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# Oppositional usages of Europeanization in Turkish constitution-making: discussions on religious freedom

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## ABSTRACT

The European Union has traditionally played an anchoring role in Turkey, pushing the Republic towards the enhancement of fundamental rights and freedoms. However, the decreasing credibility of the project for EU membership after 2005 has gradually led to selective reforms being introduced, and most recently to de-Europeanization. Against this quickly changing background, this paper seeks to investigate the usages of Europeanization by domestic political actors during the discussions on the recently failed constitution-making process (2011–2013). It specifically focuses on deliberations over religious freedom, and argues that Europeanization has continued to serve as the normative context in constitution-writing.

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## Introduction

The European Union (EU) has traditionally played an anchoring role in Turkish domestic politics, enticing Turkey to undertake policy reforms aimed at enhancing fundamental rights and freedoms. After the recognition of the Turkish candidacy for EU membership in 1999, an intensive reformist period was initiated, during which the EU demands for compliance were assigned center stage in domestic politics. However, the decreasing credibility of EU membership after 2005 has taken its toll on the Europeanization process in Turkey, leading first to selective Europeanization and most recently to de-Europeanization.

The current challenges that Europeanization faces in Turkey have shifted the focus of scholars to the role of domestic actors. This also coincides with

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developments in the Europeanization literature, which no longer posits Europeanization as a linear adaptation process driven by the impact of the EU, but rather as a politico-normative context that shapes and is shaped both by domestic and European actors. This fresh outlook on Europeanization treats the discursive references and usages of Europeanization by the relevant actors as an important component of these processes. Although the investigation of discourses currently forms a minor portion of Europeanization studies, discourse analysis becomes critical in cases where the EU's role appears to be diminished. Such investigation enables scholars to trace trends of Europeanization that would otherwise have remained unnoticed.

Drawing on these insights from Europeanization literature, and reviewing previous applications to the Turkish case, this paper seeks to understand to what extent the usages of Europeanization impacted political actors' discourses on religious freedom during the discussions over the recently failed constitution-making process (2011–2013). Despite the widespread interest in constitutional reform, not least as part of the Europeanization agenda, this unprecedented attempt at constitution-making has largely remained unexplored in the literature. This article focuses principally on the proceedings of the deliberations of the Conciliation Commission (*Anayasa Uzlaşma Komisyonu*), which was established under the auspices of the Turkish parliament, as these proceedings are a better indicator of the dynamic relations between different political actors than static policy documents.

Through reviewing three episodes of conflict, this article strives to show how the usages of Europeanization were influential in the deliberations as a means to achieve supremacy for the parties' negotiation lines. The argument here is twofold. First, domestic actors may and do apprehend European norms differentially, not least due to their party interests, and they put forward oppositional usages of Europeanization. They do so at times by over-emphasizing certain aspects of the European norms that they wish to see implemented in the domestic context, or alternatively by intentionally omitting certain aspects of those norms. While the first episode of conflict attests to the former mechanism, the second episode of conflict attests to the latter. Second, although different party preferences are the main reasons why oppositional usages of Europeanization emerge – and these are evidently re-negotiated in strategic interaction between the parties – the level of institutionalization of a European norm also carries considerable weight. The third episode of conflict illustrates how oppositional usages escalate when the European standards are themselves more open to interpretation. Together, they also display how the politicization of discussion on a topic such as religion, which lies at the heart of many controversies, might to a certain extent be mitigated through the mobilization of Europeanization discourses, albeit oppositional ones.

This article starts by laying the foundations of the conceptual framework, which places actors' usages at the core of the study of Europeanization processes. A brief overview of the literature on Europeanization in Turkey, with an emphasis on recent developments follows this. After situating religious freedom within the European and Turkish constitutional contexts, the article discusses the three episodes of conflict: freedom not to believe, limitations of religious freedom and religious education. Finally, it offers some concluding remarks.

### **Europeanization: mechanisms, actors and usage**

Europeanization is a useful framing concept with which to describe the political and institutional transformations taking place within EU member states, accession countries and beyond. A commonly accepted definition of Europeanization refers to:

processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things,' and shared beliefs and norms, which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic discourse, political structures, and public policies.<sup>1</sup>

Positioning EU-induced domestic change at the center, the Europeanization literature sets out two principal models, inspired by rational choice and sociological institutionalism. Based on rational choice institutionalism, one can identify three mechanisms for Europeanization: conditionality, domestic empowerment and lesson-drawing.<sup>2</sup> However, it is mostly conditionality<sup>3</sup> that has attracted attention in the literature on accession countries: this mechanism is seen as bringing about changes of attitude in domestic actors by altering their cost-benefit calculations through positive and negative incentives. Deriving from sociological institutionalism, the social learning model, on the other hand, links the transformative power of Europeanization to the socialization of domestic actors into the norms, practices and meaning structures of the EU. The EU appears as a 'teacher of norms'<sup>4</sup> that utilizes moral arguments rather than material incentives.

These two models are distinguished in order to underline the different causal mechanisms that might bring about a given course of action. However, this distinction has been challenged both conceptually and empirically. In a number of policy areas, it has been shown that both rational and sociological mechanisms are in effect, either subsequently or simultaneously. In particular, studies on post-accession countries<sup>5</sup> have disclosed that EU conditionality is to a large extent replaced by the logic of appropriateness and the socialization of domestic actors after accession. Similarly, at the conceptual level, rational and sociological mechanisms are not as independent from each other as is often suggested. Studies have shown that even an instrumental

adoption of European norms and practices might eventually lead to a process of identity transformation, which in turn (re-)defines interests.<sup>6</sup> Jacquot and Woll's work in this sense is pivotal in forging a conceptual framework that puts the social construction of actors' rational behavior at center stage.<sup>7</sup> The authors develop the notion of 'usage,' a term which precisely makes the connection between the two mechanisms: its double meaning captures both the idea of instrumentalizing Europeanization for one's strategic purposes and the habitual practice that might evolve out of this utilization.<sup>8</sup> Put another way, 'the actors at the heart of these processes use European opportunities strategically, but are also transformed by them.'<sup>9</sup> Jacquot and Woll identify three types of usage: *cognitive*, *strategic* and *legitimizing*. These differ not only in terms of the political work they do – respectively, framing, resource mobilization and justification – but also in terms of the elements mobilized – among others, ideas, institutions and discursive references. Even though the lines dividing these three types might be at times indeterminate, usages of Europe constitutes a good place to start to analyze the micro-foundations of Europeanization. Particularly relevant for this article is the legitimizing usage of the EU or Europe in general, as it relates to the discursive references of the domestic actors and is 'based on the assumption that demonstrating a certain level of appropriateness between domestic policy and EU norms helps political actors to claim the normative upper hand in a political debate.'<sup>10</sup>

In justifying their policy preferences, domestic actors can have recourse to European references in order to gain the support of other actors or the public audience. However, as this article shows, even though there might be a common acceptance of Europeanization as a legitimizing force, domestic actors employ oppositional usages depending on their interests. Political parties advance different interpretations of European standards by selectively highlighting certain aspects that they desire to 'transplant' to the domestic context at the expense of others that they choose to overlook. As Aydin-Düzgit<sup>11</sup> underscores, in the analysis of domestic discourses about Europeanization, what is not said can be just as important as actual utterances. Moreover, the literature posits that Europeanization is more likely to happen when the EU rules are strongly legalized and when they are linked to overarching international norms.<sup>12</sup> Similarly, oppositional usages of Europeanization tend to be fiercer when the European norm in question is weakly institutionalized. Although oppositional usages of Europeanization more often than not fail to forge material domestic change in form of rule adoption, 'in the long run, it entails cognitive and/or normative adaptation by actors.'<sup>13</sup> Furthermore, since usages of Europeanization tend to mask party interests, they contribute to a relatively less politicized environment within which discussions are at least assumed to be carried out on a common ground.

The focus on the usages of Europeanization corresponds to an understanding of Europeanization in terms of a wider historical context, which gives

birth to varying conceptions of Europe and Europeaness that are continually re-visited and that co-exist in different segments of society.<sup>14</sup> It also detaches Europeanization from a direct tie to the EU institutions<sup>15</sup> and opens up a space to consider the roles of a series of actors – European, transnational and domestic – in triggering a process of transformation.<sup>16</sup> Relying on the kinds of Europeanization identified by Diez, Agnantopoulos and Kaliber,<sup>17</sup> it can therefore be claimed that such an understanding sits at the crossroads of not only policy and political Europeanization but also discursive and societal Europeanization. The inquiry into the contested meanings and usages of Europe by domestic actors is admittedly marginal compared with the bulk of the work on EU conditionality.<sup>18</sup> However, this does not make discursive practices less important: on the contrary, investigating usages of Europe by a candidate country ‘reveals how Europe matters where and when we least expect it,’<sup>19</sup> particularly in the absence of EU conditionality.<sup>20</sup>

### Europeanization in the Turkish case

Europeanization in Turkey has mostly been grappled within the context of EU membership, and analyzed with a conditionality perspective that has obtained great explanatory power in understanding processes of domestic reforms. Following Turkey’s official application in 1987, the recognition of the candidate status came twelve years later in 1999, and precipitated an intensive reformist period, entailing several harmonization packages. Negotiation talks were opened with a good deal of controversy in 2005, only to be blocked again by a European Council decision in 2006 that prevented the opening of eight chapters and allowed for provisional closure of the others until Turkey removed its restrictions on seaports and airspace to Cyprus. To this date, only sixteen out of 35 chapters were opened for negotiation.<sup>21</sup> In the post-2005 period, therefore, the spotlight on EU conditionality gradually dimmed.

However, as noted by several scholars, Europeanization has continued, albeit imperfectly, in certain policy domains such as state-military relations, the rule of law and minority rights.<sup>22</sup> In what Yilmaz<sup>23</sup> calls the selective Europeanization phase, the role of domestic actors has come to the forefront, as well as the political (but not strictly policy) dimension of Europeanization. Whereas, for instance, Nas and Özer emphasize the social learning of domestic actors and claim that Europeanization may be observed in the ‘positioning, values, discourses of domestic actors and what defines acceptable behaviour and legitimate values,’<sup>24</sup> others<sup>25</sup> stress the strategic alignment of political preferences of domestic actors with EU demands and standards. More specifically, the ruling Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) has been identified as the main driving force behind this parsimonious Europeanization, cherry-picking the items that match its interests.<sup>26</sup> The AKP’s support for Europeanization has more often than not been

explained via strategic calculations of obtaining legitimacy and eliminating domestic pressures.<sup>27</sup> In parallel to that, the Euroscepticism of the Republican People's Party's (*Cumhuriyet Halk Partisi*, CHP), the main opposition party, was perceived as a reaction to the AKP's ownership of the issue, which raised concerns over secularism and national unity.<sup>28</sup>

Even more recently, the scholars have argued that in the post-2010 period Turkey entered a phase of de-Europeanization,<sup>29</sup> which implies not only a reversal of political reforms but also the loss of Europe as a normative reference point.<sup>30</sup> The literature has therefore also moved to the investigation of discursive and societal Europeanization, whereby Europeanization 'exists as a context to the extent that the European norms, values, and institutions are incorporated into the public narratives by domestic actors.'<sup>31</sup> Aside from a number of policy areas such as the rule of law<sup>32</sup> and media freedom,<sup>33</sup> where significant backslides are reported, the AKP government appears to make fewer and fewer positive references to Europe.<sup>34</sup> Moreover, studies show that Turkish civil society organizations have also been affected by this discursive shift, which has weakened the EU's attractiveness as a normative context.<sup>35</sup> Similarly, at the societal level, the spread of European values is not happening at the pace that could be expected from a potential member country.<sup>36</sup> Ironically, the CHP is considered to have moved away from its earlier Eurosceptic attitude and resorts more often to EU norms to promote its political agenda.<sup>37</sup> These shifts also show that political parties' attitudes towards Europeanization are not solely the result of their deeply embedded identities but also of their strategic interactions with each other.

When it comes to constitutional politics, one can observe that this follows the temporal pattern broadly identified above. EU conditionality was clearly a very significant anchor of domestic change in the beginning.<sup>38</sup> Since the speeding up of the EU accession process in the late 1990s, drafting of a new constitution has been on the agenda of Turkish politics. Driven by the desire to facilitate the EU accession process, constitutional amendments were first initiated in 1995 and accelerated during the intensive reformist period in 2001 and 2004. Conversely, the 2007 and 2010 amendments to the current constitution, were to a large extent driven by domestic interests. These amendments which were enacted during what has been called the selective Europeanization phase in Turkey were also appraised by the EU.<sup>39</sup> The failed attempt at constitution-making (2011–2013), on the other hand, took place in a period characterized by de-Europeanization trends and stalling negotiation talks, which considerably weakened EU conditionality. Indeed, it was mainly domestic concerns relating to the 1982 post-military-coup constitution that triggered the formation of the Conciliation Commission, comprised of delegates from all four parties represented in parliament – the Justice and Development Party (AKP), the Nationalist Movement Party (*Milliyetçi Hareket Partisi*, MHP), the Republican People's Party (CHP) and

the Peace and Democracy Party (*Bariş ve Demokrasi Partisi*, BDP). The Commission was charged with ‘reaching a consensus’ with the ultimate aim of drafting a new constitution. In particular, events like the presidential election crisis in 2007 and the referendum on constitutional amendments in 2010 epitomized the ‘constitutional battles’<sup>40</sup> that the country was undergoing, leading to serious considerations in favor of a complete overhaul. When the Conciliation Commission was set on 1 October 2011, hopes were high for a new constitution drafted by democratically elected members embodying a large array of Turkish societal fractions. The commission hit the headlines several times over lack of compromise during its two-year existence, before getting dissolved in late December 2013. The proceedings, which were then made public for a short period, provide an important source for examining discursive references and usages of Europeanization.

After a relatively long pause, constitution-making was once again top of the agenda in Turkish politics. Multi-party initiatives, tested in the beginning of 2016 and then again after the July 15 coup attempt, are now shelved for good. Instead, the AKP and the MHP agreed upon partial amendments<sup>41</sup> that aim to establish a presidential system and the Parliament adopted them in January 2017. These amendments, which was put to public vote in April 2017, are notably fresh, but opposition deputies have raised concerns prior to the referendum that the adoption of the amendments would be the end of Europeanization.<sup>42</sup> The article comes back to this in the conclusion; for now it returns to the drafting of the provision on religious freedom, which allows to show concretely how usages of Europeanization unfold.

## Freedom of religion

### *Institutionalization in the Turkish context*

Three constitutions have been enacted since the official establishment of the Republic: in 1924, 1961 and 1982 (setting aside the major amendments in the 1970s and most recently in the 2000s). While the provision that identified Islam as the state religion was removed in 1928, secularism (*laiklik*) as a fundamental value of the state was added to the constitution in 1937. Moreover, all of these three constitutions entailed some form of religious freedom provision (chronologically Art. 75, Art. 19, and Art. 24).

Perhaps unsurprisingly, given the period in which they were enacted, the 1961 and 1982 constitutions make a more explicit reference to freedom of religion and conscience than that of 1924. Both the 1961 and 1982 constitutions contain ‘abuse’ clauses (Arts. 19 and 24, respectively) that create safeguards against the exploitation of religious freedom for the purpose of personal or political influence, or for even partially basing the fundamental order of the State on religious tenets. In terms of differences, whereas the 1961



constitution foresaw specific limitations on the basis of public order and morals, the 1982 constitution makes reference to the general ‘abuse’ clause as a ground for limitation and does not cite grounds one by one. Another difference: while the 1961 constitution makes provision for optional religious education in line with parents’ wishes, the 1982 constitution made religious education mandatory in primary and elementary schools and asserted that it should be provided under state supervision. One could claim that freedom of religion is an institutionalized norm in the Turkish context, although the modifications introduced to the paragraph related to religious education with each constitution decreases its precision.

### ***Institutionalization in the European context***

As argued above, the degree of institutionalization of a European norm exerts an influence over the intensity of oppositional usages of Europeanization, as it leaves more room for interpretation by the domestic actors. The question in this section is therefore to what extent freedom of religion could be considered an institutionalized norm in the European context. Clearly, legalization of a norm does not tell us much about its societal acceptance or its reflection in the behaviors of the society. Based on the dimensions they develop on the degree of legalization of norms – namely, obligation, precision and delegation – Abbot et al. assert that the European Convention on Human Rights falls into the category of highly institutionalized norms.<sup>43</sup> All the EU members as well as Turkey are signatories to the Convention and are therefore bound by it. As is often the case, EU rules are embedded in overarching international norms.<sup>44</sup> Freedom of religion, regulated under Article 9 of this Convention, can therefore be considered a highly institutionalized European norm. This normative framework is further strengthened, again following Abbott et al., by the existence of the European Court of Human Rights (ECtHR), to which governments have delegated the authority to resolve disputes. Article 9 of the Convention goes as follows:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Unlike freedom of religion, the regulation of religious education is far from being strongly institutionalized at the European level. With the exception of Art 2 of Protocol 1, which relates more to respecting parents’ wishes than to the regulation of the provision of religious instruction, the Convention

does not contain specific provisions on this score, and EU members have diverse practices ranging from no religious instruction at public schools to mandatory or optional mono/multi/non-denominational religious instruction.<sup>45</sup> This weak institutionalization has to a certain extent been compensated for by some of the ECtHR decisions against Turkey (*Hasan and Eylem Zengin v. Turkey* 2008; *Mansur Yalcin v. Turkey* 2014), in which compulsory religious education in public schools was deemed to fail to meet the criteria of objectivity and pluralism. Although the ECtHR case law receives a great deal of support from the EU, the regulation of religious education remains a weakly institutionalized norm at the European level.

### Deliberations on religious freedom in the new constitution

The Conciliation Commission discussed freedom of religion on nine different occasions: three times during the meeting of the entire Conciliation Commission (6 September 2012, 7 September 2012, 11 September 2012) and six times (6 August 2012, 8 August 2012, 2 May 2013, 8 May 2013, 13 August 2013, 14 August 2013) during the writing commission meetings where each party was represented with at least one MP. Despite agreement on certain clauses, no consensus was reached over the whole article. By going through three episodes of conflict, this article will show how oppositional usages of Europeanization were mobilized by domestic political actors in order to win the upper hand in the deliberations. Whereas the first episode of conflict exemplifies how actors may over-prioritize one feature of a European norm with a view to implementing it in the Turkish context, the second offers a mirror image of this and further displays the selective nature of this usage, which at times insouciantly overlooks the unwanted aspects of a European norm. In both cases, the different meanings attributed to the norm in question led to oppositional usages of Europeanization, and therefore more often than not failed to persuade the other actors. Yet even if the usage of Europeanization did not necessarily bring a 'victory' to the actor(s) who mobilized it, it had the unintended consequence of mitigating the politicization of the deliberations. The third episode of conflict is geared to exhibit the proliferation of oppositional usages when the European norms are weakly institutionalized and therefore allow for more room for national interpretations. Even in such cases, however, actors do not cease to use Europeanization or disregard it as a source of legitimacy. Notwithstanding the general acceptance of Europeanization as a discursive frame by all political parties present, it was chiefly deployed by the AKP and the CHP during the discussions of religious freedom. This aligns with the idea that usages of Europeanization are not solely determined by political ideologies but also by strategic interactions with each other. This will be briefly reflected on in the conclusions.

### *Freedom not to believe*

The disparity between distinct interpretations of Europeanization started with the very first paragraph of the article on religious freedom that concerns what such freedom entails. The disagreement arose when the two opposition parties (CHP and BDP) proposed that the text explicitly mention the freedom not to hold any religious beliefs and the freedom to change one's beliefs. As seen above, whereas the freedom to change one's religion or beliefs is included in the text of the Convention, the freedom not to hold any beliefs is not explicitly mentioned. Therefore, justifying the transfer of this norm into the Turkish context required an accentuation of the case law of the ECtHR as a source of legitimacy. The CHP member of the commission, a former judge of the ECtHR, stated that the contours of freedom of religion are defined so as to include agnostics, atheists, skeptics and other types of beliefs. Without challenging the Europeanization frame circumscribed by the opposition, the AKP pointed to the absence of an explicit reference to this in the Convention. The AKP members argued that the decisions of the ECtHR could be explanatory sources but that they are too lengthy and detailed to be put into a constitution article format. They thereby sought to justify this objection with a technical constitution-writing preference rather than with an essential disagreement over the content of what freedom of religion, belief and conscience should entail in a European society. It can be noticed that despite being oppositional, both parties used Europeanization to support their positions. The AKP's stance was also backed by the MHP, whose representative contended that an explicit reference was not necessary and that the freedom not to believe was intrinsic in the formulation of the first paragraph.

This review of the first-round discussions displays the significance of analyzing usages – and not merely domestic policy change – as an indicator of Europeanization. First, despite the sinking hopes about Turkey joining the EU, the mobilization of Europeanization discourse was not greeted with skepticism by either of the actors. On the contrary, adhering to the European standards had a manifest normative authority, which exerted its power on both pro and counter arguments. Second, notwithstanding the former, it can be seen that the parties – in this particular excerpt, the CHP – put a great deal of emphasis on the case law of the ECtHR in order to add an extra layer of protection for secular and agnostic worldviews on top of what the Convention provides. This is perhaps hardly surprising given the CHP's longstanding attitude towards the protection of secularism in Turkey and at times its self-assigned role of guardianship. This ideological stance also finds resonance in the urban and secular sectors of the population, which traditionally form the electoral base of CHP.<sup>46</sup> However, none of these potential concerns were used as negotiation grounds in the argumentation. Instead, the debate concentrated on an expertise-based disagreement on whether or not the

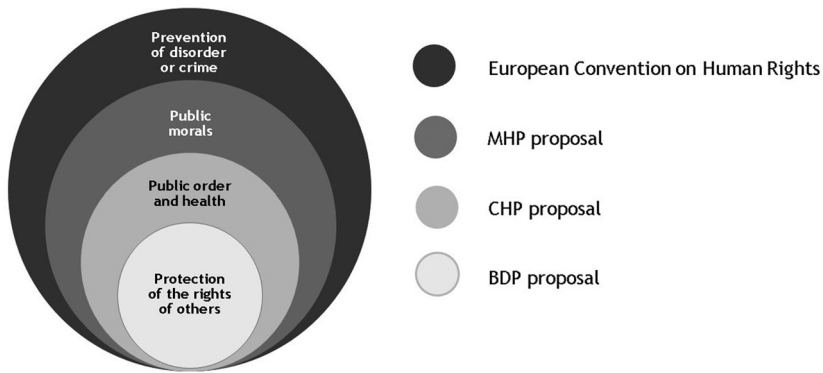
Convention needed to be read together with the ECtHR decisions. Therefore, the usage of Europeanization to a certain extent impeded the politicization of the discussions, at times giving the – false – impression of a disagreement on technicalities rather than on substance.

However, when the issue was re-discussed in the Conciliation Commission, aside from the usage of Europeanization, domestic preferences more visibly surfaced. This took the discussions from a purely technical to a more political level. For instance, MHP members who initially formulated their objection as a constitutional writing preference were impelled to revise their position when the proposal came down to adding only one word. This pushed them no longer to hide behind a technical justification, and instead to reveal their main political concern. In the words of one of the MHP members, Faruk Bal: ‘We have to think of the context, if we write it so explicitly, we will have serious issues. Ultimately, we live in a society with Islamic identities. There is no need to agitate this majority and arouse societal reaction.’ Similar to the CHP’s concern vis-à-vis its secular electoral base, the MHP’s ideological stance appeals to the Sunni Muslim majority of the country and the representatives in the commission were hesitant to make a move that might potentially offend them.

Evidently, party positions were modified throughout the process, and the deliberations on any particular clause or article were also affected by the positions taken on other provisions. In the final meeting of the Conciliation Commission, where they decided to postpone negotiations on the article due to stark divergence of opinions, an impromptu agreement was reached on this particular paragraph. Although it was geared more to raising the spirits of the commission after endless discussions, the particular usage of Europeanization mobilized by the CHP ultimately became one of the rare instances where a desired outcome followed the usage.

### ***Limitations of religious freedom***

The strategic usage of Europeanization was not only exposed by what the parties sought to transplant into the domestic context, but also by what they sought to omit. Despite advocating a near-verbatim application of the Convention for the first paragraph of the freedom of religion, the AKP had disregarded the second paragraph, which, as seen above, contains the grounds for restricting that freedom. While the AKP proposal contained zero restrictions, the other parties had a variety of grounds for restriction, summarized in the figure below. It should be noted that even the MHP and CHP suggestions allow for less restriction than is provided for in the Convention. This was explicitly highlighted by the MHP, which thereby not only claimed legitimacy for its proposed grounds for limitation, but also posited itself as more progressive than ‘even’ the Convention. This statement, coming from the most Eurosceptic party,<sup>47</sup> also seems to suggest that the



**Figure 1.** Party positions on limitations to religious freedom. Source: Author's own compilation.

usage of Europeanization might trigger cognitive adaptation by the actors, as predicted by Jacquot and Woll (Figure 1).<sup>48</sup>

The AKP maintained its position over several meetings; however, it never challenged or cast aspersions on the relevance of Europeanization as a normative context. Instead, the justification cited by the AKP came from an unexpected source: the 1982 Turkish constitution.

This is surprising not only because the 1982 constitution is commonly observed to be a statist constitution that is highly restrictive of fundamental rights in general, but also because it is not generous when it comes to religious freedom. As mentioned earlier, even though the article on religious freedom (Art. 24) does not detail specific grounds for limitation, it does include an abuse clause, in addition to a separate abuse article that applies to all freedoms (Art. 14). The AKP member, Mustafa Şentop claimed that despite the 1982 constitution's skeptical attitude towards religion, it does not contain limitations. Abuse or exploitation clauses cannot be regarded as limitations to acts of worship or religious practices, for they are exceptional cases that do not apply to general exercise. Whether this is a correct reading of the 1982 constitution is not of concern here: rather, what is of interest is the oppositional usage of Europeanization, which in this case was replaced by the usage of Turkish constitutional tradition. The claimed normative authority was rooted in not stepping back from the protection offered to religious freedom by a constitution that is highly discredited in the public eye: none of the political parties wanted to be labeled as proposing more restrictions than in the previous constitution. This line of argumentation was reinforced in a later meeting of the Conciliation Commission where the same AKP member openly pronounced: 'There is no way that this commission, this Parliament and Turkey will pass a provision that regresses Turkey from where we stood in the 1982 constitution.' The categorical rejection of any limitation to

religious freedom did not, however, find many advocates among the opposition parties, and aroused the CHP's anxieties about the AKP's intentions, which politicized the deliberations. Ironically, months later, the presence of another AKP member, Mehmet Ali Şahin in the place of the fervent advocate of the no-limitations position, combined with the MHP's broad understanding of public order as inclusive of public health and morals, almost yielded a consensus on two grounds for limitation: the rights of others and public order. However, in a later meeting the BDP re-stated its reservation over public order.

### **Religious education**

The last episode of conflict, which relates to religious education in Turkish public schools, serves to illustrate how oppositional usages of Europeanization increase when European standards are weakly institutionalized. [Table 1](#) offers an overview of where the political parties stood during the discussions, as well as a summary of the gradual change from the 1961 constitution to the 1982 constitution that established mandatory courses on religion and ethics at primary and elementary levels.

As [Table 1](#) demonstrates, this was one of the most controversial topics in the commission, with even two-party alliances proving unattainable. The main axes of division related to whether the course on religion and ethics should be optional or mandatory, and to a lesser extent whether it should be state supervised. When juxtaposed with the public support that religious education enjoys, we arrive at a puzzling outcome. According to Carkoğlu and Toprak's survey in 2007,<sup>49</sup> a significant majority, namely 82% of people of voting age, defended compulsory religious education in public schools. However, the breakdown of societal support offers a more nuanced picture: those who were against compulsory education were more likely to be ideologically inclined to the left, urban settlers and amongst the voters of the CHP and DEHAP/DTP, the predecessor of the BDP, with Alevis forming 35% of the group. Seen from this angle, the demand for an optional course is a claim that resonates with the electorate of the CHP and BDP. Moreover, 38% of the population not only advocated compulsory education, but also favored the teaching solely of Islam. This figure was found to be even higher among AKP voters.

Therefore, it is fair to conclude that the positions taken by the political parties have to a large extent built on their party interests. Nonetheless, during discussion in the commission, both the CHP and AKP – which are

**Table 1.** Party positions on religious education.

	State provision/supervision	Private provision
Mandatory	MHP/1982 constitution	AKP
Optional	CHP	BDP/1961 constitution

Source: Author's own compilation.

at the opposite ends regarding their views – found justifications for their arguments from Europeanization. This is further evidence that oppositional usages are employed to shadow domestic preferences. Moreover, in the case of religious education, the weak EU institutionalization engendered more intense oppositional usages by the political actors. For instance, the AKP member, Mustafa Şentop, repeatedly cited a number of European countries with mandatory schemes, reading out different state provisions on the matter, seeking to prove that both the AKP's position and the current practice in Turkey conformed to European standards. Moreover, taking advantage of the weak institutionalization, he aspired to 'establish' a European norm by showing that 25 out of 46 Council of Europe countries have mandatory religious education. In his words:

Having a mandatory religious education is not germane to the Oriental world or uncivilized or developing countries so to say. On the contrary, a huge majority of the civilized world has a course on religion or ethics. And these courses usually contain even more elements of Christianity than ours do of Islam.

While the AKP presented the provision of mandatory religious courses as the European norm, the CHP deployed a more limited usage of Europeanization. The CHP did not aim to establish an overarching European norm but rather to pinpoint Turkey-specific shortcomings as regards Europeanization. Reminding the members of ECtHR decisions, CHP members underlined the poor possibilities for exemption from the course and its content, which thereby failed to meet the criteria of being objective, critical and pluralist. Accordingly, the CHP member, Rıza Türmen, claimed: 'In the Turkish context it was proven again and again that having a mandatory scheme which enforces religion and ethics courses practically ends up in indoctrination.' With this move, the CHP planned to bring norms from the ECtHR such as pluralism into the domestic context, while disregarding other parts of the court decision – particularly where it recognizes the legitimacy of mandatory religious education. In effect, therefore, it made use of both mechanisms detailed in the previous two episodes of conflict. The AKP countered this effort by pointing out precisely the section that the CHP omitted: the Court did not in fact condemn the mandatory nature of the course. This example shows that in the absence of strong institutionalization even the same court decision can be mobilized differently by different actors, paving the way for oppositional usages of Europeanization.

## Conclusion

This article sought to uncover the usages of Europeanization deployed by domestic political actors in Turkey during the constitution-making attempt between

2011 and 2013. Initiated in a period that is characterized by de-Europeanization trends in Turkish politics, it aimed to detect whether – and, if so, how – references to Europe retained normative legitimacy in the discourses of domestic actors. By studying three episodes of conflict in the deliberations over the religious freedom provision, the article disclosed that actors often had recourse to Europeanization discourse, even if it was strategically and selectively employed. The usage of Europeanization granted normative authority to their line of argumentation, which thereby became more persuasive and less provoking than if they had simply stated their domestic political concerns. This contributed to a less politicized environment for negotiations. However, it is also observed that adhering to European norms did not imply that the actors' interpretations of Europeanization and article proposals were in line with each other. On the contrary, there were as many usages as there were actors – which, as shown here, engendered oppositional usages of Europeanization. Moreover, the oppositional usages seemed to be exacerbated where the European norm in question was not strongly institutionalized.

On the whole, investigation of the usages of Europeanization displays that despite the de-Europeanization trends – which can be observed not only in particular policy areas but also in the discursive and societal practices in Turkey – Europeanization continued to serve as the normative context in constitution-writing in 2011–2013. Detecting such instances of Europeanization requires a new conceptual and empirical lens that goes beyond seeing the EU as the sole driver of Europeanization, and does not consider the material transformation of domestic policies as the ultimate outcome of the process. Instead, concentrating on usages of Europeanization in the discourses of domestic political actors provides us with a more nuanced picture about when, how and for whom Europeanization matters.

In the specific case of constitution-writing, it can be discerned that even though all the political parties made use of Europeanization as a source of legitimacy, the AKP and CHP more often came head-to-head and so developed oppositional usages of Europeanization. What seems to be at stake here is not so much the general rootedness of the two parties' identities in the Europeanization discourses, but the very nature of the article under discussion. The question of religious freedom revives a longstanding divide in Turkish politics and reveals a strong cleavage between the AKP and the CHP, which incentivized them to pursue the debate and rely more often on Europeanization as a 'winning argument.' Therefore, the more visible usage of Europeanization by the CHP and the AKP has more to do with the strategic interaction and the competitive relationship established between them on issues of religion and secularism, which is evidently entrenched also in their political identities.

In granting an absolute majority to the AKP, the 2015 November general elections re-opened Pandora's Box in terms of constitutional reforms. As



mentioned above, initiatives that were inclusive of all the parliamentary political parties are now abandoned and new constitutional amendments, which establish stronger executive power and move away from a parliamentary system of government, received green light with a narrow majority (51%) in a contested public referendum. Religious freedom, or fundamental rights in general, were not part of the chapters that were amended. The few controversial public statements that appeared in the press – notably by the President of the Assembly, who urged a ‘pious constitution’<sup>50</sup> and called for removing secularism as a principle of the state constitution – were quickly denounced by President Erdogan. Clearly, it is not possible to talk about institutionalized European standards in these governance systems, and therefore these amendments would need to be justified or contested by oppositional usages of Europeanization, if at all. However, given that references to Europe are limited to the supposed European contempt of a ‘stronger Turkey’<sup>51</sup> by the AKP leaders, and to the end of Europeanization tout court by the CHP deputies,<sup>52</sup> it is plausible that the current de-Europeanization trend, which discards Europe as a source of legitimacy, will be reinforced in the increasingly tense political atmosphere.

## Notes

1. Radaelli, “Europeanisation: Solution or Problem?,” 3.
2. Tekin, “Introduction: A Framework Analysis”.
3. Schimmelfennig and Sedelmeier, “Governance by Conditionality”.
4. Finnemore, “International Organization as Teachers of Norms”.
5. Ayoub, “Cooperative Transnationalism in Contemporary Europe”; O’Dwyer and Schwartz, “Minority Rights after EU Enlargement”.
6. Risse and Sikkink, “The Socialization of International Human Rights Norms,” 10.
7. Jacquot and Woll, “Usage of European Integration”; “Using Europe”.
8. Ibid.
9. Jacquot and Woll, “Using Europe,” 115.
10. Günay and Renda, “Usages of Europe in Turkish Policy,” 51.
11. Aydin-Düzgit, “De-Europeanisation through Discourse”.
12. Lavenex and Schimmelfennig, “EU Rules beyond EU Borders”.
13. Jacquot and Woll, “Using Europe,” 116.
14. Kaliber, “Contextual and Contested”.
15. Featherstone and Radaelli, *The Politics of Europeanization*.
16. Ayoub, “Cooperative Transnationalism in Contemporary Europe,” 284. See also Checkel, “International Institutions and Socialization in Europe”; Grabbe, “How Does Europeanization Affect CEE Governance?”; Kaliber “Contextual and Contested”.
17. Diez, Agnantopoulos and Kaliber, “File: Turkey, Europeanization and Civil Society”.
18. Alpan and Diez, “The Devil Is the Domestic” further argue that even bottom-up research on Europeanization rarely focuses on the political consequences of meaning production.
19. Günay and Renda, “Usages of Europe in Turkish Policy,” 53.

20. Günay and Iseri, “Unexpected Persistence amidst Enlargement Stasis”.
21. A breakdown of the chapters can be found here: [http://www.ab.gov.tr/files/5%20Ekim/yatay\\_muzakere\\_tablosu\\_30\\_06\\_2016\\_tr.pdf](http://www.ab.gov.tr/files/5%20Ekim/yatay_muzakere_tablosu_30_06_2016_tr.pdf) (accessed March 17, 2017).
22. Gürsoy, “The Impact of EU-Driven Reforms”; Nas and Özer, *Turkey and the European Union*; Noutcheva and Aydın-Düzgit, “Lost in Europeanisation”; Yılmaz, “EU Conditionality Is Not the Only Game”.
23. Yılmaz, “From Europeanization to De-Europeanization”.
24. Nas and Özer, *Turkey and the European Union*, 3.
25. Börzel, “Europeanisation meets Turkey”; Noutcheva and Aydın-Düzgit, “Lost in Europeanisation”; Yılmaz, “EU Conditionality Is Not the Only Game”; Yılmaz and Soyaltin, “Zooming into the ‘Domestic’ in Europeanization”; Alpan and Diez, “The Devil Is in the Domestic”.
26. Yılmaz, “From Europeanization to De-Europeanization,” Saatcioglu, “AKP’s Europeanization”.
27. Dağı, “The Justice and Development Party”; Kilinc, “International Pressure, Domestic Politics”; Saatcioglu, “AKP’s ‘Europeanization’”; Yılmaz, “EU Conditionality Is Not the Only Game”.
28. Oğuzlu, “Turkey and the European Union”.
29. Some scholars trace de-Europeanization back to the 2007 elections.
30. Aydın-Düzgit and Kaliber, “Encounters with Europe”.
31. Kaliber, “Contextual and Contested,” 58.
32. Saatcioglu, “De-Europeanisation in Turkey”.
33. Yılmaz, “Europeanisation or De-Europeanisation?”.
34. Aydın-Düzgit, “De-Europeanisation through Discourse”.
35. Bosnak, “Europeanisation and De-Europeanisation Dynamics in Turkey”; Kaliber, “De-Europeanisation of Civil Society”.
36. Yesilada and Noordijk, “Religiosity and Political Values”; Erdenir, “Europeanization of Value Orientations in Turkey”.
37. Balkir and Eylemer, “Shifting Logics”; Oğuzlu, “Turkey and the European Union”; Yılmaz, “EU Conditionality Is Not the Only Game”.
38. Noutcheva and Aydın-Düzgit, “Lost in Europeanisation”; Özbudun and Genckaya, *Democratization and the Politics of Constitution-Making*.
39. Özbudun, “Europeanization and Turkey’s Constitutional Reform”.
40. Özbudun and Genckaya, *Democratization and the Politics of Constitution-Making*.
41. For a comparative table of all the amendments in English see: <https://politicsandlawinturkey.wordpress.com/publications/contributions-of-fellows/2017-amendment-proposal-to-the-turkish-constitution/> (accessed January 27, 2017).
42. [http://www.cumhuriyet.com.tr/haber/dunya/651681/CHP\\_li\\_Dogan\\_Bu\\_anayasa\\_teklifi\\_yasalasirsa\\_AB\\_sureci\\_resmen\\_biter.html](http://www.cumhuriyet.com.tr/haber/dunya/651681/CHP_li_Dogan_Bu_anayasa_teklifi_yasalasirsa_AB_sureci_resmen_biter.html) (accessed January 31, 2017).
43. Abbott et al., “The Concept of Legalization,” 406.
44. Lavenex and Wichmann, “The External Governance of EU Internal Security”.
45. For an overview, see Doe, “Religion and Public Schools”.
46. Carkoğlu and Toprak, “Religion, Society and Politics,” 42; Carkoğlu, “Political Preferences of the Turkish Electorate”.
47. Avci, “The Nationalist Movement Party’s Euroscepticism”; Balkir and Eylemer, “Shifting Logics”.

48. See note 7.
49. Carkoğlu and Toprak, “Religion, Society and Politics”.
50. [http://www.bbc.com/turkce/haberler/2016/04/160425\\_kahraman\\_laiklik](http://www.bbc.com/turkce/haberler/2016/04/160425_kahraman_laiklik) (accessed January 31, 2017).
51. <http://www.hurriyet.com.tr/egemen-bagis-yeni-anayasa-etkili-bir-turkiyey-40342841> (accessed January 31, 2017).
52. See note 42.

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