of the most conspicuous instances of the government employing unconstitutional and politically motivated extraordinary security measures because they were a part of the most substantial and enduring protest movement in many years. Before, throughout, and following the protests, the political liberties of those opposing the neoliberal and conservative policies of the AKP were curtailed or suspended through securitisation and criminalisation. Citizens participating in the Gezi protests and their supporters faced strategic lawsuits targeting dissents, as legal regulations were used in associating them with acts of terrorism. As such, the governing political authority equated challenges to its power with threats to the state itself, framing lawful demonstrations as acts of terrorism. However, it is important to note that restricting the right to gather and demonstrate and other relevant social and political rights was not exclusive to the Gezi protests during the AKP era under research.

Particularly after 2006, one of the most employed means of taking exceptional security measures involved imposing local-level protest bans. According to research conducted by Mert Arslanalp and T. Deniz Erkmen

(2020a, p. 959), between 2007 and July 2017, there were 84 instances of protest bans in Istanbul, 49 in Diyarbakır, 23 in Ankara, 16 in Mardin, 13 in Şırnak, and 11 each in Hakkari and İzmir (data only shows cities with more than ten bans). As such, apart from the three metropolitans, Istanbul, Ankara, and İzmir, most of the protest bans took place in the southeastern provinces of Türkiye, populated heavily by citizens of Kurdish descent. Indeed, although the AKP lifted the state of emergency from the southeast in 2002, this just altered the means through which the rights and liberties of those inhabiting the southeast were restricted or suspended. The following section will look at this matter in closer detail.

6.6. The *Hendek* (Trench) Operations (August 2015-June 2016)

This section examines a sequence of military actions carried out in southeastern Türkiye and the legal framework that empowered state authorities to restrict or suspend the constitutional rights and liberties of the people residing in that particular region of the country. On 8 August 2015, with cooperation between the Turkish Armed Forces and the General Directorate of Security (*Emniyet Genel Müdürlüğü*), the government launched military operations named ‘the *hendek* operations’. Governmental authorities stated that the operations were initiated because the PKK had stocked weaponry in the trenches they had dug in and around cities to consolidate and strengthen their presence in the southeastern region of Türkiye (BBC Türkçe, 2015). The space where the operations were carried out encompassed “at least 30 urban and a number of rural locations” (OHCHR, 2017, p. 5). The forces involved

military units consisting of “thousands of troops serving with combat-ready infantry, artillery and armoured army divisions, as well as the Turkish Air Force” (OHCHR, 2017, p. 4). PM Erdoğan stated that these operations would continue until the southeast is “cleansed” from the PKK presence and “an environment of peace is established” (BBC Türkçe, 2015). As the PKK retreated in June 2016, the intensity of the armed clashes came to an end (Duran, 2016).

The spatially-selective exceptional security measures employed during the *hendek* operations can be best understood when they are put in context. Thus, it can be seen that although the state of emergency encompassing southeast Türkiye was lifted in 2002, this situation did not change the fact that the exceptional security measures in Turkey still had a spatially selective aspect. For this reason, I will first explain the process starting from 2002 and leading up to the *hendek* operations and then examine the exceptional security measures taken during the military operations.

6.6.1. The Context

The southeast continued to be a source of security sensitivities and concerns for state authorities, especially as long as the war with the PKK continued. The ongoing ceasefire between the PKK and the Republic of Türkiye since 1998 was unilaterally ended by the PKK in 2004 (Hürriyet, 2004). After the ceasefire ended, designating territorial spaces as ‘security zones’ emerged as a prominent method state authorities adopted for limiting access to the zones deemed high-security priorities where the military

engages in operations against the PKK (for 'security zone' declaration examples, see Habertürk, 2012; also see Şimşek, 2007). During the 2000s and onwards, armed clashes between the PKK and the Turkish armed forces mainly occurred in remote mountainous regions distanced from residential areas (HRW, 2010, pp. 8–9; see also Coşkun, 2015). However, the emergence and organisation of the youth and urban wing of the PKK, the YPG (Kurdish People's Protection Units), starting in 2013, significantly contributed to the PKK's presence within urban areas (Coşkun, 2015, pp. 70–72; see Milliyet, 2015a).

The resolution process between the Turkish state and the PKK, initiated in 2012 and maintained until the 2015 summer, ceased armed conflicts between the Turkish army and the PKK. During this process, the government and intelligence officials were in dialogue with democratically elected members of the pro-Kurdish HDP (People's Democratic Party, *Halkların Demokratik Partisi*), the PKK's former leader Abdullah Öcalan, who has been in prison since 1999, and the KCK (Kurdistan Communities Union) for a democratic resolution to the "Kurdish question" (CNN Türk, 2014; Savran, 2020, pp. 782–783). During the resolution process, government officials repeatedly pointed out that there is a Kurdish issue and that it must be resolved through democratic means to end the war in the southeast (see CNN Türk, 2014). Even though a public announcement was made in May 2013 regarding the withdrawal of the PKK from Turkish territory (CNN Türk, 2014), a complete withdrawal never took place as the PKK put effort into strengthening its "urban presence and youth networks" (Savran, 2020, p. 786; see also Yegen, 2022, p. 2). Besides, the mistrust between the negotiating parties never entirely

disappeared (see CNN Türk, 2014). This mistrust had to do with both the ongoing war against ISIS in Syria and domestic politics in Türkiye.

In addition to concerns about the PKK's strengthening within the country, the presence and control of the Syrian Kurdish militia in northern Syria constituted a security concern for Türkiye. The USA cooperated and supported the YPG and its political complement, the PYD (Kurdish Democratic Union Party), against ISIS in Syria (Van Wilgenburg & Fumerton, 2022, pp. 9–10). Backed by international support and taking advantage of the power vacuum in the area, the YPG achieved “political-military consolidation” in northern Syria between 2012 and 2014 (Van Wilgenburg & Fumerton, 2022, pp. 5–6). While the US saw the YPG as instrumental in the fight against ISIS, for Türkiye, YPG-PYD was the Syrian extension of the terrorist PKK operating in Türkiye, hence a security threat to Türkiye's national security and territorial integrity (Ministry of the Interior, 2017b; see also Ministry of Foreign Affairs, n.d.).

In domestic politics, the ruling AKP could not achieve the success that it aimed for in the (first) 2015 election. As such, it could not gain the majority to form a government alone in the Parliament in the general election held on 7 June 2015. Following the election, a coalition government could not be formed, and Türkiye entered a spiral of violence until the renewed elections in November 2015 (see Sayın, 2021). A total of 141 people were killed in two separate attacks undertaken by ISIS during the period between the two elections³⁵ (Köker, 2016). During this time, the AKP adopted a more security-

³⁵ From June 2015 to December 2016, 497 individuals were killed in attacks aimed at civilians orchestrated by either the PKK or ISIS in Türkiye (Köker, 2016).

oriented discourse and made changes in its security policies. As the resolution process effectively stopped after the June 2015 election (see BIA Haber Merkezi, 2021), governmental authorities expressed concern regarding the establishment of a Kurdish state in northern Syria. As such, in a Twitter post on 26 June, PM Erdoğan referred to the YPG and PYD as terrorists and stated: “I call out to the whole world: No matter what the cost, we will never allow the establishment of a [Kurdish] state in the north of Syria and the south of Türkiye” (@RTErdogan, 2015). However, the HDP, one of the parties involved in the resolution process, did not share the government’s security concerns. So much so that the HDP Co-Chairperson and MP Figen Yüksekdağ expressed the HDP’s support for YPG and PYD in a speech on 19 July, only 20 days before the *hendek* operations began. MP Yüksekdağ said, “we lean our back on... those who fight against that gang you call ISIS; we lean our back on... those who do not bring down the noble values of humanity. We lean our back on the YPJ, YPG and PYD” (Maltaş & Dikme, 2015). As such, the HDP, far from seeing the organisations that the Turkish state considered terrorists in the same way, glorified them.

Therefore, in domestic politics, which was increasingly adorned with a security-centred discourse, the ties between the pro-Kurdish movement and the AKP were completely tense, and relations came to a breaking point. Only three days after MP Yüksekdağ’s statements, on 22 July, two Turkish police officers were shot dead in their homes in Ceylanpınar district of Şanlıurfa (Sayın, 2021). The resolution process ended definitively after this incident. One day after the incident, operations were launched against the PKK and ISIS, and the PKK, which first claimed and then renounced the Ceylanpınar

attack, ended the ceasefire decision taken during the resolution process (Sayın, 2021). Following the military operations against the PKK in the southeast, the KCK announced that it had declared autonomy in some provinces and districts in southeastern Türkiye (BIA Haber Merkezi, 2021). PM Erdoğan said that his government initiated the resolution process for “national unity and fraternity”, but the PKK always exploited both the resolution process and “our democratic approach as well as our positive approach to fundamental human rights and liberties in our country.” He further stated, during the resolution process, “Our citizens, especially in the Southeastern Anatolia Region, could not even exercise their democratic rights at their own will and faced constant threats [from the PKK]” (BIA Haber Merkezi, 2015). In response, the government initiated the *hendek* operations.

6.6.2. Exceptional Security Measures During the *Hendek* Operations

The *hendek* operations targeting the PKK caused harm to hundreds of thousands of Kurdish civilians inhabiting southeastern Türkiye. During the operations, state authorities used mainly two pieces of legislation as the legal basis for their discretionary decisions that interfered with the rights and liberties regime. These laws were namely the Law on Military-Prohibited Zones and Security Zones (*Askerî Yasak Bölgeler ve Güvenlik Bölgeleri Kanunu*), no. 2565, and the Law for Provincial Administration (*İl İdaresi Kanunu*), no. 5442. Of these, no. 2565, was used to change the legal status of territorial spaces. Law 2565’s stated objective is to outline the procedures for establishing, abolishing, and expanding military-prohibited zones and security

zones around institutions deemed crucial for “homeland defence” and “national security” (Art. 1). Since security zone declarations were how state authorities restricted or suspended citizens’ rights and liberties in areas where military operations took place, military-prohibited zones are outside the scope of this study.

Law 2565, enacted in 1981, categorised security zones into two types: military security zones and special security zones (Art. 3). The Law entrusted the authority (whether military or otherwise) responsible for maintaining security and public order within a designated security zone with the discretion of whether to allow the exercise of constitutional rights and liberties in that area (see Art. 21). Areas designated as security zones are categorised as military security zones when they concern military installations and facilities, whereas they are classified as special security zones when either public (other than military) or private entities own them. As such, per Law 2565, special security zones could be established around all kinds of places and facilities deemed to have strategic value in terms of security, regardless of whether they belong to public or private entities (Art. 20).

Through a provision in Law 2565, the legislator unsparred state authorities to cause irreversible change in the lives of those who are subjected to exceptional security measures. For, in security zones, properties belonging to public or private entities could be subjected to expropriation (Art. 21). An article added to the Law in 2013 facilitated the use of discretionary power in this matter by provincial governors and legalised a permanent intervention in some areas of fundamental rights and liberties. As such, while the authority to decide to declare a security zone typically belonged to the Council of

Ministers (when deemed necessary by the General Staff or the Ministry of Interior), the provincial governor was authorised to declare special security zones for up to 15 days when “a delay is unfavourable” during “operations carried out within the scope of the fight against terrorism” (Art. 32/A). According to the same provision, these zones could not be entered without the permission of the relevant authorities.

As such, to avoid delay in declaring security zones, a governor could make the declaration, and based on the governor’s decision, private properties could be expropriated by state authorities within 15 days. There is no obstacle to this in either Law 2565 or the regulations³⁶ concerning the implementation of the Law. During the *hendek* operations, based on Article 32/A of Law 2565, while governors declared special security zones, the Council of Ministers made expropriation decisions in these regions. As such, in the Sur district of Diyarbakır, the largest province in the southeast of Türkiye, the immovables in 15 neighbourhoods, including the municipality building and several historic buildings, were expropriated by the Council of Ministers (T.C. Resmî Gazete, 2016). Thus, residents living in the neighbourhoods in question and property owners were deprived of their right to inviolability of domicile. According to the decision, approximately 70 per cent of the historic district, which is also on the UNESCO World Heritage List, was expropriated (B. Karakaş, 2016). More than 6000 families were displaced only from Diyarbakır’s Sur district (DITAM, 2018, p. 6). According to another account, the destruction in Sur was so great that more than 22 thousand people were displaced (M. Bozarslan, 2017). An

³⁶ The Regulation on Military-Prohibited Zones and Security Zones (*Askeri Yasak Bölgeler ve Güvenlik Bölgeleri Yönetmeliği*), no. 18033. The Regulation came into force on 30 April 1983.

alternative source states that 30 thousand “have fled the Kurdish-dominated World Heritage Site in Turkey” (Lepeska, 2016).

The second piece of legislation, Law 5442, enacted in 1949, based on which state authorities made discretionary decisions and curtailed or entirely suspended constitutional rights and liberties, ambiguously granted extensive discretionary powers to provincial and district governors when public order and security were concerned. As such, while not explaining the measures the governors could decide, the Law left the provisions unclear and security measures undefined. Per Article 11/C of the Law, “within the provincial borders, ensuring peace and security, personal immunity, public well-being, ... and exercising preventive law enforcement authority are among the duties of the provincial governor.” Article 32/Ç of the same Law gives the same powers to the district governor for the same reasons. While the measures that governors can take for security purposes and the limits of these measures are not specified by Law 5442, presenting these provisions as the legal basis for their discretionary decisions, both provincial and district governors declared curfews in southeast Türkiye during the *hendek* operations.

By (mainly provincial) governors, curfews were declared in seven cities and 19 districts for a total of at least 253 days in 2015 alone (Söylemez, 2016). Between 16 August 2015, when the first curfew started, and 31 January 2017, curfews were declared 100 times in Diyarbakır, 23 times in Mardin, 19 times in Hakkari, 13 times in Şırnak, four times in Bitlis, three times in Batman, twice in Muş and Tunceli, and once in Elazığ (DITAM, 2018, p. 6). The number of people living in the area where a curfew was declared was 1 million and 809 thousand (DITAM, 2018, p. 6). As curfews during operations

were integral to state authorities' exceptional security measures, exercising certain rights, such as the rights concerning education, health, or travel, became impossible to exercise. As such, restrictions led to suspensions of rights and liberties as long as those exposed to exceptional security measures were not allowed to leave their locations. It took time for what happened in these areas to come to light, as the military and police prevented the press, the politicians who wanted to observe the operation area or protest curfews, and the NGOs from entering the zones where curfews were declared (Cumhuriyet, 2016; Duvar, 2017; Milliyet, 2015b). The UN report on the southeast of Türkiye documented that "[t]he most serious human rights violations reportedly occurred during periods of curfew, when entire residential areas were cut off and movement restricted around-the-clock for several days at a time" (OHCHR, 2017, p. 2).

In the *hendek* operations, similar to the Republic's formative years, the state engaged in military operations within its territory without declaring an emergency or war. The restrictions and suspensions of citizens' constitutional rights and liberties sometimes caused irreversible harm to millions of civilian people, while the stated purpose of the operations was to end the PKK presence in the southeast (BBC Türkçe, 2015; BIA Haber Merkezi, 2021; Sayın, 2021). The UN documented human rights violations between July 2015 and December 2016, such as

numerous cases of excessive use of force; killings; enforced disappearances; torture; destruction of housing and cultural heritage; incitement to hatred; prevention of access to emergency medical care, food, water and livelihoods; violence against women; and severe curtailment of the right to freedom of opinion and expression as well as political participation. (OHCHR, 2017, p. 2)

According to official accounts, between 7 July 2015 and 27 March 2016, 285 civilians were killed during conflicts (Duran, 2016). According to the UN report, the number of internally displaced people during the operations was between 355 thousand and half a million, and “some 2,000 people were reportedly killed between July 2015 and August 2016, including local residents, amongst whom women and children, as well as close to 800 members of the security forces” (OHCHR, 2017, pp. 4–5). The Human Rights Foundation of Turkey reported that between 16 August 2015 and 18 March 2016, “at least 310 civilians lost their lives during the curfews. Of these, 72 were children, 62 were women, and 29 were over the age of 60” (TİHV, 2016, sec. Foreword). The data did not include 79 people killed in two southeastern districts, Cizre (Şırnak) and Sur (Diyarbakır), as their bodies had not been identified (TİHV, 2016, sec. Foreword).

According to the Constitution, fundamental rights and liberties can only be restricted by law without affecting their essence. These restrictions cannot violate the constitutional principles, the requirements of the democratic social order and the secular Republic, and the principle of proportionality (Art. 13). Besides, rights and liberties may be suspended only in cases of a declared war, mobilisation, or a state of emergency. Even in these exceptional circumstances, state authorities cannot take actions or make decisions that cause harm to a person’s right to life or the integrity of his material existence (Art. 15). Contrary to these constitutional provisions, the data discussed above shows that the exceptional security measures taken during the *hendek* operations were unconstitutional in many respects. Moreover, aside from the state actions that contravened the fundamental prerequisites for restricting or

suspending constitutional rights and liberties, there was also a failure to uphold the principle of administrative legality. Empirical data shows that military officers who took part in the operations enjoyed “an atmosphere of ‘systematic impunity’” derived from several laws while their actions ended in severe violations of “constitutional and international human rights law obligations” (OHCHR, 2017, p. 19). The exact breakdown of civilian deaths, indicating the proportion caused by state forces versus the PKK, remains unclear. As per the state authorities, they attribute all the deaths and destruction in the area to the PKK (Ministry of the Interior, 2017a). However, neither the government nor any other state entity undertook any efforts to address this matter and provide clarity. Furthermore, the government blocked human rights organisations that attempted to conduct independent investigations in the region to document violations, even after the operations ended and curfews were lifted (HRW, 2016b).

While the AKP government presented the *hendek* operations as a necessary part of Türkiye’s fight against terrorism, it also accused the NGOs and human rights defenders who criticised state policies, destruction, and deaths in the southeast of being at least as terrorist as the PKK (T.C. Cumhurbaşkanlığı, 2016). As such, the government used the concept of ‘terrorism’ so freely that the conduct of violence was not necessarily part of its terrorism definition. Immediately after trench operations came to a halt, there was a coup attempt in Türkiye. The government also accused those who attempted the coup of being terrorists. The following section will examine this coup attempt and the exceptional security measures taken in response.

6.7. The 2016 Coup Attempt

On 15 July 2016, after the relationship between the AKP and the Fetullahists deteriorated, a Fetullahist fraction of the military attempted a coup. On the day, soldiers blocked access to the two Bosphorus bridges in Istanbul, warplanes conducted low-altitude flights over Ankara, and the Parliament building was targeted by bombing. Tensions escalated as soldiers and police forces clashed against each other in the streets and public buildings. President Erdoğan addressed the nation via television, urging citizens to take to the streets. Civilians confronted the soldiers, resulting in the loss of over 300 civilian lives (Medyascope, 2023). The coup attempters, identifying themselves as the “Peace at Home Council,” (*Yurtta Sulh Konseyi*), announced on the TRT (Turkish Radio and Television Corporation, *Türkiye Radyo Televizyon Kurumu*) broadcast that they had seized power to “restore the damaged constitutional order” (A. Yıldız, 2016). The coup attempt was eventually suppressed by the forces that sided with the government, and the government declared a nationwide state of emergency on 20 July 2016. The emergency initially declared for three months was extended seven times and lifted on 18 July 2018.

During the state of emergency, tens of thousands of people were detained, arrested and suspended across Türkiye. With emergency decrees, at least 125 thousand 678 public officers were dismissed, and one thousand forty-three private education institutions and 1229 associations were closed (Medyascope, 2023). Dismissed public officials and closed institutions made applications, separately or simultaneously, to the relevant administrative units, administrative judiciary, constitutional judiciary and the ECHR (Altıparmak et

al., 2018). When all of these legal remedies rendered ineffective and there was no judicial review option for those exposed to exceptional security measures, an attempt was made to overcome the legal crisis that arose with the establishment of the State of Emergency Processes Review Commission (*OHAL İşlemlerini İnceleme Komisyonu*) on 23 January 2017 (see Öndül, 2022, pp. 12–13) through an emergency decree that became Law 7075 after ratification. The Commission's term of office was determined as two years (*Law 7075*, Art. 3) but extended until 22 January 2023. The Commission consisted of seven members, five of whom were handpicked by governmental authorities. The remaining two members were determined by the Council of Judges and Prosecutors (*Hakimler ve Savcılar Kurulu*). This administrative organisation operated like a judicial authority and could even override some legal provisions (Altıparmak et al., 2018). While the Commission functioned akin to a judicial body, its lack of independence and impartiality, given its formation at the discretion of the government, undermined its ability to conduct fair decision-making processes. During its term of office, 127 thousand 292 applications were made to the Commission, and it was decided to restore the rights of approximately 14 per cent of the applicants (İ. Karakaş, 2023).

The government issued 32 emergency decrees during the state of emergency. While some of these decrees regulated issues that had nothing to do with the state of emergency and were meant to be regulated by ordinary laws, some made regulations aimed at personalised punishment (Altıparmak et al., 2018). As such, these decrees violated the principle of inalienability of legislative and judicial powers. In the 1980s and 1990s, the Parliament

cooperated with the governments in office through inaction in ratifying the emergency decrees (see Chapter 5). Differently this time, the Parliament actively cooperated with the executive by ratifying all the emergency decrees rapidly (see Altıparmak et al., 2018, n. 3). The Parliament acted against the regulations concerning the ratification process and avoided subjecting the executive to political supervision (see Öndül, 2022, p. 5). Through ratification, legal regulations concerning the rights of hundreds of thousands of citizens became embedded in the constitutional order for a time that exceeded the temporal limitations of the state of emergency, even though they were decisions of the executive.

The only obstacle to the permanence of the regulations made through emergency decrees in the constitutional system was the Constitutional Court's legal review of the decrees. However, regarding the cases filed against the decrees, the Constitutional Court, in its 2016 decision, reversed its previous jurisprudence (see Chapter 5) and refused to review these decrees for constitutionality. It is unclear whether the Constitutional Court will subject the decrees enacted after the state of emergency to constitutionality review because the Court does not have any jurisprudence in this regard. As of May 2024, all of the emergency decrees issued during the state of emergency and ratified by the Parliament, that is, all of them, are still in force regardless of whether they are actively used.³⁷

Per Law 7075 provisions legal proceedings against the decisions made by the Commission in either the Administrative Court or the Council of State

³⁷ For the list of the ratified emergency decrees issued between 2016 and 2018, please see Öndül, H. (2022). *OHAL KHK'ları ve İnsan Hakları Mücadelesine Etkileri*. İnsan Hakları Derneği, pp. 6-7.

(*Danıştay*), in case the dismissed personnel are judges and prosecutors who were dismissed by the decision of the Council of Judges and Prosecutors (Art. 14). This means of appeal appears to have endeavoured to keep political power within legality despite the prevailing capabilities of political power over the norms concerning the rights and liberties regime. As such, if individuals who applied to the administrative court received a 'rejection', they could appeal to the Council of State. Should a similar decision be reached by the Council of State, the right to make an individual application (*bireysel başvuru*) to the Constitutional Court would arise. Those whose individual applications are turned down by the Constitutional Court could then seek recourse at the ECHR.

While the state of emergency and the state rule through emergency decrees targeted dissenters, the exceptional security measures taken during the state of emergency also had a spatially selective aspect. While the state of emergency "largely targeted dissent in general and political parties of the opposition in particular", they "disproportionately [affected] citizens of Kurdish origin" (OHCHR, 2017, p. 4, see also 2018, pp. 25–26). The government justified its widespread oppressive policies that deprived individuals of their constitutional rights and liberties on the grounds of the fight against Fetullahists and the PKK. However, as Arslanalp and Erkmen argue (2020b, pp. 107–108), it used the fight against terrorism "as a pretext to widen the crackdown on the Kurdish movement as well as individuals or groups that criticise the government's militarised approach to the Kurdish issue". Of the 241 bans in 36 provinces during the state of emergency, 100 of them took place in Diyarbakır, Hakkari, and Mardin, which are southeastern provinces

heavily populated by citizens of Kurdish descent (see Arslanalp & Erkmen, 2020b, p. 111).

During the ongoing state of emergency, the Republic of Türkiye transitioned from a parliamentary democracy to the “Turkish-style presidential system” through a presidential referendum held on 16 April 2017, amending 18 articles of the Constitution, and presidential and general elections held on 24 June 2018. Although the presidential system abolished the post of Prime Minister, PM Binali Yıldırım, who held this post before the referendum, collaborated with President Erdoğan to promote AKP propaganda, framing the constitutional amendments for a presidential system as a necessity to counter groups labelled as terrorist organisations, such as the PKK and the FETÖ. Furthermore, his statements grouped the legally represented pro-Kurdish HDP with these organisations officially categorised as terrorists (Altun, 2017). Deputy PM Numan Kurtulmuş stated that assassinations and suicide bombings could continue unless the constitutional amendments are made and that “with God’s willing after a large majority votes ‘yes’ in the referendum, these terrorist organisations [would] shut up like a clam” (Cumhuriyet, 2017). In the circular he sent to the party organisation about the referendum, MHP Chairman and AKP’s ally MP Devlet Bahçeli stated that voting ‘yes’ on the constitutional amendments was a necessity for nationalism and patriotism, as it aligned with the interests of the state. According to Bahçeli, “Türkiye [was] dealing with a grave process full of dangers and threats”, and the state was facing destruction by enemies both internally (PKK, YPG, and PYD) and externally (Russia and the West) (Bahçeli, 2017). Concerning the transition to

a presidential system, President Erdoğan explained why he considered this transition necessary:

The diseases of the old system can appear at every step we take. ... The cross-border operations we carry out in Syria and the historical events in our region have made it necessary for Türkiye to overcome the uncertainties promptly. The transition to a new governmental system has become increasingly urgent so that decisions can be made and implemented more strongly. (Cumhuriyet, 2018)

It was determined before the referendum that the constitutional amendments passed through the 2017 referendum would come into force upon the first elections. As the government framed the election as urgent, through an early election set for 24 June 2018, the legal and institutional transition to the new regime was completed during the state of emergency. As stated in a Human Rights Watch report, “the election campaign took place ... in a climate of media censorship and repression” over those framed as a threat by the government, “with many journalists as well as parliamentarians and the presidential candidate from the pro-Kurdish opposition in jail” (HRW, 2019, p. 588).

While the constitutional amendments approved in the referendum mainly bolstered the powers of the presidency, they concurrently weakened the responsibilities and authorities of the legislature. As such, the amendment to Article 87 eliminated Parliament’s oversight of ministers and its ability to authorise the Council of Ministers to issue statutory decrees on specific matters. Article 101 stipulated that henceforth, the elected president was not required to sever ties with their affiliated political party. Additionally, Article 104 granted the president the authority to propose constitutional amendments

for referendum when deemed necessary and to issue presidential decrees pertaining to executive affairs.

During the state of emergency declared after the 2016 coup attempt, the government system underwent changes, with the executive, particularly the President, assuming a predominant role in decisions regarding citizens' rights and liberties. As evidenced above, the exceptional measures provided by the legal and administrative regulations concerning states of emergency were utilised to serve the political interests of the AKP and its allies. Following the cessation of the state of emergency, with the initiative of AKP and its partner MHP, exceptional powers that were not guaranteed in the ratified emergency decrees were included in the legal system through legislation. The subsequent section will turn to examine this.

6.8. Law on Amendments to Some Laws and Decrees (*Bazı Kanun ve KHK'lerde Değişiklik Yapılmasına Dair Kanun*), No. 7145 (2018-Present)

Following the end of the state of emergency, the Parliament passed Law 7145, amending several laws and decrees by narrowing the realm of rights and liberties, which came into force on 31 July 2018. Article 1 of the Law grants governors the authority to ban specific individuals from entering or leaving designated areas of a province for 15 days. It allowed for the prohibition of pedestrian and vehicular traffic in specified locations and times without stipulating a duration for these measures. Thus, this provision embedded in the legal system that personal freedom and security, the right to assembly and demonstration, as well as freedom of settlement and travel,

which are rights and liberties constitutionally guaranteed, can be limited by the discretionary authority of a single bureaucrat.

Law 7145 includes a provision allowing for the extension of detention periods by a judge's decision in increments of four days, up to a maximum of 12 days (Art. 13). This provision contradicts the Constitution, specifically Article 19, which permits detention extensions to a maximum of four days, even in cases of mass crimes, upon the prosecutor's request and the judge's decision. Furthermore, according to the Constitution, detention periods may only be prolonged during states of emergency and wartime (Article 19). Law 7145 departed from some constitutional norms regulating the rights and liberties regime by normalising this constitutional regulation concerning extraordinary circumstances.

The speed of investigations and prosecutions stands out as a concern in the Law, and the aim seems to be to speed up judicial processes. According to Article 16 (amending Law 5271), the prosecutor may seize computers, computer programs and files without a judge's decision "in cases where a delay is deemed objectionable", and the judge's decision is requested after the seizure. Law 7145 has violated the *habeas corpus* principle by providing that only the file be reviewed every 30 days for up to 90 days in cases of detention objections instead of allowing the defence to be heard in court. As a result, the rights to personal security, freedom, and a fair trial have been infringed upon by law.

According to Law 7145, gendarmerie and police can conduct preventive searches in military areas and areas declared as security zones without a judge's decision (Art. 2). However, according to Article 20 of the Constitution,

persons' personal belongings and private papers can only be searched by a judge's decision and based on one or more of the reasons such as national security, public order, prevention of crime, protection of general health and public morals, or protection of the rights and freedoms of others. In cases where a delay is deemed objectionable, a search may be made with a written order of the authority authorised by law to be submitted to the judge for approval within 24 hours. However, Article 2 of Law 7145 has paved the way for potential violations of constitutional norms regarding the confidentiality of private and family life.

Provisional Article 35 of Law 7145 introduced a regulation that intervened in the realm of rights and liberties for a duration of three years. According to the provision, public officials who are deemed to be members of or affiliated with organisations deemed terrorist or groups deemed by the MGK (National Security Council, *Millî Güvenlik Kurulu*) to be acting against the state's national security would face dismissal from their positions by the decision of the commission to be established and the approval of the relevant minister. The gun licenses and passports of those who are dismissed from duty would be cancelled, and these people would be evacuated from their public housing within fifteen days. As such, the Law kept provisions similar to those in the emergency decrees that could only affect the emergency period through legislation within the legal system for three years after the end of the emergency. In dismissals, the presumption of innocence regulated in Article 38 of the Constitution was violated.

As such, Law 7145 has equipped state authorities with exceptional powers, contradicting the constitutional norms concerning the rights and

liberties regime (see HRW, 2019, p. 588; Türkdoğan, 2022, p. 1). While embedded in the legal system, it has rendered many constitutional norms concerning rights and liberties open to state authorities' intervention despite violating the Constitution.

6.9. Conclusion

Between 2002 and 2019, the AKP-led governments and state authorities possessed significant discretionary powers, allowing them to employ exceptional security measures. Such measures implemented by the AKP were initially derived from a combination of parliamentary actions, extensive executive discretion, and judiciary acting according to the government's understanding of security. During the last three years under research, all these means were coupled with the exceptional powers deriving from the declared state of emergency, and the legislation granting extraordinary powers to state authorities contradicted the constitutional rights and liberties regime.

These measures granted the government latitude in shaping policies affecting the rights and liberties of the people, who were often labelled as terrorists by state authorities. Even though there was no declared emergency in the first fourteen years under research, state practices, especially starting from 2007, interfered with the rights and liberties regime in Türkiye in several ways, through governmental, judicial, legislative, law enforcement, and military aberrations from the constitutional norms on the rights and liberties regime. In this regard, in terms of exceptional security measures, state

practices and their legitimization processes converged more to the formative years of the Republic (Chapter 3) than to the period between 1950 and 2002 (Chapters 4 & 5). On the other hand, following the state of emergency declaration of 2016, the AKP used the coup attempt as the legitimacy basis for its oppressive policies over dissenters by exposing them to measures that made the struggle for political power unfair and unbalanced, especially considering human rights defenders, journalists, and politicians who have not been proven to have ties with any organisation deemed terrorist were imprisoned. Data examined shows that during the AKP rule, exceptional security measures impacted mainly the dissent across the country depending on what was deemed to be a security threat at a given time, and the southeast region of Türkiye, populated heavily by citizens of Kurdish descent.

Similar to the period examined in Chapter 3 (1923-1948), during the period 2002-2019, the constitutional order was never suspended. As such, all the exceptional security policies were decided on and implemented by constituted powers within the constitutional order. International security politics significantly shaped the security politics of the era under research in Türkiye after the 9/11 attacks. This era's exceptional security measures were similar to contemporary examples worldwide regarding the relationship between law and politics (for these examples, see Chapter 2). During the examined timeframe, the exceptional security measures in Türkiye presented practices that are incompliant with the dichotomous logic of the Schmittian and the Agambenian conceptualisations of the exception (see Chapters 1 & 2). Contrary to contemporary literature, including Agamben's work, explaining the state's intervention in the rights and liberties regime within the constitutional

framework based on the norm-exception dichotomy (in this line of thought, one excludes the other), the state practices that interfered with the constitutional norm on rights and liberties occurred through the coalescing of the law and politics and within the coexistence of the norms concerning citizens' rights and liberties and the legal-repressive measures contradicting these norms in Türkiye.

Hussain's (2007) analysis of post-9/11 politics seems valid in terms of the exceptional security practices carried out during the hendek operations in Türkiye. According to Hussain (2007, p. 741), "emergency is a proliferation of new laws and regulations passed in an ad hoc or tactical manner, administrative procedures, and the use of older laws and cases tweaked and transformed for newer purposes." The counterterrorism legislation, which was under the international influence of legal measures against terrorism, facilitated the creation of exceptions to the norm through legal means. Furthermore, some ready-to-use laws, one enacted in 1949 (Law 5442) and another in 1981 (Law 2565), belonging to entirely different national and international contexts, were activated to restrict and suspend the rights and liberties of those (southeastern residents) framed as a threat. As such, while the citizens inhabiting the rest of the territory were targeted through the use of counterterror legislation shaped in the 2000s, the southeastern residents, in addition to the counterterrorism legislation, were also targeted through other pieces of legislation enacted decades ago to design and architect territorial spaces.

Terrorism was presented as the main reason for exceptional security measures between 1971 and 2019 in Türkiye. However, the content of the

concept ‘terrorism’ and the terrorist acts changed over the years, leading to increasingly more people and groups being designated and labelled as terrorists in the 2000s and onwards. Türkiye made its own use of the global wave of counterterrorism legislation that granted extraordinary powers to state authorities through the legislation’s broad and unclear definitions as well as their ambiguity in terms of the limitations of state authorities’ powers and measures they can take. Divergently from the former decades, though, state authorities’ measures against what they labelled as terrorism were taken mainly through making use of the law for political purposes and, as the cases of *Ergenekon* and *Balyoz* have shown, sometimes through illegal means, in which the law enforcement and the judiciary were involved. In each example examined in the present chapter, state authorities’ labelling as ‘terrorist’ led to restrictions or suspensions of fundamental rights and liberties recognised in the Constitution and the international agreements Türkiye is a party to. According to the Ministry of Justice, as of June 2019, “almost one-fifth (48,924) of the total prison population (246,426) had been charged with or convicted of terrorism offences” (HRW, 2019, p. 589).

As discussed earlier in Chapter 5, Türkiye has been in its own fight against terrorism since 1984. The counterterrorism measures against the PKK have occupied Türkiye’s domestic and international politics for decades. As such, starting in the 1990s in Türkiye, the concept ‘terrorism’ referred primarily to PKK terrorism as the militants and supporters of the PKK were addressed as terrorists. Another group labelled as terrorist, despite to a lesser extent, was socialists, who were mainly addressed as Marxists and Leninists (see Beyribey, 2022). Still, in the 2000s, the first thing the word ‘terrorism’ evoked

in Türkiye was the PKK terrorism and separatist terrorists due to both the end of the Cold War and the victory of the capitalist world and the 1990s being the years when the confrontations between the Turkish state and the PKK were the most intense. For this reason, when the state authorities labelled people as ‘terrorists’ in the 2000s and onwards, they built on and derived from the vocabulary that was already familiar to society and state authorities in a certain way—PKK terrorism, threatening territorial integrity, carried out by the enemies of the state.

By building on this vocabulary between 2002 and 2019, state authorities labelled military officers, protestors, journalists, academics, and civil society organisations that never took part in terrorist violence. As such, the labelling benefited from terrorism as an empty signifier. As Mark Sedgwick (2007, p. 99) underlines, “[a] radical ideology is indisputably an essential ingredient in producing terrorism.” However, during the period 2002-2019, radicalism in any way ceased to be essential to what defines a terrorist in Türkiye. The language of terrorism served to distinguish ordinary citizens from those labelled by state authorities as ‘terrorists’. Counterterrorism measures were legitimised based on the necessity of securing society, hence providing societal security - protecting “our citizens” from terrorists (see TRT, 2023). As Tobias Theiler (2003, p. 250) puts it, “[s]ocietal security - defined as the cultural, linguistic and identitive survival of a particular social group - then becomes the logical extension of state security”. Labelling as a ‘terrorist’ is labelling as an ‘enemy’, over which extraordinary measures and state violence are presented as legitimate as this violence is legitimised on the grounds of state security/national security. As such, the use of the language has

something to do with the “practice of sovereign power” (Suganami, 2007; see Chapter 2) to the extent that discretionary violence becomes instrumental in eliminating the ‘enemy’. As Theiler (2003, pp. 251–252) highlights, “[p]erceived threats to societal security generate a sense of emergency and a corresponding willingness to take extraordinary emergency measures”. As the state’s existence is prioritised, the terrorist threat to ‘our society’ and its political existence ultimately becomes about state security.

Naming or labelling, when done by authorities that can achieve a successful securitisation, can lead to severe consequences, be it social, political, or legal (see Jackson, 2018, p. 23). As Jackson (2018, p. 9) argues, “[l]anguage and practice ... are inextricably linked; they mutually reinforce each other; together they co-constitute social and political reality”. As such, ‘terrorist’ as a political label connotes a meaning socially, and the content of the concept, as understood by the securitising actors as well as the receivers of the labelling discourses and actions, holds the potentiality to lead to interferences with the rights and liberties regime by state authorities. Labelling subjects as terrorists facilitates exceptional security measures to be taken and legitimised, and emergency powers are practised over the securitised. As discussed by André Barrinha (2011, p. 164), the “labelling processes ... are associated with a potentially long-term disruption of normal political life, in which counterterrorism emergency measures become routinised in the daily life of states, communities and groups”. Here, what I understand from “normal political life” is the life where the use of political rights by citizens is not at stake. By “normal life”, I do not mean uninterrupted political activities. As this dissertation has discussed so far, unless the constitutional order is

suspended, “normal political life” goes on to the extent political activities go on. However, being labelled as a terrorist disrupts the normal (political) lives of those who are labelled, as the state force prevents these people from their liberty to exercise their political and social rights. The discursive practices, as Neal (2012, p. 109) argues, “does not simply defer to executive security prerogative”. Instead, besides “the multiple ways in which professional politicians mobilise and organise around security issues” (A. W. Neal, 2012, p. 108), labelling someone as the enemy is not necessarily the doing of only the government but also of the politicians. Moreover, Chapters 5 and 6 show that the judiciary, when given discretionary power over security-related issues, especially terrorism, may also become a state authority taking decisions on exceptional security measures in the sense that it deprives individuals of their rights and liberties when it considers them a threat.

During the period under research, although a security regime supported by laws and judicial decisions was established throughout the country, the state’s human rights violations were still most intense in the southeast. For example, the prevalence of unresolved homicides in eastern and especially southeastern Türkiye during the 1990s remained a human rights issue after the State of Emergency Regional Governorate was closed down, and the state of emergency was lifted. While the Human Rights Foundation of Turkey data reported 522 unsolved murders throughout Türkiye between 2006 and 2010, the Human Rights Association’s research in eastern and southeastern Türkiye reported a total of 375 unresolved murders in the same period (NTV, 2011; Söylemez, 2011). As such, during the four years that we have data for, nearly 71 per cent of all unresolved homicides were committed in the area

populated heavily by Kurdish citizens of Turkey. It is important to note that the total population of Türkiye's Eastern Anatolia and Southeastern Anatolia Regions is less than that of Istanbul.

The *hendek* operations (2015-2016), conducted based on the decision that the country's territorial integrity was in danger, were similar to the operations carried out in the eastern regions of the country during the country's formative years, which were also due to security concerns about territorial integrity. These similarities include the existence of an operating war logic within the national territory; fully-fledged military operations; forced displacement of the area's inhabitants; the restriction, suspension, or violation of rights and liberties such as housing immunity, freedom of travel, freedom of communication, freedom of expression, and right to assembly; bureaucrats making decisions on extraordinary security measures (the First and the Fourth Inspectors-General in the formative years, provincial and district governors in the 2010s); and the failure to hold those responsible for rights violations accountable before the law.

Jabri's arguments in one of her articles help explain the situations during and after the *hendek* operations. Jabri (2006, p. 48) writes that when "distinctions between war and criminality, war and peace, war and security ... disappear, impunity is the result, accountability shifts beyond sight, and violence comes to form the linchpin of control." As such, during the *hendek* operations, the distinction between war and peace lost clarity for both the people of the southeast and the state authorities. The line separating the measures taken by security professionals who were part of military operations to clear the country of enemies in war from the crimes they commit while

violating civilian inhabitants' human rights became blurry. The right to life of civilians who were shot dead for stepping out of their homes during curfews and whose bodies remained on the streets for days was one of the human rights placed in the security discourses arguing that the military operations were carried out to protect the southeast residents' rights and liberties. The security measures said to be taken to protect the territorial integrity during the operations could not easily be placed in either the realm of extraordinary security measures in a constitutional order or the requirements of war conditions, considering there was no declared war or emergency. However, both of these were experienced by the people exposed to military operations in their hometowns. Therefore, just as Jabri argues, due to the disappearance of the distinctions in question, let alone the fact that those responsible for human rights violations have not been punished, even independent investigations to reveal human rights violations have not been allowed by state authorities.

When the coup attempt was carried out by the Fetullahists in 2016, the concept of 'terrorism' was this time used to frame the coup attempt. State authorities placed the concept of 'terrorism' instead of 'coup' in their discourses while employing exceptional security measures. Since there is no consensus on the definition of terrorism, the framework of terrorism is more transient and more permeable than the concept of 'coup'. This state of the concept allows state authorities to frame more people as a threat through the concept of 'terrorism'. As such, after the 2016 coup attempt, not only the Fetullahists but also many people without any connection to the coup or the organisation behind it were also subjected to exceptional security measures

taken by the state in response to the coup attempt. In the process, the government silenced people and groups seeking political power or rights with repressive policies and concentrated the executive power in almost a single focus: the presidency. As a consequence, personalised power brought personalised punishment methods. Law 7145 was a representation of this.



CHAPTER 7

CONCLUSION

This dissertation began with the observation that the state's interference with the norms on rights and liberties has been integral to modern statehood, in contrast to the contemporary argument in Political Science and IR considering 9/11 as a breaking point for such state actions. For this reason, it argued, state practices contradicting the rights and liberties regime can be better understood through continuities rather than ruptures, as pivotal points in history do not lead to complete breaks from historical legacies of states' concerns, fears, and the means to deal with them. The case of the Republic of Türkiye showed that, even when the entire legal system is suspended and replaced under states of exception, the state's concerns and traditions do not necessarily change.

As such, this dissertation challenged the assumptions and binaries of the exceptionalist literature in the post-9/11 era by examining the historical trajectory of the Republic of Türkiye. It questioned the limited explanatory power of the norm-exception dichotomy by analysing state practices from 1923 to 2019. Schmittian analyses of exceptional security measures were based on dualities and distinctions such as norms versus exceptions, law versus politics, and security versus politics. Contrary to the view that places exceptional security measures in the realm of lawlessness, this dissertation argued that such measures are embedded within the legal system. However, the military coups in Türkiye in 1960 and 1980 demonstrated that states of

exception, involving the suspension of the constitutional order and the absolute authority of a monarchical figure, are also historical realities. While the exceptionalist terminology helps explain the military coups and the periods of 1960-1961 and 1980-1983 under the state of exception, it falls short in accounting for the ways state authorities interfered with rights and liberties in Türkiye while the constitutional order was still in place.

The empirical evidence examined demonstrated that, in Türkiye, what was deemed as a threat varied, targeting specific groups of people, cultures, ideologies, territorial spaces, ways of life, specific organisations and associations, and protest marches. The threat framing depended on the contextual circumstances of the country and the security concerns of the state authorities at a given time. Once the threat was portrayed, the tools for achieving security varied between the methods of the enactment of state power (using the constitutionally determined emergency response or creating binding legal norms through legislation or statutory decrees) and the exercise of sovereign power (the state of exception or day-to-day practices of state authorities such as bureaucrats and security professionals). Political power, which was always dispersed other than in times of the state of exception (1960-1961, 1980-1983), each time sought to legitimise its decision to take exceptional security measures based on the grounds of necessity. Those framed as a threat were exposed to exceptional security measures, depending on the juridical and political possibilities provided by the constitutional and political order.

The exploration of the republican history of Türkiye showed that juridico-political forms of exceptional security measures varied based on the territorial

space exposed to these measures and across issues framed as a threat, which was not independent of the territorial space. As such, the state was spatially selective in the way it implemented exceptional security measures. The norms on rights and liberties and the state's exceptional security measures did not apply equally and to the same extent across the national territory. The geographical selectivity of the state presented itself in two settings: even though exceptional security practices of state authorities in the Republic of Türkiye were permanent throughout the state's history, they were differently permanent³⁸ in the eastern regions, particularly southeastern Türkiye, heavily populated with the citizens of Kurdish descent, and metropolitan areas heavily inhabited by non-Muslims, students, and workers, such as Istanbul, Ankara, and Izmir.

In what follows, I will address and analyse the juridico-political and spatiotemporal aspects of exceptional security measures in two sections. Each section will provide an overview of the state practices that contradicted the rights and liberties regime in Türkiye between 1923 and 2019 and an analysis of these practices.

7.1. Juridico-Political Conditions

This dissertation showed that state authorities interfere with the rights and liberties regime in various ways under various juridico-political conditions. The analyses were carried out using an approach that allows us to understand the

³⁸ I use the phrase 'differently permanent' with inspiration from the phrase "differently different" used by Pınar Bilgin (2012) to express the difference in security approaches between Türkiye and Arab countries in the post-Cold War period.

peculiarities of contexts in different national and international settings. I drew upon a body of literature in Political Science and IR scholarships that addresses the embeddedness of extraordinary powers in the state structure and its functioning. This literature helped me explain the exceptional security measures taken and implemented while the constitutional order was in place. However, unlike the studies in this literature, I also acknowledged states of exception as a juridico-political form of interfering with the rights and liberties regime while maintaining political order. For this reason, I examined the state as a whole instead of focusing on a specific authority, such as the executive, the legislature, or security professionals. I examined the tension between political power and law and showed that this tension unfolds in various ways, resulting in various juridico-political forms of exceptional security measures depending on the context. Analysing state practices by acknowledging their multiplicity enabled this research to explain both the exceptional security measures during periods without a legal order and those taken and implemented within the constitutional order.

The constitutional order creates constituted powers and frames their duties, responsibilities, and jurisdiction. These powers are charged with maintaining and reproducing the constitutional and political order. However, the 1960 and 1980 military coups in Türkiye, which dismantled the existing constitutional order and established a new one by force, proved this is not always the case. The states of exception during 1960-1961 and 1980-1983 lasted about four years. During the remaining 92 years under study, those responsible for exceptional security measures operated within the legal framework through action or inaction. During periods without a state of

exception, the authorities of the Republic of Türkiye restricted or suspended constitutional rights and liberties in the name of security and necessity, blending law and politics.

7.1.1. Historical Trajectory

After the constitutional order was established in 1924 in the Republic of Türkiye, until 1960, the constitution was never suspended, and no authority emerged with the constituent power to suspend or dismantle it. As such, none of the security measures taken during the formative years were juridically extraconstitutional, nor could they be explained through the norm-exception dichotomy. The authority that interfered with the regime of rights and liberties was not centralised in a single power source. Instead, decision-making powers were distributed among various authorities nationwide. Chapter 3 showed that, during the formative years of the Republic, the security measures that contradicted the rights and liberties regime were implemented through the powers granted to state institutions, including legislative, governmental, judicial, bureaucratic, and military authorities. The evidence demonstrated that these authorities took and implemented exceptional security measures based on their (un)constitutional discretion, resulting in decisions that blurred the boundaries of law, politics, and state violence. During the formative years, as the executive branch was a part of the legislature, political supervision over the executive was essentially ostensible. In a time when the legislature and the government were indistinct, enacting state power in the form of legislation was a primary way of taking legal-

repressive measures. The security measures restricting or suspending rights and liberties were created and enforced where law and parliamentary politics converged.

Chapter 4 highlighted that in the late 1940s, the state's security concerns underwent some shifts and transformations due to national and international developments. The transition to multi-party democracy and Türkiye siding with the capitalist bloc during the Cold War impacted how state authorities framed what they deemed a threat. Between 1948 and 1960 and from 1961 to 1971, similar to the Republic's formative years examined in Chapter 3, state authorities restricted rights and liberties through various means, including martial law declarations and legislative, governmental, and administrative actions and inactions, all within the constitutional order.

Beyond the extraordinary measures taken while the constitutional order was intact, Türkiye experienced a state of exception lasting about a year following the 1960 military coup. During this period, the constitutional order was suspended entirely and replaced by the 1961 Constitution, which established new rules and principles for Türkiye's political system and institutions. During the state of exception, even though the military cadres that carried out the coup made regulations, the entire duration passed in a state of lawlessness, as the decision-makers were not politically and judicially responsible before any authority. When they took over power and abolished the 1924 Constitution, they abolished all the constituted powers with it.

Between 1948 and 1971, political power changed hands several times, and the definitions of threats changed depending on who held political power. State practices in Türkiye during the given timeframe illustrated the

intertwinement of politics and law regarding security issues. Every power group seeking dominance in the political arena used discourses of legal legitimacy against their opponents. The DP accused the CHP of acting illegally, while the CHP levelled the same criticism at the DP. The military actors behind the 1960 coup condemned the DP's actions by framing them as illegal, and political figures continuing the DP's legacy after the coup also labelled socialist movements as illegal. Each power source claimed to ensure public order and state security whenever they intervened in the rights and liberties regime, implementing exceptional security measures against what they framed as threats. As such, there was no agreed-upon threat when security measures addressed threats to the nation or the state. In addition to the national and international contexts, the security understandings of decision-makers determined the definition of the threat and who fits this definition.

Chapter 5 demonstrated that, similar to Chapters 3 and 4, exceptional security measures from 1971 to 2002 varied juridico-politically, with constitutionally defined emergency measures being only one method of interfering with the rights and liberties regime. It highlighted the multiplicity of decision-makers even within a constitutional order that favours the executive in decision-making. During the 1980-1983 state of exception, as with the 1960-1961 exception, the military seized and monopolised political power through force, altering the entire constitutional order while operating in a legal void. Apart from the times under the state of exception, the boundaries between decision-making authorities were blurred, as the potentiality to make decisions was dispersed. Legislators and the State Security Courts

cooperated when exceptional security measures were enacted through laws. The judicial police, organised under the Ministry of the Interior, implemented legal regulations concerning nation/state security. They delivered the individuals deemed threats to national/state security to the State Security Courts based on the legislation interfering with the constitutional rights and liberties regime. The capacity to create and enforce legal-repressive measures was embedded within the state's power structure.

The evidence showed that while the legislature was more active in enacting exceptional security measures in 1923-1971 and 2002-2019, executive and military powers became more prominent in decision-making from 1971 to 2002. In 1971, the military threatened to take over the state administration, forcing the legislature to empower the executive and the military. The memorandum displaced the existing government. The new government was formed according to the military's suits, and the Parliament passed legislation strengthening the executive and the military in decision-making concerning issues deemed to be about nation/state security. Based on constitutional amendments and laws, beginning with the 1971 military memorandum, matters portrayed as national security problems were primarily addressed through constitutional emergency responses and emergency decrees. However, the Parliament remained involved in the enactment of state power by ratifying martial law and state of emergency declarations, as well as emergency decrees issued by the government. Parliamentary actions and inactions as political decisions enabled norm-making by the executive during the timeframe examined in Chapter 5. Between 1971 and 2002, the constitutional frameworks established through the 1971-1973 amendments

and the 1982 Constitution, along with legal regulations, aimed to exclude judicial review of state authorities' decisions and actions concerning interventions in the rights and liberties regime. However, Chapter 5 provided evidence that both the Constitutional Court and the administrative judiciary reached verdicts that did not align with governmental policies.

Chapter 6 showed that, between 2002 and 2019, the AKP-led governments and state authorities wielded discretionary powers, enabling them to take and implement exceptional security measures. Although there was no declared state of emergency during the first fourteen years of the AKP rule, state practices still often contradicted the constitutional norms on rights and liberties in Türkiye. This interference manifested through government, judiciary, legislature, law enforcement, and military deviations from the constitutional norms on rights and liberties. In addition, from 2016 to 2019, the state interfered with the rights and liberties regime through the declared state of emergency (2016-2018) and Law 7145, enacted in 2018, which provided state authorities with extraordinary powers. Similar to the period examined in Chapter 3, during the period 2002-2019, the constitutional order was never suspended. As such, all the exceptional security policies were decided on and implemented by constituted powers within the constitutional order. During the periods examined in Chapters 3 and 6, the exceptional security measures in Türkiye presented practices that are incompliant with the dichotomous logic of the Schmittian conceptualisations of the exception. As such, state practices that infringed upon constitutional norms regarding rights and liberties occurred through a merging of law and politics, reflecting a coexistence of norms and

their exceptions, legal-repressive measures, within the constitutional framework.

7.1.2. Analysis

State authorities' practices in Türkiye's juridico-political history complied with the patterns suggested by the positivist (the rule of law) and decisionist (sovereign decision) perspectives at different times and junctures. However, there were instances where state actions contradicted the rights and liberties regime, and these actions did not conform to either positivism or decisionism. This finding shows that security measures interfering with rights and liberties do not necessarily fall exclusively within strictly defined categories of positivist and decisionist perspectives. Contrary to the arguments of liberal state theory, in Türkiye, the constitutions (1924, 1961, and 1982) were the results of the political will of the constituent power rather than social contracts. The constituent power in Türkiye always happened to be a monarchical figure, as conceptualised by Schmitt. However, incompatible with the Schmittian norm-exception binary, norms and repressive measures were not necessarily exclusionary of each other, as they often coexisted through the implementation of security measures contradicting the constitutional rights and liberties regime. In contrast to positivist legal theory, in Türkiye, using constitutional emergency responses was never the only way to restrict or suspend rights and liberties. Moreover, there were occasions of lawlessness following the 1960 and 1980 military coups.

In Türkiye, the legal order comprises the written constitution, legislation, statutory and emergency decrees of the executive that remained embedded in the legal system, and judicial opinions (*içtihad*). The legal system is a product of political power and struggles while simultaneously being the tool to interfere with the rights and liberties regime in the name of security and at the expense of rights and liberties. Similar to every legal system in line with liberal constitutionalism, the legal system of the Republic of Türkiye determined the decision-maker and decision-making processes. Chapters 3-6 demonstrated that the political power to decide on discretion often led to deviations from the norms on rights and liberties. In the actions or inactions of state authorities contradicting the rights and liberties regime, the constitutional order was addressed as the referent object of security while being the accumulation of legal texts taking precautions against possible threats to itself. As such, for 92 of the 96 years under research, the state functioned within this circularity of the norms and their exceptions.

This dissertation showed that depending on whether political power was monopolised, the juridical conditions of exceptional security measures and their legality changed. In the history of the Republic of Türkiye, decision-making was exercised within two juridical situations. In the first of these, the legal order delegated decision-making authority to specific actors, institutions, and practitioners who were meant to act according to the constitutional rules. Otherwise, according to the law, they would have to respond to the judicial authority. However, Chapters 3-6 showed that even though the legal order may establish separation of powers and ways to take legal action against the state, the law's vagueness enables discretionary decision-making and

contradictory interpretations of the same norm, withering legal security of citizens and equality before the law. As such, it results in defects in the liberal constitutional order by not allowing citizens to have the same equal rights.

Referring to the second one of these situations, in Türkiye, a power located in the existing juridical order, namely, the military, surpassed all other sources of authority which were constitutionally established. This power forcefully assumed the monopoly of political power and became the ultimate decision-maker, acting outside the constitutional order. During the states of exception following the 1960 and 1980 military coups, the Republic of Türkiye experienced this way of decision-making. This second situation pertained to the complete alteration of the political and juridical system by a source of power that emerged as the constituent power. This power had no legal or political restraints while forming the state's juridical and political characteristics.

Chapters 3-6 demonstrated that at times when the separation between the legislature and the executive was *de jure* or *de facto* indistinct, one of the primary mechanisms for restricting rights and liberties was the enactment of state power through legislation. This scenario occurred mainly during the periods 1923-1960 and 2002-2019. Throughout these eras, laws were utilised to both broaden state authorities' discretionary powers and restrict judicial oversight over their use of these powers. Between 1960 and 2002, excluding the four years under the state of exception, 32 different governments served. Much of this period was characterised by the fact that no political party dominated the Parliament and that the military had a decision-making capacity on rights and liberties. However, Chapter 5 showed that the power to

make a decision was still dispersed, even when executive decision-making was constitutionally favoured. More than 80 per cent of the period under research in Chapter 5 was spent under officially declared emergencies. However, the security measures in question were not solely the results of the use of constitutional tools during an emergency or the arbitrary actions of the military while the constitutional order was suspended. Apart from the 1980-1983 state of exception rule, there were always multiple decision-makers on rights and liberties, some more powerful than others.

To recapitulate: Exceptional security practices can arise from legal frameworks, emergency declarations, routine actions by state authorities that contradict constitutional rights and liberties, or from the state of exception when the legal system is suspended and political power is monopolised. Literature often simplifies these diverse juridico-political manifestations into a norm-exception framework, overlooking the nuanced characteristics of interventions in rights and liberties and the legality surrounding such security measures. Juridico-political conditions can take various forms, each necessitating consideration of contextual specifics.

7.2. Spatiotemporality

This section presents the dissertation's conclusions on the temporal aspects of exceptional security measures implemented in specific territorial spaces inhabited by citizens of the Republic of Türkiye. Chapter 2 highlighted that the studies on the spatiotemporal aspects of security mainly described the geographies and areas where rights and liberties are restricted or

suspended as the spaces of the exception, indicative of a legal vacuum or lawlessness. The international spaces examined by the literature included constructed sites like the Guantánamo and Abu Ghraib prisons or the international territories subjected to military interventions, like Iraq and Afghanistan. Some scholars pointed at the hierarchy in the international system and studied countries such as Palestine as the states of exception. Chapter 2 demonstrated that these studies considered such countries as places where international law is suspended. For, the scholars discussed that, particularly in the post-9/11 era, violence over these territories has become permitted as those carrying out violent actions are not accountable before the law. Those who looked at the spatial patterns of exceptional security within the national borders also examined constructed spaces, such as border control posts and refugee camps. Non-constructed spaces within the national territory remained understudied in the literature.

This dissertation showed that not everyone living in a country is affected by exceptional security measures to the same extent and in the same way. In Türkiye, there was a spatial reflection of this reality. As such, in most instances examined, there was a tangible spatial pattern to the state practices in defiance of the rights and liberties regime, affecting the residents of specific spaces within the national territory. By historicising the exceptional security measures in republican Türkiye, Chapters 3-6 showed that the temporal is not independent of the spatial. The evidence demonstrated that the discretion of state authorities may result in decisions on exceptional security measures taken not because of the occurrence of a threat at a specific time but because of the features of a specific space and its residents.

In the Turkish constitutional order, which was always in line with liberal constitutionalism throughout the republican era, legal regulations addressed the national territory as a whole and the citizens of the state as a general category. As such, legal regulations did not establish hierarchical relationships or make any distinctions between different territorial spaces of the national territory or between citizens. By law, the state was entitled to take legally determined exceptional security measures when there was a threat to the nation/state. However, this power of the state was not limitless: rights and liberties could be restricted only due to an emergent threat to the nation/state, only in the spaces where the threat was located and only until the threat was eliminated. So, in theory, the state was spatiotemporally restrained when citizens' rights and liberties were concerned.

However, Chapters 3-6 showed that, depending on the contextual circumstances, the state's exceptional security practices were spatially selective, resulting in a *de facto* hierarchy between different territorial spaces and citizens. The actions of the state stretched or exceeded the spatiotemporal boundaries determined by law. The territorial spaces that were exposed to exceptional security practices the most can be divided into two categories: the provinces where citizens of Kurdish descent have a numerical majority and metropolitan areas heavily populated by students and workers, such as Istanbul, Ankara and Izmir. While the security concern was about territorial integrity regarding the Kurdish-populated regions, which are in eastern and southeastern Türkiye, in metropolitan areas, the threat was framed as communism/socialism and, after mainly 2002, terrorism. In what

follows, I will respectively discuss the exceptional security measures targeted at these territorial spaces.

7.2.1. Eastern Regions

The context in which the constitutional order is shaped determines the usual suspects over which exceptional security measures are exercised. As discussed in Chapter 3, the Republic of Türkiye had concerns for territorial integrity when it was established in 1923. Türkiye's fear of disintegration significantly shaped the state's security policies in the formative years of the state. These security concerns determined who would be exposed to exceptional security measures. Chapter 3 showed that the revolts in the country's eastern regions reinforced the state's concerns for territorial integrity. Among the revolts, one was initiated by non-Muslim Assyrians, while Kurds started the others. The ruling elite at the time was convinced that these revolts in the national territory threatened territorial integrity and were backed by foreign powers. The state deported Nestorians. It portrayed Kurdish rebels as reactionaries who failed to appreciate the state's republican reforms and efforts to favour the region.

Following the suppression of the Sheikh Said revolt in 1925, exceptional security measures taken through martial law declaration, legislation, and Independence Tribunals aimed to punish those involved in the revolts, to dismantle tribal power structures in the southeast by penetrating governmental authorities into the regions heavily populated by citizens of Kurdish descent, and through expansive demographic policies. Through legal

regulations and administrative and military practices, Turks were sent to the eastern regions, and Kurds were resettled in the areas where Turks formed the majority. Through such demographic policies, the state sought to break the cultural unity of Kurds in the eastern and southeastern regions. The enactment of state power through legislation and administrative decrees endorsed the exercise of sovereign power by bureaucrats and military officers in mainly southeastern Türkiye. As such, state institutions centring on the security of the state (The First and the Fourth Inspectorate-Generals, *Umumî Müfettişlikler*) were established in southeastern Türkiye. These institutions functioned *de facto* until 1948 and *de jure* until 1952.

During the period examined in Chapter 4 (1948-1971), the eastern regions of the national territory were not the primary focus of exceptional security policies. However, the empirical evidence indicates that political power remained concerned about the cultural differences between the southeast and the rest of the country, as well as territorial integrity. The 1959 report on Kurdistan and examples of ‘the case of the 49’ and the Sivas camp demonstrated that the eastern regions continued to be of particular concern. ‘The case of the 49’ highlighted governmental, administrative, and judicial contradictions with constitutional norms on rights and liberties, while the Sivas camp was established through a sovereign decision following the military coup of 1960, after which the constitutional order was repealed. The fact that the prisoners of ‘the case of the 49’ were exempted from the general amnesty after the 1960 coup and the construction of the Sivas camp showed that the sovereign authority, similar to the constituted powers of the formative years, was spatially selective in its measures. During the 1960-1961 state of

exception, laws and exceptional security practices applied differently to the eastern regions and their residents.

After the 1971 military intervention, the country's eastern regions became the primary target of exceptional security measures. Following the 1971 memorandum, martial law was declared in the southeast, even though there was no mention of an imminent threat in the provinces of this region. Chapter 5 showed that the 1978 Kahramanmaraş massacre, where at least 110 Alevi citizens were killed, was utilised to declare martial law in regions heavily populated by Kurds. Evidence demonstrated that the Turkish intelligence and the MHP (Nationalist Movement Party, *Milliyetçi Hareket Partisi*) illegally took part in the martial law declaration decision. Evidence revealed that although the government was reluctant to declare martial law, a political party and a state institution orchestrated violent events and withheld information from the government.

The military carried out the 1980 coup while southeastern Türkiye was still under martial law. The state of exception rule of 1980-1983 was more restrictive and violent in the eastern regions than the rest of the country. From 1987 to 2002, the entire southeast was placed under the authority of the State of Emergency Regional Governorate (SoERG, *Olağanüstü Hal Bölge Valiliği*) rule. This institution shared similarities with the First Inspectorate-General. However, unlike the Inspectorate, the SoERG functioned under the provisions of the constitutional emergency response, the state of emergency. The establishment of the First Inspectorate-General was not justified by an emergency requiring immediate action. However, the SoERG was justified on the grounds of the existence of an imminent threat to the nation/state - PKK

terrorism aimed at dividing the country, posing a threat to the country's territorial integrity and constitutional order.

Similar to the previous periods, the exceptional security measures during the AKP era, analysed in Chapter 6, were also spatially selective. The evidence showed that the AKP rule targeted southeastern Türkiye as a territorial space and democratically elected Kurdish politicians from the pro-Kurdish HDP, who addressed the Kurdish problem, as well as people and institutions who addressed human rights violations in the southeast. The *hendek* operations (2015-2016), undertaken by the AKP government based on the events framed as a threat to the country's territorial integrity, had similarities with earlier operations in the eastern regions during the nation's formative years. In both periods, state authorities sought to legitimise the military operations within the national territory by expressing that they had security concerns about territorial integrity. The operations conducted in the region exhibited characteristics of a war mentality within the nation's borders, comprehensive military campaigns, forced displacement of local populations, and the restriction, suspension, or violation of rights and liberties such as the inviolability of the home, freedom of movement, communication, expression, and assembly. In both periods in question, bureaucrats made decisions on exceptional security measures on a daily basis—First and Fourth Inspector-Generals during the formative years and provincial and district governors in the 2010s. Additionally, those responsible for rights violations were not held accountable before the law. In both periods discussed in Chapters 3 and 6, state actions blurred the distinction between exceptional security measures

within the national territory and acts of war by employing military force domestically.

7.2.2. Metropolitan Areas

After the state's establishment in 1923, the constituent power embodied in the Turkish National Assembly formalised the principles of state institutions and citizens' rights and liberties in the 1924 Constitution. Although this constitutional framework granted equal rights to all citizens, political power did not recognise all inhabitants of the national territory as equal holders of rights and liberties. As Chapter 3 discussed, the political characteristics of the new Turkish nation excluded non-Muslims. In metropolitan areas, the spatial patterns of security measures against non-Muslim citizens and residents became pronounced during WW2. During this period, the state restricted or suspended citizens' economic and political rights and liberties. Six provinces in western Türkiye were placed under martial law between 1940 and 1947, but the extraordinary rule operated differently in Istanbul than the other five, as the majority of non-Muslims lived in Istanbul. Non-Muslims were framed as a threat and defined as those profiting from the war, while Turkish people suffered. Besides martial law, the state interfered with the rights and liberties regime during the war through legislation and public officers' discretionary practices, as proven by the discriminatory tax collection process. Non-Muslim citizens, subjected to a discriminatory tax system, were forced into manual labour when they could not pay the required amounts set by public officers.

Following the end of WW2, Türkiye sided with the capitalist bloc, which impacted whom state authorities framed as a threat. During the Cold War, those who were deemed to be associated with the ideology of communism were portrayed as the internal enemy. From 1948 to 1971, metropolitan areas and their neighbouring provinces became the primary targets of state practices that interfered with the rights and liberties regime. The 6-7 September pogroms were prompted by the DP's securitisation of the Cyprus issue, leading to political violence against non-Muslims. Martial law declared upon the pogroms in 1955 was primarily used against the opposition and those deemed as communists and socialists organised in metropolitan areas. During the timeframe examined in Chapter 4, state authorities regarded communist associations and opposition party politics as threats to the survival of the state and social integrity, often linking communism with terrorism.

Although the 1961 Constitution provided the constitutional basis for socialists to become involved in the political struggle in democratic ways, Chapter 4 showed that the Parliament and governmental authorities still portrayed communism as a threat. As a result, metropolitan areas—centres of socialist thought and action—were targeted through security measures that restricted or suspended citizens' constitutional rights and liberties, such as freedom of association and the rights to assembly and demonstration. These measures were taken mainly through the constitutional emergency response (martial law) and legislation. By the late 1960s, political hostility among entities and movements seeking political power escalated to the point where even lawful protest marches resulted in the death and injuries of protestors, based on which martial law was declared in metropolitan areas.

Chapter 5 showed that during the 1970s and the 1980s, communism was still considered a threat. The martial law declared during the military operation in Cyprus was repeatedly extended by Parliament and used to implement exceptional security measures against communists and socialists. The securitisation of communism by state authorities had a role in the Kahramanmaraş massacre and impacted the actions taken following the violent events. The state of exception rule between 1980 and 1983 dismantled students' and workers' unions and associations, which were strong in big cities, and implemented measures to prevent their reorganisation.

Chapter 6 showed that, even though the AKP governments did not declare a state of emergency in the first fourteen years of their rule, they targeted metropolitan areas mainly through protest bans and restricting or suspending citizens' right to association. The evidence shows that the AKP rule took more intense and severe security measures in Alevi and working-class neighbourhoods (see Yonucu, 2018). Through legislation and judiciary activities, people using their constitutional right to assembly and protest were labelled as terrorists. Chapter 6 showed that the ambiguity of counterterrorism legislation allowed state authorities to label non-violent statements and actions as acts of terrorism. The legislation provided the legitimacy basis for state authorities to take exceptional security measures against people who did not comply with or criticised the policies of the AKP government.

7.2.3. Analysis: Differently Permanent

In Türkiye, citizens of Kurdish descent heavily inhabited the eastern regions, and metropolitan areas of the national territory were heavily inhabited by non-Muslims and those involved in students' and workers' movements. State authorities' exceptional security practices had different implications in different territorial spaces of the national territory. Although exceptional security practices were permanent throughout the country's history, they were differently permanent in the eastern regions compared to metropolitan areas. Throughout the timeframe under research, governments (legal) or the military cadres that carried out coups in 1960 and 1980 (extralegal) put specific geographies or the entire country under extraordinary rules.

Martial law/state of emergency durations in the eastern regions: 24

February 1925-23 December 1927 (two years, nine months, 29 days), 26 April 1971-26 September 1973 (two years, five months, one day), 26 December 1978-30 November 2002 (23 years, 11 months, five days), and 15 July 2016-20 July 2018 (two years, six days). In total, 31 years, two months, and 11 days.

Martial law/state of emergency durations in metropolitan areas: 1 January-

9 March 1931 (two months, nine days), 23 November 1940-23 December 1947 (seven years, one month, one day), 7 September 1955-7 June 1956 (nine months, one day), 28 April 1960-1 December 1961 (one year, seven months, four days), 21 May 1963-20 July 1964 (one year, two months), 16 June 1970-16 September 1970 (three months), 26 April 1971-26 September 1973 (two years, five months), 20 July 1974-2 September 1975 (one year, one month, 13 days), 26 December 1978-19 July 1984 (five years, six

months, 23 days), and 15 July 2016-20 July 2018 (two years, six days). In total, 19 years, one month, and 27 days.

From 1923 to 2019, regardless of the territory exposed to emergency responses, political authorities utilised or sought to utilise emergencies as they provided state authorities with extraordinary powers. Nevertheless, such security measures assumed different temporalities in different parts of the national territory. The information concerning the periods of martial law and the state of emergency proves that the state used these responses more frequently and generally for shorter periods in metropolitan areas, while it was declared less in number in the southeast and lasted longer. Emergencies were declared and lifted according to the legal framework in metropolitan areas. However, the evidence shows this was not the case in the eastern regions.

Chapters 3-6 showed that the state employed constitutionally determined emergency measures in metropolitan areas upon an incident or event that took place before the declaration of martial law or the state of emergency, such as WW2, the military invasion in Cyprus, protest marches, and coup attempts. The exceptional security measures taken in the eastern regions were different in two respects. First, except for the 1971-2002 period, state authorities generally preferred alternative methods in the eastern provinces over constitutionally determined emergency responses to implement exceptional security measures. Secondly, these measures were mainly taken not as a result of an incident or an event but in a preventive manner when no issue had arisen at the time of taking the exceptional security measures. During the formative years, there were numerous Kurdish revolts, culminating

in the suppression of the Dersim revolt in 1938. However, martial law was declared after only the Sheikh Said revolt in 1925.

Instead of invoking martial law or a state of emergency, the state curtailed citizens' rights and liberties in eastern regions through other means until the 1970s and again after 2002. These included establishing state institutions with exceptional powers specific to southeastern Anatolia (e.g., the First and the Fourth Inspectorate-Generals in the formative years) and enacting laws targeting only the areas predominantly inhabited by citizens of Kurdish descent. Starting after the 1971 military memorandum and until the AKP rule, the Kurdish-populated areas were targeted through constitutionally determined emergency measures. Through constitutional amendments between 1971 and 1973 and the 1982 Constitution, the military and the government were empowered to make decisions on employing emergency responses. The State of Emergency Regional Governorate was created in 1987 upon a state of emergency declaration. It was a unique state institution: the only regional administration in the country and specific to southeastern Türkiye. This institution had broad security-related discretionary powers over its jurisdiction.

Chapters 3-6 showed that state authorities in Türkiye sought more permanent exceptional security measures in the eastern regions. Taking and implementing such measures in the eastern regions involved more intense crafting that would allow the reproduction of a narrowed-down version of the rights and liberties regime for the residents of the territories densely populated by citizens of Kurdish descent. As such, different threat frameworks resulted in spatiotemporal differences between the exceptional security measures

employed in the eastern regions and metropolitan areas. Chapters 4-6 demonstrated that the primary security concern in metropolitan areas was framed as communism and socialism. In the eastern regions, the focus was on threats to territorial integrity. In the former, the issue was considered a challenge to the existing political power structure, while in the latter, it was seen as a risk of territorial disintegration, endangering the very existence of the state.

The exceptional security measures employed during the AKP rule also showed that the state's exceptional security measures were differently permanent in the areas populated heavily by citizens of Kurdish descent. As such, the 2000s and the 2010s were years when state authorities targeted those who were framed as a threat mainly through counterterrorism legislation and judiciary activities. Citizens across the country, whenever they fit in the threat definition at a given time, were targeted through the utilisation of the concept of terrorism. Chapter 6 showed that geographically, the Kurdish-populated areas suffered the most from such exceptional security measures of the state. However, in addition to the ambiguous regulations concerning terrorism, the AKP restricted and suspended the rights and liberties of southeastern residents through some formerly enacted laws (Law 5442 and Law 2565) during the *hendek* operations. Law 5442 was enacted in 1949, and Law 2565 came into force in 1981. These Laws were products of entirely different national and international contexts. The former came into force after the Inspectorate-Generals ceased to function, and the latter came into force extraconstitutionally during the 1980-1983 state of exception.

To recapitulate: The studies on exceptions and emergencies looking into the spaces where people's rights and liberties are compromised focused on either international territories or constructed spaces. These studies mainly addressed the events of 9/11 as a breaking point, after which the exception has become permanent in these spaces. However, the historical analysis of the state practices in Türkiye showed that, like exceptional security measures, the spatiotemporal aspects of these measures can be better understood through a historical lens. The evidence on Türkiye demonstrates that the temporal is intertwined with the spatial. The spatial patterns of exceptional security practices present permanence in geographies as long as these geographies constitute security concerns for political power. In Türkiye, this was the case with both the eastern regions and metropolitan areas. However, such practices were differently permanent in these two categories of territorial spaces. While the constitutional framework was the primary tool to take exceptional security measures in metropolitan areas, the state mainly used alternative tools in the eastern regions, such as legislation, statutory decrees, and spatially designed state institutions. As such, the state's interference with the rights and liberties regime in the eastern regions and metropolitan areas presented different juridico-political conditions and temporalities, showing that the definition of the threat and what is deemed to be threatened determine the spatiotemporal dimensions of security measures.

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