

EU Conditionality and Democratic Rule of Law in Turkey

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INTRODUCTION

In this report we examine the role of internal and external factors in advancing or preventing “democratic rule of law” reforms in Turkey over the last decade. We focus particularly on the role of the EU in trying to influence domestic reforms. We underline the interaction between domestic actors and this external actor. We primarily aim to figure out why, when, where and how has the EU managed to influence rule of law reforms and where it has failed to make a real impact. In conceptualizing this influence we distinguish between direct (through government-to-government pressure etc.) and indirect (through empowering domestic reformists strengthening pro-reform civil society, or coordinating with other international organizations to maximize external pressures) impacts.

We adopt the conceptual framework depicted by Morlino and Magden for this project but at the same time use a two-level game perspective. We thus distinguish in our foregoing discussions between the more formal diplomatic negotiations during the course of democratic rule of law reforms at Level I that simultaneously take shape with the more informal, grass roots and civil society interactions of Level II. Since Robert Putnam’s seminal article, a growing literature has claimed that foreign policy is not devoid of domestic political concerns. In fact, in many instances, formal interest groups as well as the informal pressures of public opinion have had impacts on the way foreign policy decisions are made.¹ By offering the *metaphor* of two-level games, Putnam avoids an aggregate construction of the state, and can reject the unitary conception of the state so common among the system level theorists.

Putnam’s (1988) theoretical framework is focused on international negotiations in which governments represent constituencies that must ratify a negotiated agreement before it can be implemented. Putnam’s starting point is the simple observation that a negotiator typically has to simultaneously satisfy two interdependent imperatives. One is composed of the negotiator’s bargaining positions (Level I) and the other is shaped by those parties who remain outside of its immediate control (Level II). These parties are typically negotiators themselves (Level I) representing domestic interests of their own home constituency (Level II). The outcome of any such negotiation depends critically on simultaneous acceptance and approval of both competing negotiators as well as each and every one of their own domestic constituencies. Approval or refusal by the negotiators at Level I depend on whether or not the terms agreed upon by the negotiators are acceptable to their domestic constituencies. At Level II domestic constituencies’ decision depend on the terms agreed upon by their negotiators at Level I as well as some domestic concerns which need not depend on any decision at Level I.

Defining the “win set” as a set of Level I agreements that will be acceptable to the Level II constituency, Putnam develops three main hypotheses: that larger winning sets will make Level I agreement (resolution of inter-state water conflict in this case) more likely, that credibility at Level I is enhanced by the negotiator’s demonstrated ability to deliver at Level II, and that the relative size of the win sets at Level II will affect the distribution of the joint gains from the international bargain. A smaller win set at home might actually give the negotiator effective bargaining power.

In short, the two-level game metaphor offers a convenient conceptual framework for the analysis of rule of law reform. In the case of the rule of law reform such a concern for formulating a domestically acceptable reform package is obvious from the very beginning. However, at least two shortcomings of this framework should also be underlined. First among these is concerned with the meaning and use of “democratic rule of law” within the

¹ See Robert Putnam, “Diplomacy and Domestic Politics: The Logic of Two Level Games” *International Organization*, Vol. 42, No. 3 (1988) pp. 427-60 and essays in P. Evans, K. H. Jacobson and Robert Putnam. (eds.), *Double Edged Diplomacy: International Bargaining and Domestic Politics*, Berkeley, (C.A.: University of California Press, 1993).

interactions of applicant as well as non-applicant countries and the EU. This term refers to an ideal of “substantive” or “thick” model rather than simple or “thin”, procedural notions of the rule of law, which do not relate to the system of government or economic system. As such, democratic rule of law constitutes a critical basis for a working, quality democratic system. Within the framework of the Copenhagen criteria the EU promotes such a template of the rule of law particularly to applicant countries and generally in principle within its overall umbrella foreign policy abroad.

Second shortcoming is concerned with the counterpart of the reforming country that is the reform demanding side in the international arena. Although the reforming country does not necessarily have a position that rejects the needs for legal and implementation changes in the area of legal framework, more often than not it finds itself unable to convince the relevant players in the domestic constituency for a full acceptance of the terms expected of them within the reform package. The reforming country’s counterpart is also not a single country with well-defined bargaining positions and domestic constituencies. The EU is a unique mixture of international organisation and transnational polity that does not lend itself to easy classification in traditional academic categories. A number of different layers of decision-making that includes a complex of constituencies ranging from various masses of interest groups in member states to an array of elites that exert influence over decisions in the EU.

Below we examine “democratic rule of law” reforms in the context of Turkey. We focus on 5 aspects of substantive rule of law: (a) Judicial independence and capacity; (b) Legislative and administrative capacity; (c) combating corruption; (d) Police and civilian control of the military; (e) respect for and protection of fundamental rights. For each of these branches of reform we intend to provide a description of the changes that form the basis of the reforms and provide an analytical depiction of the causes that led to these reforms. In our efforts to delineate the causes of the reforms we especially pay attention to the internal (Level II) factors as opposed to the kind of influence Level I and Level II actors on the side of the EU and other external players. We try to identify whether and to what extent different explanatory models discussed in Morlino and Magden (in Chapter 1 of this collection of reports) such as the democratic example model, the punitive and positive conditionality model, the democratic socialization model and the theory of democratic embedding). If possible we also try to provide an analysis of why, when and how has the EU and other external players influenced the reform process. What specifically has the EU tried to promote? How has it done so? What has it avoided promoting or did not place emphasis on? (see Morlino and Magden in this collection).

Along the lines of the two-level game metaphor we also underline the interaction between the domestic and international variables. For each of the reform areas we try to diagnose how the domestic and external actors interact and affect one another? What factors render the effectiveness of the external actors more likely to succeed in the reform efforts and what others impede its success? Our ultimate aim in this respect is to diagnose factors that bring about only formal rule transfer without creating “real change” that effectively transforms the mind set and behavioral patterns in the policy-making environment.

Before tackling with the questions posed in this section a review of the political developments that led to Justice and Development Party (*Adalet ve Kalkınma Partisi*-AKP) coming to power in 2002 and thereafter will be presented with a short digression on the overall character of electoral dynamics in the country. We use this background to underline the reform environment in the country over the last decade and a half. From our analytical framework it is critical to determine the country specific character of the change agents and their opposing veto players. In order to contextualize the social and political conditions that brought the change agents to a potent position of significance we provide a short historical review. Similarly, the perceived costs and benefits of reform packages as well as the

alternatives in domestic as well as foreign policy initiatives that are linked to the reform efforts are all intrinsically related to this historical background. In the ensuing sections we hope to underline these issues for further reference later on in our analyses.

Political Background

The 1990s in Turkey witnessed the emergence of a formidable electoral force for the pro-Islamist followed by the ultra-nationalist parties that had remained in the fringes of the electoral scene in the preceding decades.² At the beginning of the new millennium the pro-Islamist electoral forces have receded back as a consequence of the rising nationalist sentiments in the country. However, the nationalists could not capture the executive office as a single party but rather as a second largest partner in a three party coalition in the aftermath of the 1999 general elections. The electoral results of this coalition were disastrous for all partners. Some of the reasons were beyond the control of the partners and were primarily due to accumulated lack of government capacity and highly costly popular economic policies. Some others however were due to ineffective governance during their tenure in the executive office. As a result, the 1999-2002 period prepared the ground for political as well as economic shake up in the whole Turkish politico-economic system.

Starting from a mere 7.2 percent electoral base in 1987, the pro-Islamist Welfare Party (*Refah Partisi*-RP) continuously raised its appeal to masses reaching about 17 percent in pre-election coalition with the Nationalist Action Party (*Milliyetçi Hareket Partisi*-MHP) in 1991. In 1994 municipal elections, RP captured the largest metropolitan centers. In less than two years later, RP became the largest party in a fragmented party system with only 21.4 percent of the vote in December 1995 elections. RP has its roots in the National Salvation Party (*Milli Selamet Partisi*-MSP) founded in 1973, following the National Order Party (*Milli Nizam Partisi*-MNP) founded three years earlier. For most of the post-1960 period, electoral support for the pro-Islamist parties remained on the fringes of the system.³ Never before the second half of the 1990s did the pro-Islamist tradition capture more than 12 percent of the popular vote alone.

In the aftermath of the 1995 general election, the pro-Islamist policy agenda found significant reflection in the RP and the centrist True Path Party (*Doğru Yol Partisi*-DYP) coalition. The challenge of the pro-Islamists to secularist Republican principles led to a series of reactions. It polarized secularists against the anti-secularists, Sunnis against Alevis and even widened the existing cleavages between the Turkish and the rising Kurdish nationalists.

The peak of the tension was reached when the then ruling RP-DYP coalition was openly challenged by the military representatives of the National Security Council (NSC) in its meeting of the 28th of February 1997. After nine hours of deliberations, the declaration of NSC expressed uneasiness about attempts to harm and ultimately change the secular, Kemalist nationalist and democratic character of the Turkish constitution. Several precautionary measures, some of which were previously proposed by earlier civilian governments and/or bureaucracy but failed to be implemented, were brought once again to the agenda and demanded especially by the military branch of NSC, were also submitted to the cabinet. These included demands for stricter regulation of Koran courses, social and economic

² See Çarkoğlu (2002) for a detailed analysis of the Turkish political parties in late 1990s, their policy stands and support constituency characteristics.

³ For being against the secular regime, both MNP and MSP had been banned by the military regimes of 1971 and 1980 respectively. See Ahmad (1991), Ayata (1993, 1996), Barkey (1996), Berkes (1964), Çarkoğlu and Toprak (2000), Göle (1996, 1997), Güllalp (1999), Heper (1997), Mardin (1981, 1989), Öniş (1997), Robins (1995), Sakallıoğlu (1996), Sayarı (1996), Sunar and Toprak (1983), Toprak (1981, 1984, 1986, 1988), Turan (1991), Yavuz (1997) on Islam and politics in Turkey.

activities of various Islamic brotherhoods (tarikats) and a halt to the appointments of the government that are seen as aimed towards building an Islamic cadre within the state bureaucracy. RP leader and then the Prime Minister Necmettin Erbakan tried to resist the impositions by the military but could not obtain much political support. Under pressure, he did sign the NSC decisions, and formally, the “28th of February process” had begun. Many in the media agreed that this was a new form of a coup by decree similar to the 1971 example.⁴ Public opinion seemed to agree with this diagnosis (Milliyet daily newspaper, 7 March, 1997). Unable to legislate, encircled by popular resistance together with increasing resignations from DYP, the coalition partners agreed on going to early elections under the premiership of the DYP leader Tansu Çiller. Accordingly, Erbakan resigned. However, the President asked the centrist Motherland Party (*Anavatan Partisi*-ANAP) leader Mesut Yılmaz to form the new government. Together with the center-left Democratic Left Party (Demokratik Sol Parti-DSP) and the Democratic Turkey Party (*Demokrat Türkiye Partisi*-DTP) Yılmaz’ minority government obtained the vote of confidence with outside support from the center-left Republican People’s Party (*Cumhuriyet Halk Partisi*-CHP). The new government also was pressured by the military for implementation of the “recommended” policies in the infamous NSC meeting and consequently delivered especially on the education policy front by passing the controversial 8-year mandatory education law. The unofficial 28th of February process was de facto brought to an end only by the early general elections of April 1999.⁵

The months leading to the 1999 general election have witnessed the momentous capture of the leader of the separatist Kurdistan Workers’ Party (*Partia Karkaren Kürdistan*-PKK), widening corruption scandals, mass demonstrations against the religiously sensitive ban of headscarves at the universities, as well as the death of the ultra-nationalist Alparslan Türkeş, who was the founding leader of MHP, that led to an eventual reshaping of MHP’s image.⁶ The capture of the PKK leader Abdullah Öcalan and his trial, as well as the developments that led to NATO’s military action in Kosovo, helped increase the nationalist fervor in the country. DSP, which was in power for nearly, the last two years preceding the election either as a coalition partner, or as a single minority government, have greatly benefited from these developments. When the polls closed it became obvious that DSP was neither alone, nor was it the major benefactor from shifting electoral preferences. As expected, DSP became the

⁴ See Hale (1994, 184-214) on Turkish military regimes and especially on the 1971 coup by decree.

⁵ In the mean time the Constitutional Court closed down RP in January 1998 on the grounds that the speeches of several party leaders were against the secular constitution. The Court also banned the former Prime Minister Erbakan and 5 other prominent members of the party from political activity for five years. By the end of April the Virtue Party (*Fazilet Partisi*-FP) became the new address of almost all of the unbarred RP deputies. The Constitutional Court eventually closed down FP in June 2001 on similar grounds to those of the RP case. Following FP’s closure the inner party struggle within the pro-Islamist camp led to the founding of two separate parties; one for the old-guard in the pro-Islamist movement the Felicity Party (*Saadet Partisi*-SP) and the other for the young generation the Justice and Development Party (*Adalet ve Kalkınma Partisi*-AKP) which eventually came to power after the November 2002 elections. See Çarkoğlu (2002) for a review of these developments.

⁶ MHP has its roots in the Republican Peasant Nation Party (*Cumhuriyetçi Köylü Millet Partisi*-CKMP) that was founded in the aftermath of the 1960 military coup. Alparslan Türkeş was its leader until his death in 1997. Türkeş was an active colonel in the coup of 1960 and a member of the ruling junta, the National Unity Council. He eventually got sidelined within the radical Group of 14 and got elected to the leadership of CKMP in 1965, which was renamed in 1969 as MHP. MHP remained in the fringes of the Turkish party system from the very beginning, up until the last election. MHP was also closed down by the military regime of 1980 but eventually found its way back into the party system participating in the 1987 election as Nationalist Work Party (*Milliyetçi Çalışma Partisi*-MÇP) obtaining 2.9 percent. In 1991 it participated in the general elections as a coalition with the pro-Islamist RP sharing a total of about 17 percent of electoral support. MHP participated in the 1995 elections alone and remained below 10 percent nationwide support threshold, and thus gained no seats in the parliament. See Ağaoğulları (1987), Arıkan (1998), Landau (1995), Poulton (1997), Salt (1995) on the nationalist tradition in Turkish politics.

largest party with 22.2 percent of the vote, up nearly 52 percent from 1995 election. The surprise came with MHP capturing the second largest vote share after DSP and reaching nearly 18 percent of support, up by about 120 percent from its share in 1995.⁷

The tenure of the coalition of DSP, MHP and ANAP in the aftermath of April 1999 elections was full of crises. While some of these crises came with natural disasters like the two massive earthquakes in August and November of 1999, the very coalition partners cast some others' seeds. The perceived ineffectiveness of the organization of public relief efforts in the aftermath of the August 1999 crisis not only enervated the grieving public but also proved once again the inaptitude of public authorities to respond to the needs and demands of the Turkish public. However, the arithmetic of parliamentary seat distribution, together with the inability of the civic anger to pressure the coalition to take responsibility, helped the coalition to survive the political after-shocks of the earthquake.

The impact of the financial crisis that hit the country first in November 2000 and next in February 2001 had been much more severe on the political front. Political manipulations of fiscal policies leading to an unsustainable public debt were commonly diagnosed as the underlying reason for these crises, which resulted in unprecedented urban unemployment and a record depreciation of the Turkish lira against all foreign currencies. The crisis peaked on 21 February 2001 with an overnight devaluation of the Turkish lira by about 50%. By the end of the year, about 2.3 million people had lost their jobs and the economy had contracted in real terms as much as 8.5%.

The new post-crisis economic policy initiative under the guardianship of Kemal Derviş aimed to do away with political manipulations in the economy. The dilemma of the new program rested on this very objective. The capacity to politically manipulate economic policies had been the only tool in the hands of the politicians to build and maintain political support in Turkey. Other more subtle ideological tools have either been oppressed, as in the case of once quite potent left-wing groups of the late 1970s, and once rising pro-Islamists of the early 1990s, or they are quite risky, as for the ethnic nationalism of the Turkish or Kurdish variants, both domestically as well as internationally. If the economic patronage distribution mechanisms were taken away from the politicians, the Turkish party system risked being reduced to an impotent player. Parties had failed to respond to the demands of their constituencies in any other way than simple patronage distribution, which led to huge public deficits, inefficient production structures. Intricate and obscure budgeting practices helped disguise the responsibility of the politicians while ruining the public budget. Politicians could not design foreign policy, which remained an almost exclusively bureaucratic or military arena.⁸ They also could not design much of domestic policy. Many, for example, in the political circles of the centre-right would want to concede on the issue of headscarf ban in the universities, but that option was and still is strongly resisted, if not practically vetoed, by the military as well as the strictly secularist bureaucratic establishment. Demands from the pro-European political circles concerning "concessions" on minority issues, regarding for instance education rights in Kurdish, had been very hard to push against complex bureaucratic coalitions in Ankara with potent political power. Only relatively recently on August 3, 2002 could the Turkish Grand National Assembly legislate on the issue of Kurdish language

⁷ The remarkable electoral success by pro-Islamists and nationalists is less surprising when the movement of the Turkish electorate along the conventional left-right ideological spectrum is taken into account. Throughout the last, nearly two decades, for which we have data, most of the Turkish voters remained around centrist positions along the left-right continuum (Ergüder, 1980-81; Kalaycıoğlu, 1994a; Çarkoğlu, 1998; Esmer, 1999; Çarkoğlu and Toprak, 2000). While a slight plurality of the electorate placed itself to the left of the centre in late 1970s, by the end of 1990s a majority placed itself at the right of the centre. Especially striking is the fact that in 1999 about 15 percent of the Turkish electorate had placed itself at the extreme right-end of the ideological spectrum.

⁸ See Özcan (2001) and Sönmezoğlu (1998) for an in depth analysis of Turkish foreign policy-making and the role of the military and bureaucracy therein.

courses, and now Kurdish can be legally taught in Turkey. Nevertheless, the use of these newly established rights still waits to be implemented.⁹

Within the framework of the new economic policy initiative that was primarily imposed by the international financial institutions, politicians cannot deliver economic policy because they do not have the necessary resources any more. Until AKP's coming to power they no longer had the means to postpone dealing with structural issues in the economy for the future generations. The new dilemma of the Turkish politicians then become one of whether they had the power then to be potent players with political responsibility to deliver policies. In contrast to being in "power without responsibility" for decades of patronage-based policy-making, for the first time in multi-party politics in Turkey, the parties of the coalition in the post economic crisis of 2001 seem unable to escape from "responsibility without power".¹⁰ The issue of EU membership gains potency within this larger framework of running politics in the Turkish party system.

Together with the August 1999 earthquake the devastating impact of the economic crises seem to have found their reflections in the political arena in the form of disturbingly deep alienation from the current political parties. The incumbent coalition partners were perceived as responsible for the economic crises and their clumsiness in responding to the earthquakes. Yet the centrist opposition could not also escape from blame for their perceived lack of credibility and willingness to cooperate in order to respond to people in crisis. Perhaps the most significant finding in all surveys of the Winter and Spring of 2001 reported in newspapers is the large portion of the respondents (26.1%) who declare that they would not vote for any one of the existing parties and an equally surprising 10% who declare that they would cast an invalid protest vote.¹¹ In short, during at least the first part of 2001 about one third of the electorate was not undecided, but rather decided not to cast their votes for any one of the present parties. Recurrent crises and lack of accountability in the party system seem to have pushed the Turkish electorate away from the then available options in the party system. This alone was enough to bring uneasiness to the party system and thus possibilities of leadership changes together with electoral system change, as well as establishment of new parties under possibly fresh leadership.

November 2002 election and the question of EU membership

The ruling coalition of DSP, MHP and ANAP survived immense economic difficulties, which seem to have exhausted public trust in the future of the country. It was time for the ultimate political punishment associated with this failure. The discussions of early elections began within this general atmosphere of failure in the executive office. As the idea of early elections took root, a surprising pro-EU initiative also started to assert itself on to the public agenda. Parliament first decided on early election and then, again to the surprise of many, started the debate over the so-called EU adjustment package. One by one, a series of changes was adopted on many sensitive issues ranging from the abolishing of the death penalty to making the education of mother tongues other than Turkish possible under Turkish law. These issues were very deeply rooted in the Turkish Republican psyche that remained deeply suspicious of foreign infringement in issues of sovereignty. However, domestic constituencies mobilized around EU membership and courageous political leadership tilted the balance in favor of change towards Europe for Turkey.

The courage of the leaders seems to have been rooted in desperation for facing downfall of electoral support in approaching elections rather than in sincere principles of the so-called EU coalition of ANAP, DSP, newly founded YTP, and DYP that pushed the

⁹ See Hale (2003) on the recent legal adjustments concerning freedoms of expression and association.

¹⁰ See Thomas L. Friedman's account in the NY Times June 6, 2001.

¹¹ Radikal Daily newspaper, 14 May, 2001.

legislation in the parliament. The EU's role as a catalyst for change and reform in candidate countries, became evident once more in the case of Turkey, where a long tradition of multi-party politics created and maintained a network of entrenched patronage groups standing for opposing interests that nourished various forms of euroskepticism in the country.¹² The leaders of the EU coalition seem to have jumped into the EU lifeboat just prior to a decisive election in which they saw themselves at risk for being perhaps eliminated by the newly rising pro-Islamist AKP.

The characteristics of EU resistance and euroskepticism were most evident in the opposition of MHP and hesitation of AKP against the EU package. The skeptic and resistant attitudes towards anything that is western and European has deep roots in the Turkish intellectual tradition.¹³ Although it is hard to argue that during the founding years of multi-party democracy in Turkey this long-standing resistance among the elites has had widespread support among the masses, their support bases seem to have been spreading over the last few years. The modern Turkish political scene also contains a sizeable political constituency resistant or hesitant towards integration with the EU.¹⁴ In some respects, these elite movements resemble their European counterparts. However, despite sizeable pockets of resistance, the overall mass support seems to run against them.

Suddenly, in early August 2002, the Turkish political scene seemed cleared in terms of the political aspects of the Copenhagen criteria. The parliamentarians' ability to take the initiative for EU adjustments despite the pressures of early elections, might not be surprising.¹⁵ At least on paper, Turkey seemed willing and ready to start the long and arduous process of membership negotiations. While realization of legal changes in practice remains to be seen, there was no question as to the decisiveness of the representatives of the Turkish electorate. What was questionable was the real basis of mass support behind these changes.

Among the political parties only the nationalist MHP and, to a lesser extent, the pro-Islamist AKP, resisted these EU adjustment laws. However, as the early elections approached and as the electoral support for AKP surfaced in predictive polls, the fate of the euroskeptics in the elections became a critical issue. Would the parties that passed the EU adjustment laws remain politically viable after the elections? Or, instead, would the nationalist and pro-Islamist parties use the euroskeptic rhetoric in their election campaigns and garner the largest segment of the electoral support? The obviously political decision to start the negotiations is going to be taken in light of an evaluation of the practice of legal changes. However, all these evaluations would obviously be screened through the ultimate electoral test of early elections.

Looking back, one suspects that it was the economic crisis, its consequent inability and clumsiness of the incumbent coalition, as well as the main opposition that seem to have carved the defeat of almost all of the Turkish party establishment. However, elections are always more about the future than about the judgements of the past. From this perspective, only two parties, CHP and AKP seem to have convinced the institutionally relevant portion of the electorate --that is more than 10% of the nation-wide electorate-- about their credibility on the economic and political future of the country.

To what degree then does the EU membership and the related reform process relate to this core economic worries of the electorate? Leaders of the major parties seem to have largely ignored the EU related discussions during their campaigns. However, short of a systematic evaluation of issue discussions in the 2002 elections, a reading of the election manifestoes of both AKP and CHP leads one to observe that EU related issues play a critical

¹² See Öniş (2003) ???

¹³ See Canefe and Bora (2003) ???

¹⁴ See Avcı (2003) and Çarkoğlu (2003 and 2004) ???

¹⁵ See McLauren and Müftüler-Baç (2003)

role.¹⁶ In its election manifesto AKP portrays EU as a catalyst of many different issues ranging from the obvious foreign policy discussions around Cyprus and Turkish-Greek relations to reform of the judicial system, expansion of basic citizens' rights, economic policy, municipality reform, foreign direct investment policies and transportation policy. CHP's emphasis is more on the membership aspect of the debate. However, in a similar fashion to AKP's argumentation, CHP manifesto intricately links EU issues to a large number of policy areas. In short, economic crisis formed the backbone of election issues and prepared a fertile ground for an emphasis of reform in public policy. Reform discussions provided a convenient linkage point to the debate about EU membership and the policy transformations that this necessitates.

Another observation worthy of note is the presence of two staunchly nationalistic and thus euroskeptic parties in the campaign; that is the Young Party (*Genç Parti*-GP) and MHP. Although both parties had a majority of their supporters in favour of EU, their rhetoric were potentially inflammatory and carried high doses of anti-Europeanism. Both seemed to prefer being the only party of the euroskeptics and thus carry high enough support behind them to pass the 10% threshold. Ex-post facto, the support bases of GP and MHP is seen not to overlap.¹⁷ GP was a real threat to the centrist left and right establishment in the coastal provinces whereas MHP was a force to be reckoned with in the central Anatolian provinces where AKP got most of its support. GP got around 7% whereas MHP got about 9% nationwide support; high enough to provide a serious threat since a slight increase in either one could have pushed them above the 10% threshold changing the seat distribution in the parliament substantially. In short, neither CHP facing GP, nor AKP facing MHP in their core constituencies in coastal or central Anatolian provinces respectively, could afford to push EU related issues beyond the mere subtle linkage to various reform debates. In consequence, the anti-European front was not confronted publicly in any public debate and the two largest parties kept the EU issues at low salience. At the same time, the euroskeptic front was conveniently kept divided into smaller party constituencies thus helping to waste their representation by keeping them out of the parliament for being below the 10% threshold.

Early general elections of November 3rd, 2002 in Turkey have ended with perhaps an unsurprising but nevertheless a very impressive victory for AKP, which secured, for the first time since 1987, a confident majority in the Parliament. The landslide rise of AKP support marks the progression of electoral collapse of the centrist politics in the country. The left leaning CHP is the only other party which was able to pass the 10% nationwide electoral support threshold to gain seats in the Parliament. CHP remained about 14 percentage points below AKP, at around 20% electoral support. Compared to 1999 election, the largest incumbent coalition partner DSP shrunk down to about 1.2%. MHP lost 9.6 percentage points, while the junior partner ANAP lost 12.9 percentage points. While the pro-Islamist SP suffered a loss of 12.9 percentage points, DYP lost 2.5 percentage points. The incumbent coalition partners suffered the heaviest losses. However, besides CHP and AKP and to a lesser degree the Democratic People's Party (*Demokratik Halk Partisi*-DEHAP), all opposition parties have also incurred significant losses of electoral support. Consequently, all the leaders of those loosing centrist parties except the leader of the SP were forced to resign.

AKP seem committed to the Turkish modernization project aiming to integrate with Europe. However, their religiously conservative constituency is known to carry seeds of scepticism toward the EU membership. From the perspective of economic interests within the

¹⁶ See AKP's election manifesto *Herşey Türkiye İçin* (Everything is for Turkey) <http://www.akparti.org.tr/> and CHP's election manifesto *Güzel Günler Göreceğiz!* (We'll See Good Days!) <http://secim2002.chp.org.tr/bildirge.asp>.

¹⁷ See Ali Çarkoğlu, "The Turkish General Elections of 2002", *South European Society and Politics*, 2003.

country, AKP supporters seem to reflect the resurgent conservative Anatolian capital against the secular establishment of Istanbul, the largest metropolitan city of Turkey.

AKP's first two and a half years in office witnessed the most widespread discussion of EU issues. From the very beginning of their tenure with Copenhagen 2002 meetings the EU debate began to occupy the centre stage in the public agenda. The divide in the party system between the EU supporters and the resisters touched upon the very heart of the Turkish republican concerns with national unity, modernization, security and democracy. It seems like a new cleavage in Turkish politics has taken root; one that posits the EU supporters as opposed to the resisting camp.

Domestic Variables Shaping the Turkish Reforms within a Historical Perspective

In this section we evaluate the historical experience from the view point of factors that may explain why, when and how would and external actor like the EU has come to be a potent actor to affect rule adoption, internalization and implementation in Turkey.

The Turkish state throughout the last two decades has remained as an increasingly less potent authority within the boundaries of its geographic territory. Despite two-decade long ethnic conflict in the south-eastern Anatolian provinces where the Kurdish ethnicity remains a dominant group, the issue of sovereignty has not been questioned almost at all. However, the capacity of the Turkish state in formulating and implementing policies that could address the issues of salience on the public agenda has steadily declined over the same period. 1999 was a crucial year for Turkey. That year witnessed the capture of the leader of the PKK and thus marked a starting point for an easier period wherein significant resources could be re-channeled into peaceful policy formulation and implementation. However, two devastating earthquakes the same year also quickly depleted valuable economic resources that freed up by the reduced militarized conflict in the south-east. The inability of the government as well as the security establishment to live up to the expectations of the masses in the aftermath of the earthquakes also damaged the perceived potency and trust in government in particular as well as the state at large. At the end of the same year Turkey was recognized as a candidate for the EU and thus the reform needs to fulfill the Copenhagen political and economic criteria rose in salience on the public agenda.

The economic crisis that hit the country at the beginning of 2001 rendered the ability of the governments to undertake political reform much more difficult in an environment where tough economic measures to counteract the financial crisis made the government very unpopular. The economic crisis necessitated strict budgetary discipline and increased regulatory role for the government within the framework of IMF and the World Bank conditionality measures and almost automatically helped the country to fulfill the Copenhagen economic criteria.¹⁸ In such an unpopular economic crisis environment the three-party coalition started the political reform process in a timid and unwilling fashion and found it very difficult to proceed until the very end of its term in late summer 2002. By that time the political environment was already transformed into one that made it almost impossible for the incumbents to survive the next general election. In a surprising fashion the coalition government committed political suicide by allowing an early election in November 2002 and right after this decision adopted the most courageous political reform package towards fulfilling the Copenhagen political criteria. The out-going coalition government took the leadership in passing a series of bills that allowed teaching of native languages other than Turkish which made teaching in Kurdish possible. Similarly, broadcasting in Kurdish was made possible while at the same time capital punishment was outlawed. As such all the

¹⁸ We should also note here that by that time Turkey was also implementing the customs' union agreement with the EU which again helped put in place the economic criteria.

political costs of passing these controversial bills were undertaken by the outgoing coalition government which was going to lose the elections any ways.

This package prepared the background for the AKP government that came to power as a single party government in the aftermath of the November 2002 election. By that time the economic policy package was fully implemented and thus the government needed just to continue along the same lines. Most important factor to underline here is that the single party government of AKP did not need to follow any populist policies for short term political gains anymore. The fact that there was then a stable single party government made it possible to continue along the bitter economic measures. Moreover, the international environment was also conducive for them to remain fully disciplined in the economic policy arena. The deteriorating relations at the start of the Iraqi war with the US which was very instrumental in gathering international financial aid to Turkey during the 2001 financial crisis necessitated that the economy stayed in perfect control since otherwise no help from the international financial circles could be depended on any longer. As such the AKP found itself as a lone wolf in a chaotic international environment wherein good old friends like the US was no longer there to depend on. As a result, the willingness of the AKP to continue the economic austerity program and further pursue along the political reforms increased and they became the most powerful change agent in the country.

The AKP government's single big strategy in their tenure became the starting of membership negotiations. Unless this start was guaranteed it seemed that their economic policies were not going to be enough to keep the Turkish economy safe from crisis. Hence, strongly anchoring the country to the EU became the ultimate necessity to keep the economic recovery healthily in place. The political costs in the process came primarily from the Cyprus conflict. The AKP government took the initiative of changing the long-term non-conciliatory stance of the country and supported the Annan Plan for a solution on the island. This complex problem could not be resolved despite having brought the two sides on the island to vote on a referendum whether to support the Annan Plan. The Plan was supported by the Turkish side and rejected by the Greek side. This helped the AKP government keep the political costs of their decision to support the Annan Plan under control and at the same time gather support for the start of accession negotiations for having supported a peaceful resolution of the conflict on the island. Other political costs could be easily controlled or postponed until after the start of the negotiations. As such, the timing of the reform initiative was quite favorable for the AKP government.

The major conceivable veto player at the start of this process was the military and civilian security circles. One major historical development that helped transform these security circles from veto players into mostly observant players obedient of the pro-EU initiatives came with the March 1st decision of the Parliament that did not allow the US troops to use Turkish soil for their operations in Iraq. The following few months witnessed considerable severing of the Turkish-American relations. So much so that further distancing of the country from either the US as well as the EU came to be seen as a serious blow to Turkey's long-term commitment to the western world. The lack of any credible alternatives to those offered by the reform process within the general EU prospects for Turkey also helped strengthen the inability of Euroskeptic forces within potential veto players to resist reforms. As we will further note below the fact that the AKP stood as a single popularly elected government also helped maintain the potential veto ineffective. Yet another factor that solidify the reformers hand in pushing the reform initiatives further was due to the fact that the AKP leadership was very successful in gathering the pro-Islamist popular forces firmly behind the EU cause. Popular support for the EU remained firmly above 70% well into the third year of AKP's tenure. Such popularity of the EU cause helped maintain the momentum behind the reformist forces and control the veto players' resistance. Veto players nevertheless

were able to gather together some popular support under the umbrella of small merchants and tradesmen of Anatolian provinces that were mobilized by the leadership of Ankara Chamber of Commerce. These smaller players were quite potent in mobilizing popular resistance especially concerning the Cyprus initiatives of the AKP government.

Yet another factor that remains to be elaborated below concerns the institutional capacity in the state apparatus. Despite strong leadership at the very top of the executive branch lack of institutional capacity as well as the ideological orientation of the cadres that run these institutions are primarily responsible for the delay of reforms in most institutions. Corruption, bribery, cronyism of all sorts remain very much alive in state institutions. The AKP government's tenure primarily remained out of touch with the efforts that were intended to build administrative capacity. Perhaps the longest running rule of law reforms in the country concern those that aim to strengthen institutional capacity to formulate and implement policies that can respond better to the needs, demands and expectations of the Turkish society. As we will note below the reform initiatives of the AKP government have made ample use of previous decades' accumulated knowledge concerning institutional reform in many respects. However, bureaucracy coming together with the resistance forces within the judiciary proved quite potent in delaying the adoption as well as the implementation of reforms in the country.

We now turn to an in-depth analysis of different branches of reform in Turkey over the last 10-15 years.

SECTION A-Judicial Capacity and Independence in Turkey

Please provide a succinct, contextual description of the judicial system in the country, pointing out any distinct problems or issues with the judicial system and a short explanation for these (historical legacy, ethnic or ideological legacy, politicisation and so forth)

The fundamental workings of the Turkish judicial system are mainly regulated by Articles 9, 36, 37 and 40 of the Turkish Constitution. Enshrined in these articles are the independence of the Courts, the right to a fair trial and guarantee of lawful judgement. An analysis of the institutional structure of Turkish courts reveals a major distinction between general and administrative jurisdiction. The general and administrative courts are further divided amongst themselves into lower and higher courts. The general jurisdiction consists of civil courts and criminal courts. The lower courts of civil jurisdiction are comprised of the courts of first instance, peace courts and various specialised courts. The civil course of first instance is the basic trial court in each province and sub-province with jurisdiction covering everything outside the scope of other established tribunals. Peace courts mostly deal with eviction cases, claims of support and requests for permission to marry. Under general jurisdiction, there have also recently been increases in the number of specialised courts, intended to increase the efficiency of the judicial system. These comprise of juvenile courts, recently established family courts, labour courts, traffic courts, cadastral courts and courts of enforcement. The lower courts of criminal jurisdiction consist of criminal peace courts, courts of first instance and heavy penal courts. The high court in general jurisdiction is the Court of Cassation. This Court is the court of appeals of general jurisdiction and despite the fact that its decisions are not legally binding upon all the inferior courts, the inferior courts generally respect the decisions of the High Court and take them into consideration in their future judgements.

Under administrative jurisdiction, lower courts consist of administrative courts, district administrative courts and tax courts. There are several High Courts operating under administrative jurisdiction. One is the Audit Court that undertakes supervision of all accounts relating to the revenue, expenditure and property of government departments. The Council of State, in addition to functioning as a court of appeals, also investigates Council of Ministers resolutions, joint resolutions, regulations and those cases that fall under the jurisdiction of more than one lower administrative court. The Court of Judicial Conflicts delivers final judgements in jurisdictional disputes between general, administrative and military courts. The Constitutional Court, on the other hand, is responsible for examining the constitutionality of laws and the rules of procedure of the Turkish Parliament. In Turkey, military courts (military criminal courts, military Court of Cassation and High Military Administrative Court) also exist to try military personnel for military offences, for offences committed by them against military personnel or in connection with their military services and duties. Upon the requests by the EU, the Establishment and Trial Procedures of Military Courts Law has been amended in 2003 with a view to ending military jurisdiction over civilians. As a result, military courts are longer able to try civilians held responsible for inciting soldiers to mutiny and disobedience, discouraging the public from military duty and undermining Article 58 of the present Penal Code.

Turkish judicial system has historically been bound by various problems that can be classified under 3 broad categories: excessive workload hampering efficiency, insufficient independence and impartiality and inconsistent interpretation of the law.¹⁹

¹⁹ See Senem Aydın and E. Fuat Keyman, 'European Integration and Transformation of Turkish Democracy', Centre for European Policy Studies, EU-Turkey Working Papers, No.2, August 2004, for an in-depth analysis of the problems confronting the Turkish judicial system today.

Judges and public prosecutors have for long been overworked in Turkey, resulting partly in long judicial proceedings. Coupled with the statute of limitations, this even leads to the dropping of some cases, specifically those with respect to the abuse of human rights. The major reasons behind this inefficiency are the insufficient number of judges and public prosecutors, unmeritorious prosecutions by public prosecutors under the pressure of the Ministry of Justice and judges themselves who frequently rely on expert opinion and who set later dates for hearings without sufficient reason.²⁰ In addition to the excessive workload, the judicial system also suffers from the insufficient amount of financial resources allocated to the judiciary. Judicial services are allocated approximately 0.8% of the country's budget. Most court buildings and equipment are old and insufficient. Equipment and supplies are far from satisfactory, and judges and public prosecutors are poorly paid.²¹

The second distinct problem with the Turkish judicial system is the insufficient independence and impartiality of Turkish judiciary. The principle of judicial independence is enshrined in the Turkish constitution by Article 138 and Article 140. In practice, however, its independence is undermined by several other constitutional provisions, which establish a profound link between the judiciary and the executive in the process of selecting, training, appointing, promoting, transferring and disciplining judges. Although the constitution provides for the security of tenure, the career paths of judges and prosecutors (through appointments, transfers, promotions, reprimands and other mechanisms) are determined by the High Council of Judges and Prosecutors, which is chaired by the Minister of Justice and of which the undersecretary of the Ministry of Justice is also a member. In relation to this, judges in Turkey are regularly evaluated by judicial inspectors who are civil servants working within the Ministry of Justice. The Council is entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks. Limits on independence are also observed at the point of entry into the judicial profession where the Ministry of Justice is highly involved. Independence, however, is also compromised in the two-year period of vocational training undertaken at the school for candidate judges and public prosecutors.²²

At a more general level, when the relationship between judges and public prosecutors is observed, doubts arise as to the impartiality of the Turkish judiciary. Under normal conditions, judges should be separated from and regarded superior to the office of the public prosecutor. In the Turkish case, however, they are regarded as equals both in law and in various aspects of their everyday functioning. They take the same exams to enter their professions, have their careers determined by the High Council, attend the same school for in-service training, earn the same salaries throughout their career and even live in the same residences. Even in courts, certain symbolic actions such as entering the court through the same doors and sitting side by side on an elevated platform reinforce this link between the two. Furthermore, such symbolic actions distort the balance between the prosecution and the defence as lawyers use different doors to enter the court, sit at a table below the judges and prosecutors at the ground level and remain in court when prosecutors retire with the judges to the same chamber during the course of the proceedings.

The third major problem with the Turkish judicial system has been in relation with the implementation of political reforms. Up until recently when Turkey became subject to EU conditionality, courts (in particular the High Courts, i.e. Court of Cassation) were very reluctant to expand fundamental freedoms in their judgements. The opposite scenario proved to be the norm, particularly in the 1990s when internal conflict was at its peak. As political reforms expanding fundamental freedoms began to be introduced after the Helsinki Summit

²⁰ This issue is dealt in more detail in the sections below.

²¹ This issue is dealt in more detail in the sections below.

²² The influence of the executive in the judicial system is elaborated in further detail in the sections below.

of 1999, the courts have started to apply these reforms, but rather slowly and inconsistently. Although criminal proceedings launched against individuals on the basis of infamous Articles of the Penal Code such as Art.312 (incitement to class, ethnical, religious or racial hatred), Art.169 (actions facilitating the operation of terrorist organisations in any manner whatsoever) and Art.159 (insulting state institutions) were generally concluded with acquittals, following the relevant amendments in 2003 and 2004, there are still signs of the inconsistent use of Articles of the Penal Code, particularly in cases concerning the freedom of expression as shown by the broad use made of Articles 312 and 169 of the Penal Code as well as Article 7 of the Anti Terror Law. The fact that judges and public prosecutors are now increasingly giving references to ECtHR decisions in their cases, especially in the last two years, are indicative of the change that is occurring in the judicial system.²³ The new draft Penal Code, yet to be adopted in the Parliament, albeit some problematic areas particularly in the field of freedom of press still under review, will serve an important role in helping to expand freedoms in the country. However, although a certain part of the problem was rooted in the laws which are now being reformed, a crucial reason behind such restricted jurisdiction was also caused by the way in which judges and public prosecutors have internalised traditional state sensitivities and reflected these in their decisions. Hence an even more important matter of independence in the Turkish judicial system is one from the entrenched beliefs and attitudes of the state bureaucracy.

In the face of such problems, EU assisted judicial reform in the country has in particular focused on the issue of efficiency and implementation of political reforms whereas the issue of independence, despite EU pressure, has so far mostly been resisted by the Ministry of Justice. Establishment of intermediate courts of appeal, widespread training on human rights and EU law, the setting up of the National Judicial Network Project, the establishment of the Justice Academy and the abolition of the infamous State Security Courts (dealing with crimes against the state) were all achieved jointly with or driven by the EU. Such reforms, the many of which will bear full fruit in the coming years, will be further elaborated under the relevant sections below.

²³ Among such ground breaking judgements, on June 2004, the Ninth Criminal Chamber of the High Court quashed the decision of No.1 Ankara State Security Court convicting four former DEP deputies of membership of an illegal organisation in accordance with Article 168 of the Turkish Penal Code. The decision of the Court was based in part upon the fair trial guarantees enshrined within Article 6 of the European Convention on Human Rights.

How are judges appointed? Are appointments impartial or do they occur as the result of patronage, political connections, family connections or other forms of influence. Are judicial vacancies widely advertised? What skills are needed to be appointed judge? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Law school graduates can apply to the Ministry of Justice to become a judge whereas political science graduates can apply to become an administrative judge. The examination that follows consists of a written and an oral part. The written examination is held by ÖSYM (School Selection and Placement Centre). The oral examination on the other hand is held by the officials of the Ministry of Justice.²⁴ Hence, the executive is highly influential in the selection of judges into the system.

This not only creates the impression among aspiring judges that their profession will be extremely intertwined with the Ministry of Justice, but also leads to situations where political favouritism is observed. Oğuz Onaran and Koray Karasu highlight that one Minister of Justice recruited 130 candidates; his successor, who was from a different political party, recruited 230 candidates without considering whether or not there was a need.²⁵ The fact that the Ministry also has no publicly available objective criteria by which applicant candidate judges are assessed in the oral interviews aggravates the potential for political favouritism and conservatism, all of which exist in such unstructured appointments. There has not been any significant change in this area in the last 10 years, despite EU reports pointing to executive influence in this sphere.²⁶ The Ministry of Justice insists on upholding the present application.

Are there adequate numbers of judged? Please elaborate. Are there adequate staff (clerks, administration), buildings and technology in courts? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Currently, a judge in Turkey faces an average number of 800 cases each year and finalises around 400 of these cases over the course of a year. Public prosecutors, on the other hand, are faced with approximately 600 investigations each year. The duration of judicial proceedings is very long with an average of 290 days in criminal courts and 272 days in civil courts.²⁷ There are various reasons behind this huge workload and excessive duration of proceedings.

First of all, in relation to size and the number of court cases, there are not a sufficient number of judges and public prosecutors in the country and there has not been any major increase in numbers in the last couple of years. According to the figures of July 2004, there are 8970 judges and public prosecutors in Turkey. This highly contrasts with countries of similar size such as France and Germany that have 30-40 000 and 70 000 judges and public prosecutors respectively.²⁸ Another challenge concerning workload is the fact that many

²⁴The interview panel is comprised of the Deputy Under-Secretary of the Ministry of Justice, the General Director of the Ministry's Directorate General of Inspection, the General Director of the Ministry's Directorate General for Personnel, the General Director of the Ministry's Directorate General for Criminal Affairs and the General Director of the Ministry's Directorate General for Civil Affairs.

²⁵ See Oğuz Onaran and Koray Karasu (2003), "Quality and Justice in Turkey", in Marco Fabri, Philip Langbroek, and Helene Pauliat (research directors), *The Administration of Justice in Europe: Towards the Development of Quality Standards*, Research Papers of the Institute di Ricerca Sui Sistemi Giudiziari, Bologna, p.466 (retrievable from <http://www2.law.uu.nl/sbr/mdj/>).

²⁶ See for example the two Advisory Reports by the European Commission, prepared by Paul Richmond and Kjell Björnberg, 28 September-10 October 2003, 11-19 July 2004.

²⁷ See <http://www.adli-sicil.gov.tr/ISTATIST.HTM>

²⁸ See Paul Richmond and Kjell Björnberg, 'The Functioning of the Judicial System in the Republic of Turkey', Report of an Advisory Visit, 11-19 July 2004, European Commission, Brussels, pp.91-94.

prosecutors feel pressured by Ministry of Justice inspectors to continue unmeritorious prosecutions.²⁹ In fact, in 2002, 25% of all the cases in the criminal courts concluded by the action being withdrawn. Judges themselves are found to be partly responsible for the excessive workloads because of reasons such as deciding on later dates for hearings without sufficient cause. More importantly, however, the judiciary seems to be overly reliant on experts on all matters (even on matters of law) in cases where the legal knowledge of the judge can solve the problem. This situation mainly stems from the fact the judges are sometimes reluctant to decide on certain issues and wish to rid themselves of such responsibility by delegating it to the experts.³⁰ One other reason behind long proceedings is considered to be lack of communication technology. This is a particularly acute problem in the dealings of courts with public institutions. In a case where a court decides to write a request to a public organisation for a certain document and no response is received at the following hearing, the court writes a letter of reiteration and this process can carry on for consecutive hearings since public institutions in particular take too long to send documents requested by courts.³¹

Court buildings are old and insufficient. The Ministry of Justice has a very small number of court buildings (7.3%), the others are either buildings owned by a public organisation (73.7%) or rented (19%). These numbers have barely changed since 1993, against a background where the judiciary traditionally does not exceed its 1% share of the annual budget.³² Only 30% of that budget share is spent on buildings and equipment whereas 70% is allocated to salaries and other personal expenditure. It becomes very difficult, particularly for the judges, to feel confident of their profession under such settings. In addition to this, such settings also undermine the level of trust and respect held by the citizens towards the justice system and the judges.

There have been certain important reform initiatives, particularly in the last three years, to deal with the problem of efficiency in the Turkish judiciary. In line with recommendations from the EU, the Ministry of Justice has recently decided to close courts with inadequate workload and appoint the judges of those courts to courts with a heavy workload. 136 courthouses with inadequate caseload were closed and 511 judges and prosecutors were transferred to work in other courthouses.³³ The Ministry will now also lift the division of labour between Peace Courts and General Courts of First Instance in order to reduce the number of artificial suits. Alternative Dispute Resolution mechanisms (ADR) are now being introduced through the Draft Law on General Administrative Procedures, to deal with minor disputes between individuals or between individuals and the administration. The Draft Criminal Procedure Law currently in Parliament is intended to simplify rules regarding jurisdiction and hence prevent artificial suits. Both the Draft Penal Code and the Draft Criminal Procedure Code, currently in Parliament, foresee the introduction of a system of plea-bargaining. Article 179 of the Draft Code of Criminal Procedure brings the right of courts to reject indictments brought on insufficient evidence, aiming to curb the number of unmeritorious cases brought by public prosecutors. The Ministry of Justice has also recently

²⁹ Based on an interview with Oktay Uygun, İstanbul, March 2004.

³⁰ Ibid.

³¹ See Suha Tanriver, "Hukuk Yargısında Etkinliğin Sağlanması İçin Alınması Gereken Önlemler Üzerine", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 49 (1-4) 2000, pp.67-84.

³² See Oğuz Onaran and Koray Karasu (2003), "Quality and Justice in Turkey", in Marco Fabri, Philip Langbroek, and Helene Pauliat (research directors), *The Administration of Justice in Europe: Towards the Development of Quality Standards*, Research Papers of the Institute di Ricerca Sui Sistemi Giudiziari, Bologna, p.472 (retrievable from <http://www2.law.uu.nl/sbr/mdj/>).

³³ See European Commission, "2004 Regular Report on Turkey's Progress towards Accession", Brussels, 6.10.2004, p.26.

proposed to create a judicial police to ensure more effective criminal investigations enabling public prosecutors to present complete files to courts.³⁴

A Draft Law on the Establishment of Regional Courts of Appeal is now on the agenda of the Turkish Parliament. Aside from the previously mentioned reforms where the EU gave direction to reform through recommendations, the EU is directly and financially involved in the establishment of the Regional Court of Appeals which is intended to partially reduce the work load of the High Court of Appeals and help to make it concentrate on its main function, which is to ‘ensure a unity of legal practice and to enlighten the interpretation of provisions of legal codes’.³⁵ An EU funded project is being carried out by the Directorate General for EU Affairs of the Ministry of Justice, to construct 3 model Regional Court of Appeal courthouses, train 1000 judges and prosecutors and 1200 clerical personnel and also provide the necessary hardware and software to approximately 25 Regional Courts of Appeal.³⁶

In a similar fashion, the EU is actively involved in modernising Turkish judiciary through the improvement of information and communication technology. The National Judicial Network Project that started in 2001 with a budget of 170 million Euros aims to establish an information network between the courts and the other institutions of the Ministry of Justice, in order to speed up court proceedings and ensure uniformity. All the courts and institutions of the Ministry are now being provided with computers and internet connections enabling them to access legislation, decisions of the High Court, judicial records, judicial data of the General Directorate of Security and General Command of Gendarmerie of the Ministry of Interior, as well as ECHR jurisprudence. Ultimately, all bureaucratic procedures and writings are intended to be posted on a central network, reducing delays and attaining further transparency.³⁷ According to a judge in Anatolia, ‘even the early stages of the National Judicial Network Project have led to a significant increase in efficiency of judicial services, although the amount of work remains constant, the workload seems to have decreased’.³⁸ The project is planned to be concluded by the end of 2005.

Do judges have security of tenure? If so, is it constitutionally mandated? Is it respected in practice? What are the grounds for removal of judges? Who has the power to discipline judges and prosecutors? (The ministry of justice/interior? The judges themselves? A mixed committee?) What are the procedures for disciplining/dismissing judges? Are they fair, quick, subject to review/appeal? Can judges be transferred to different geographical locations without their consent? Are there rules preventing such geographical transfer? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Judges in Turkey have security of tenure enshrined in the Constitution and respected in practice. According to Article 139/1, “judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution³⁹ unless they wish to do so; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post”. Article 139/2 of the Constitution sets the ground for the removal of judges by stating that “exceptions indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties on account of ill-health, and those determined as unsuitable to remain in the profession, are reserved”.

³⁴See Paul Richmond and Kjell Björnberg, ‘The Functioning of the Judicial System in the Republic of Turkey’, Report of an Advisory Visit, 11-19 July 2004, European Commission, Brussels, p.105.

³⁵ Ibid, p.100.

³⁶ Ibid.

³⁷ Ibid.,p.98.

³⁸ See <http://www.bidb.adalet.gov.tr/aliakin/uyap1512.htm>

³⁹ Retirement age for judges is 65.

On successful completion of a two-year period of vocational training judged by a final written examination, candidates are recruited into the profession by the High Council of Judges and Prosecutors. The places where they initially work in are determined by the drawing of lots. The general and administrative jurisdiction areas are divided into regions according to their geographical, social and economic conditions. The time spent in every region – 2 to 5 years in general - is determined in advance.

Judges in Turkey are regularly evaluated by the judicial inspectors attached to the Ministry of Justice, resulting in a significant compromise of judicial independence. The reports of judicial inspectors in addition to employment records given by judges' superiors, notations given by the High Court of Appeals and the Council of State during their reviews (on appropriateness of judgement, fast resolution of cases, effective formulation of judgement), the ratio of the number of cases resolved by a judge to the number of cases a judge deals in a given period and articles written by judges are consequently handled by the High Council of Judges and Prosecutors that decides on all matters regarding the appointments, transfers, promotions, tenure and dismissal of judges. As mentioned in the introductory section, the High Council is an institution highly intertwined with the executive, with its chair as the Minister of Justice and one of its members as the undersecretary of the Ministry of Justice. Moreover, the influence of the executive in the High Council is further enhanced by the fact that the High Council does not have its own secretariat and its premises are inside the Ministry of Justice building. The Council is entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks. What exacerbates the problem is the fact that despite their administrative nature, the decisions of the High Council are not subject to review, contradicting both the independence of the judiciary as well as the basic principle of the rule of law.

This direct influence by the executive through judicial inspectors and the High Council increases the political partiality in decisions concerning judges and the fear among the judiciary of being removed and transferred to less attractive regions of Turkey – which is observed in some cases – thus having a possible impact on their attitudes and decisions.⁴⁰ In fact, civil society organisations have often in the past pointed to the use of geographic transfer as a tool to discipline 'dissenting' judges by the executive.⁴¹ The opposite scenario is also made possible by transferring judges to favourable regions, on the basis of political linkages and ideological legacy.⁴² While the first scenario proved to be more widespread in the 1990s at a time when there was serious internal strife between the terrorist-guerrilla organisation, PKK and the Turkish military, the second one is still highly prevalent today, paralleling the transfers realised under changing governments in various ministries. While such practices under all ministries are detrimental to the rule of law in the country, the problem becomes particularly acute when it involves the judiciary.

On paper, mechanisms of appeal to High Council decisions are open to judges in Turkey. Any objection to a decision of the High Council may be raised before a twelve-person panel comprised of the seven original Council members plus five additional members. First of all, given the composition of the panel, it is apparent that in any case where the original panel reaches a unanimous decision, the review process becomes futile. Furthermore, this provision can hardly be applied in practice due to the reasons closely related with the issues mentioned above. Every year, the High Council officially decides on the transfer and promotion of approximately 2000 judges. However, since the files are long compiled by the Ministry itself, the High Council barely has detailed knowledge on the files of the judges and

⁴⁰ Coşkun Kırca (1996), "Yargı Sistemimizin Bazı Anayasal Meseleleri", *Yeni Türkiye*, 10, pp.105-110.

⁴¹ See Paul Richmond and Kjell Björnberg, 'The Functioning of the Judicial System in the Republic of Turkey', Report of an Advisory Visit, 28 September – 10 October 2003, European Commission, Brussels, pp.48-49.

⁴² Based on an interview with Oktay Uygun, Istanbul, April 2005.

hence is not in a position to deal with the appeals of the judges. Only in controversial cases that have the potential of appearing in the media and becoming a source of public debate does the judges in the High Council warn the Ministry officials in High Council meetings.

These issues are regularly brought up by the members of the judiciary, civil society institutions and academics as well as external actors, particularly the European Union via its Progress Reports and Advisory Visit Reports. However, the Ministry of Justice remains very resistant to change on this front. Such provisions made under the 1982 Constitution that were prepared after the military coup d'état and that reversed the 1961 Constitution's order of the administration of judges by the judges themselves seems to be upheld today.

Do judges have physical security? Please elaborate on any recent cases of judges being intimidated, attacked or killed. Do judges enjoy civil immunity for judicial functions? Have there been any steps taken to ensure the physical security of judges or their immunity from civil action for carrying out judicial functions? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Physical security of judges is not currently a significant cause of concern in Turkey. In late 1980s and 1990s however, this issue was of prominent importance due to high incidences of terrorist activities, particularly in the east and the south-east of the country. Hence, until their recent abolition, judges and public prosecutors of the State Security Courts that dealt with 'crimes against the state' lived in lodgings protected by the state. The issue at the time however, did not only concern the protection of judges against terrorist attacks, but also their protection against security personnel of the state who were in fact entitled to protect them. Since most criminal cases in Anatolia and eastern regions concern cases between citizens and the state, some judges felt pressured not to deliver decisions against security personnel due to fears of physical intimidation. A famous case of 1990s that found reflection in the media was the murder of a journalist of a newspaper, well-known for its pro-PKK stance, in front of a public prosecutor. Unable to guarantee physical protection from the Ministry of Justice, the public prosecutor chose not to file a case against the security official.⁴³ The fact that physical security is now less of an issue than in 1990s is mostly due to internal changes that led to the defeat of PKK and the end of widespread terrorism in the country. No legislative or institutional change has recently been enacted in this area.

⁴³Based on an interview with Oktay Uygun, Istanbul, April 2005.

Do judges and prosecutors have adequate salary? Is it guaranteed by law? Do they have adequate pensions? (what is the relationship between salary and pension – 100%; 75%; 50% of salary?) What is the source of judges and prosecutors salary? (Ministry of justice, independent judicial council? Central/local government?) Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Judges and public prosecutors have equal, yet inadequate salaries in Turkey. In 2003, a judge recently admitted into the profession would receive approximately 557 Euros whereas those who reached the level of seniority after 10 years would receive approximately 620 Euros and those who are members of High Courts would receive approximately 1396 Euros. According to OECD statistics, these figures are the lowest among all member states with the exceptions of Ukraine, Armenia, Azerbaijan, Bulgaria, Georgia, Latvia and Moldova in all the ranks of the judiciary and Romania, Serbia-Montenegro and Slovakia in high court judges.⁴⁴ Despite the granting of state lodgings in 1990s, the salaries remained far from compensating for the high levels of inflation incurred in the country. Pensions, on the other hand, correspond to approximately 80% of the salary of the rank at the time of retirement. The source of salaries, as in all financial resources utilised by the judiciary except those that concern High Courts, is the Ministry of Justice. It is suggested by many observers that the executive branch, which has complete discretion over resources allocated to the judiciary, is generally unwilling to strengthen the judiciary in Turkey.⁴⁵

There have recently been some attempts to increase the salaries of judges and public prosecutors in Turkey. In May 2004, the salaries of all judges and public prosecutors were raised between 100 and 250 Euros. All civil servants also benefited from a further 15% rise in salaries in July 2004. A Draft Law Amending the Law on Judges and Public Prosecutors is currently being discussed in the Parliament, upon the adoption of which will increase the salaries of judges and public prosecutors. Such changes have occurred less due to EU pressure and more on the reactions from the judiciary and other civil servants who are also insufficiently remunerated in Turkey.⁴⁶ The decrease in inflation levels to single digit figures after almost a decade has also eased the way for such reforms in the country. However, it is still too early to state that remuneration of judges and public prosecutors is sufficient in Turkey. The President of the Constitutional Court has recently declared that approximately 2600 judges currently live below the poverty line in Turkey.⁴⁷ The problem becomes particularly acute when one compares their salaries with those of parliamentarians in Turkey. Separation of power necessitates equality in terms of remuneration between the legislature and the judiciary. In Turkey, the salary of a senior judge is currently one-third of the salary of a parliamentary deputy. Inadequate remuneration, inequalities between different branches of the state apparatus and the influence of the executive in determining salaries for the members of the judiciary not only serve to hamper the independence of the judiciary, but also the quality and competence of both judges and public prosecutors. Well-educated jurists who speak foreign languages remain unwilling to seek employment in the judiciary whereas those who choose to be in the judicial profession lack the self-confidence that is required to feel superior rather than dependent on the executive.

⁴⁴Avrupa Etkin Yargı Komisyonu, “2002 Avrupa Yargı Sistemleri: Avrupa Konseyi’ne Üye 40 Ülkede Yapılan Alan Araştırmasından Çıkarılmış İstatistik Veriler ve Bilgiler”, Avrupa Konseyi, Strasbourg, 10 Aralık 2004, p.40.

⁴⁵Based on an interview with Oktay Uygun, Istanbul, March 2004.

⁴⁶It is now almost a classic that the Presidents of the High Courts, in their inauguration speeches, draw attention to the financial inadequacies of the Turkish judicial system.

⁴⁷ See Paul Richmond and Kjell Björnberg, ‘The Functioning of the Judicial System in the Republic of Turkey’, Report of an Advisory Visit, 11-19 July 2004, European Commission, Brussels, p.97.

Is the judicial system free from interference by the executive or legislative branches? Do politicians try to influence judge's decisions? (please illustrate with statistics or examples where available), or do they restrain themselves from interfering or appearing to interfere in judicial decision making? Are judges free from interference in decision-making from superior judicial officers outside the appellate process? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Executive and legislative interference in judges' decisions was a crucial concern, particularly in the 1990s. Numerous examples of telephone calls to judges particularly by the members of the executive, with the intention to influence decisions particularly regarding economic crimes, were documented in the Turkish media in the previous years. There were various reasons behind such practices such as high degrees of corruption, lower degrees of transparency and prevalence of terror. The judges were considered in the mindsets of the executive and the legislative as simple civil servants who could be bribed and influenced like any other.⁴⁸

This situation started to change in 2000s, partly due to virtual end of terrorist activities, but mostly because of the huge economic crisis of 2001 that led to serious restructuring in the economic sector in Turkey. Increasing levels of transparency attained by the economic reforms and increasing awareness of the media and the public towards economic felonies led in turn to reluctance on the part of the members of the executive and the legislative who began to fear the public reactions and consequences of such actions.

Does the executive branch support the courts in enforcing judicial decisions, even against itself? Are certain areas of government (the president, prime minister, army, police) "above the law"? Please elaborate. Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Before the 1982 Constitution, enforcement of judicial decisions by the executive branch, in particular those against the executive itself, were very difficult to attain. The situation improved significantly after the 1982 Constitution, albeit with some problems pertaining in particular to the execution of judgements regarding the annulment of transfers of high administrators. A famous case illustrative of this problem concerned the appointment of the undersecretary of the Ministry of Justice in mid 1990s, where the Ministry and the Council of State was engaged in a continuous struggle over the transfer of an individual to this post.⁴⁹

⁴⁸Based on an interview with Oktay Uygun, Istanbul, April 2005.

⁴⁹ For the details of the case, see Oguz Onaran and Koray Karasu (2003), "Quality and Justice in Turkey", in Marco Fabri, Philip Langbroek, and Helene Pauliat (research directors), *The Administration of Justice in Europe: Towards the Development of Quality Standards*, Research Papers of the Institute di Ricerca Sui Sistemi Giudiziari, Bologna, p.463-464 (retrievable from <http://www2.law.uu.nl/sbr/mdj/>)

Once a judgement is given, how easy or difficult is it to enforce it? Are there many cases where people disregard court decisions? If so, which sections of the population do so? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Once a judgement is given in a case that falls outside the scope of administrative jurisdiction, the issue of enforcement becomes even less of a problem. However, this is not to say that there are no exceptions under the present system. First of all, there is serious concern in Turkey over the relationships between the intelligence services, the mafia and some members of the judiciary in the country. The mafia-state relationship in Turkey grew as a major problem with 1980s and particularly 1990s when security agents turned to mafioso arrangements in fighting with terrorist groups. Despite the fact that such linkages have begun to be exposed particularly through the media in the recent years due to increasing levels of transparency, the issue is not totally resolved. The recent case where the head of the High Court of Appeals was found to have communicated with the security services about the ongoing case of a famous mafia leader in Turkey demonstrates the resilience of the problem.

In addition to problems regarding ‘enforcement’, problems also remain with respect to certain areas of government being “above the law” remain. According to Article 125 of the Turkish Constitution, administrative courts are responsible for the judicial screening of all types of administrative decisions and actions in the country. However, three major exceptions are brought to this rule. No appeal can be made to any court against the decisions and orders signed by the President of the Republic in his own competence. The appointment of members to councils such as the High Council of Judges and Prosecutors and the High Education Council are acts made by the President in his own competence where discretionary power is involved. Despite the administrative nature of such acts, they remain outside the scope of judicial investigation.⁵⁰ A similar situation exists with respect to the decisions of the High Council of Judges and Prosecutors. Despite the administrative nature of such decisions regarding the appointments, transfers, promotions, reprimands of judges and public prosecutors, the decisions of the High Council are not subject to review, contradicting both the independence of the judiciary as well as the basic principle of the rule of law. The last area outside the sphere of judicial conference concerns the decisions of the Supreme Military Council, a body of high-ranking generals and admirals who are charged with the important task of making final decisions concerning the promotion and retirement of military personnel. Due to the intrinsic interconnection of such decisions with individual rights, the decisions taken in the Council regarding the expulsion of individuals from the military present a particularly acute problem.

There has not been any advance on these issues in the last decade. The European Union has also not given particular emphasis to these issues in its Progress Reports and Accession Partnership, but mentioned them (in particular the lack of judicial review in High Council decisions) through advisory reports to the Ministry where there was strong resistance. The Progress Reports on the other hand have mentioned certain ‘legal and administrative structures (in the military establishment) which are not accountable to the civilian structures’. There is however resistance on the part of the military to allow any reform on this front due to the deep distrust it has of the administrative courts and their judges, owing to their lack of independence from the executive. This situation is currently reinforced by the AKP as the party in power, as the security establishment is most concerned about an Islamic influence on the administrative courts.

⁵⁰Ibid., p.455.

Do the courts control their own budget? Do they control their own administration? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

The Ministry of Justice, with the exception of high courts (namely the Constitutional Court, High Court of Appeals, Council of State and the Audit Court) and the military courts⁵¹, controls the budget of the judiciary in Turkey. Neither the lower courts nor the High Council of Judges and Prosecutors have their own budget. Ministry of Justice decides how to divide and allocate the appropriation between courts and is responsible for distributing money to courts in accordance with traditional budgeting methods. Hence expenditures for the personnel, buildings, equipment etc. all fall under the competence of the Ministry of Justice, which compromises the principle of independence by making the judiciary financially dependent on the executive. Moreover, in the last five years, judicial services have been allocated only 0.8% of the general budget and over 70% of this allocation is spent on salaries and other personal expenditure, with very little left for buildings and equipment.⁵² Hence, despite the existence of inadequate premises, equipment and insufficiently educated administrative staff that regularly drives the EU to comment on this situation, no significant change has occurred on this front. With respect to the administration of courts, the judge or chairman of a court takes the complete responsibility for court organisation and administration in Turkey. Judicial and administrative functions are not separated.

Is there a code of ethics for judges? How is it enforced in practice? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Although the Law on Judges and Public Prosecutors outlines certain behavior that is deemed to be inappropriate for judges, there is not a formal code of ethics for judges in Turkey. The EU on the other hand, through its Advisory Reports on the Turkish justice system has often argued in favor of a formal code of judicial conduct for Turkey. Despite some initial positive responses from the Ministry of Justice for such an initiative, no concrete steps have been taken so far.

Is legal education sufficient to produce high-quality judges and prosecutors? Have there been any important changes in legal education to strengthen the capacity of lawyers and judges? Is there a judicial training school or academy? What kind of training and continued professional development do judges receive? Who controls the curriculum and faculty in the judicial academy or training? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

In general, legal education in Turkey is insufficient to produce high-quality judges and public prosecutors. The methods used in over-crowded faculties rely excessively on simple memorising rather than on analytical reasoning.⁵³ This situation has started to change slightly

⁵¹The budget of the Military Courts is controlled by the Ministry of Defence.

⁵²See Paul Richmond and Kjell Björnberg, 'The Functioning of the Judicial System in the Republic of Turkey', Report of an Advisory Visit, 11-19 July 2004, European Commission, Brussels, p.91.

⁵³See Oğuz Onaran and Koray Karasu (2003), "Quality and Justice in Turkey", in Marco Fabri, Philip Langbroek, and Helene Pauliat (research directors), *The Administration of Justice in Europe: Towards the Development of Quality Standards*, Research Papers of the Institute di Ricerca Sui Sistemi Giudiziari, Bologna, p.474 (retrievable from <http://www2.law.uu.nl/sbr/mdj/>)

with the introduction of new techniques such as virtual court cases where students are given opportunities to develop their independent reasoning abilities.⁵⁴ Yet, there has so far not been any comprehensive reform of law education in the country, with the exception of the launch of some private universities where the curriculum is supplemented with foreign languages as well as modern techniques and courses on human rights and EU law.

There is, on the other hand, significant change mainly driven by the EU, with respect to the pre-service and in-service training of judges and public prosecutors. Until recently, the two-year School for Candidate Judges and Public Prosecutors in Ankara was responsible for the pre-service training of candidate judges and prosecutors. The content of training and the administration of the School as a whole were subordinated to the Ministry of Justice. It was suggested by many members of the judiciary as well as the EU in all its documents that deals with the issue of rule of law in Turkey that this situation, above all, fostered symbolic practices where the junior candidates internalised an important degree of fear and subordination vis-à-vis Ministry officials.⁵⁵ Similar criticisms were also levelled at the in-service training of judges and prosecutors which was also administered by the Ministry of Justice.

Drawing upon EU recommendations, the responsibilities regarding in-service training are now being transferred to the Justice Academy, also responsible for in-service training, legally established in 2003.⁵⁶ Yet, it is observed that members of the executive still have a relative majority in the academy's general assembly. Above all, the presidency of the Centre for the Training of Candidate Judges and Public Prosecutors, which is now a part of the Academy, is appointed by the Ministry of Justice on proposal of the president of the academy, who is himself appointed by the Ministry. The curriculum and the faculty are still under the control of the Ministry. Hence, the structure of the Academy also creates the potential for executive influence.

Despite such problems which the Ministry of Justice argues to resolve once the Justice Academy is fully settled and functional in the coming years, it needs to be stated that the quality of the curriculum in both pre-service and in-service training is being tremendously improved, owing partly to EU efforts in this area. As well as Turkish law and legal procedure, both trainings now extensively cover the European Convention on Human Rights (ECHR) and EU law as well as foreign languages (French and English in particular). With an EU Commission funded project, administered in cooperation with the Ministry of Justice, 225 judges and public prosecutors attended training seminars on the ECHR and the case law of the European Court of Human Rights (ECtHR) in order to be trained as human rights trainers. These 225 judges and public prosecutors subsequently conducted human rights training for all other judges and public prosecutors in Turkey. Moreover, again with the financial assistance of the EU, seminars were held throughout Turkey for judges and prosecutors on EU law, judicial cooperation, intellectual property rights, juvenile criminal justice and organised crime. Various judges and public prosecutors have been sent abroad for training on specific issues such as industrial and intellectual property rights and corruption. A new project has recently been initiated to train a number of judges and public prosecutors, forensic medicine experts and candidate judges and public prosecutors specifically on issues relating to torture and ill-treatment.⁵⁷

⁵⁴Based on an interview with Oktay Uygun, Istanbul, March 2004

⁵⁵Ibid.

⁵⁶A total number of 449 candidate judges and public prosecutors were trained at the Academy in 2004. 660 judges and public prosecutors received in-service training in 2004.

⁵⁷See <http://www.abgm.adalet.gov.tr> for the details of EU-funded projects in the area of justice in Turkey.

Is the public educated about justice issues and does it demand an efficient and impartial judiciary? Is there any data collected and published about the public's perception of the justice system and how it functions? If so who collects and publishes the data (the government, the courts, NGOs others?) Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

There is no official data collected regularly by the government or the courts on the public's perception of the justice system and how it functions in Turkey. However, some universities and think-tanks conduct opinion polls to determine the level of trust in the Turkish judiciary. According to two surveys conducted by TÜSİAD (Turkish Businessmen and Industrialists' Association) in 1993 and 1998, approximately 60% of Turkish businessmen consider courts' judgements to be unfair, nearly 40% does not have confidence in the judiciary and the main concern with the judiciary is cited as the insufficiency of court buildings and equipment.⁵⁸ The results of the two nationwide surveys (one household, other among businessmen) conducted by TESEV (Turkish Economic and Social Studies Foundation) in 2000 also display tendencies of low levels of trust in the judiciary by both groups that graded the level of trust in the judiciary as five on a ten basis.⁵⁹ A more recent nationwide survey in December 2003, funded by the EU Commission and led by academics from ODTU (Middle East Technical University) concluded that 61% of the citizens found Turkish courts unfair and lacking impartiality.⁶⁰ Despite the fact that it is rather difficult to make accurate time-series inferences from surveys conducted by different institutions on different methodologies, it can still be argued that the levels of confidence in the Turkish judiciary has generally remained low in the last decade.

Is there an accessible and transparent mechanism for the public to complain about judges, suspected judicial corruption, delays in courts or any other fault in the judicial system (Ombudsman, commission etc.)? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

There is no accessible and transparent mechanism for the public to complain about judges, suspected judicial corruption, delays in courts or any other fault in the judicial system in Turkey. In theory, complaints regarding such issues can be filed by the individuals concerned at the High Council for Judges and Public Prosecutors. In fact, only the lawyers are in a position to file such complaints due to the complexity of the procedures, and since lawyers are generally reluctant to undertake such action with the fear of having to face the same judge in any future cases, this system hardly works in practice. Faced with increasing workload and under pressures from the EU to establish mechanisms for alternative dispute resolution to decrease workload, the Directorate General for Legislative Affairs of the Ministry of Justice has just begun to work on preparing a Draft Law on Ombudsman with a view to introducing the Ombudsman system in Turkey, covering disputes between individuals and public bodies. Since the initiative is currently at a very early stage, it remains to be seen how it will be devised to function with respect to judicial complaints.

⁵⁸See Oğuz Onaran and Koray Karasu (2003), "Quality and Justice in Turkey", in Marco Fabri, Philip Langbroek, and Helene Pauliat (research directors), *The Administration of Justice in Europe: Towards the Development of Quality Standards*, Research Papers of the Institute di Ricerca Sui Sistemi Giudiziari, Bologna, p.479 (retrievable from <http://www2.law.uu.nl/sbr/mdj/>)

⁵⁹Ibid.

⁶⁰See <http://www.tusiad.org/yayin/gorus/59/12.pdf>.

Are there any private (non-state) lawful dispute resolution systems – such as mediation, arbitration or other forms of ADR? How developed are there? How prevalent are unlawful “dispute resolution” system – such as “mafia” type enforcement?

Despite the fact that a substantial number of the cases present before the civil courts involve very minor disputes between individuals or between individuals and the public administration, there are currently no private (non-state) lawful dispute resolution systems in Turkey, hampering further the efficiency problem in the Turkish judicial system. Although lawyers are permitted by law to conduct conciliation proceedings, this system is not preferred so much in practice due to financial considerations of the lawyers.⁶¹ Primarily in response to EU recommendations for the establishment of alternative dispute resolution (ADR) mechanisms, a Draft Law on General Administrative Procedures is currently being prepared to introduce ADR as a less formal and less complex means of resolving disputes quickly and more cheaply than via court proceedings. As mentioned in the previous section, a Draft Law on Ombudsman is also currently under preparation. However, the influence of these mechanisms on resolving the overall efficiency problem of the judicial system in Turkey should still not be exaggerated since they can only function in limited areas outlined in the law.

While lawful ADR does not currently exist, unlawful ‘dispute resolution systems’, in particular the ‘mafia’ type of enforcement is highly prevalent in Turkey. This is especially the case in disputes concerning debts and payments where individuals choose the mafia arrangements to deliver the money unpaid instead of resorting to courts which will take longer and be costlier. While this is an important problem particularly in the big cities, it also exists, albeit at a smaller scale, in smaller cities and villages. The situation improved slightly with the decreasing levels of inflation in recent years but only further reform in the judiciary and overall improvement in living conditions and the economy can help eradicate the problem in the long run.

Is the media informed and concerned about the functioning of the justice system? Is the government sensitive to media and other public criticism about the functioning of the courts?

There are some problematic areas of the Turkish judicial system which the media is sensitive about and those that are hardly given any space in the public sphere. Mafia-judiciary-state relations involving controversial cases find extensive coverage in the media, due to increasing transparency in these issues after the end of armed conflicts of 1990s, whereas issues regarding corruption in the judicial system, despite their prevalence, find less coverage. The media has also begun to be increasingly sensitive to court decisions in the area of fundamental rights and freedoms, particularly those that involve ECHR and ECtHR in the last three years where EU conditionality on these issues have been strong. It can be stated that this rising interest of the media in the role of courts in promoting human rights was also a driving factor on the government’s recent attempts to increase such awareness among the judiciary.

REFORM AND RESISTANCE IN THE JUDICIARY

When we look at the reform attempts and changes in the Turkish judicial system, we see varied paces of reform in interrelated areas of the judicial machinery in Turkey. It is possible to analyse incremental change in three broad areas of malaise outlined at the beginning of the report: inefficiency, insufficient institutional independence and ideologically based resistance

⁶¹Based on an interview with Oktay Uygun, Istanbul, April 2005. In 2001, the Law on Lawyers was amended to allow lawyers to conduct conciliation proceedings.

to democratic interpretations of the law. With respect to the problem of efficiency, despite the fact that the problem is still acute, recent measures to improve the functioning of the system is closely related to EU advice and assistance in this area. Since EU assistance in this area (such as the establishment of a National Judicial Network Project and the establishment of an intermediate courts of appeal-see the points above for further details) largely coincides with the interests of all actors concerned for a functioning judiciary, there is a certain amount of progress involved. There are no significant veto players in this respect. However it needs to be kept in mind that progress on this front is also closely linked to institutional capacity which is also aimed at being strengthened through the high number of Twinning projects in the field. (see Section C of the Project Report). Hence EU mentions problem areas in this field through Progress Reports and Advisory visits and offers various forms of assistance mostly welcomed by the administration. Rather than ‘imposition’, ‘voluntary cooperation’ seems to be defining progress on this front and opening the path to ‘socialisation’, especially through the Twinning instrument. However, since Twinning projects in the field of JHA has just gotten off the ground in late 2004 and 2005, it is still too early to assess their impacts.

With respect to the institutional independence of the judiciary, there is barely any change. Here, significant change does not occur due to a combination of two factors. First is the reluctance of the EU to persist for change on this front. This can clearly be seen in the way in which Commission Progress Reports and Advisory Reports touch upon the issue, but it never gains prominence in any high level statements or contacts. It has never so far been pressed as a formal condition in the entry process. This lack of conditionality is combined by the strength of the veto player, which is the executive in this respect. Their high reluctance to resolve the issue can best be seen in the way in which the new Justice Academy which has been set up along the recommendations of the EU on the education of judicial personnel, is still established in a way in which the executive has indirect influence on administration, curriculum and faculty.

The third strand of the malaise- that of ideological independence- deserves special attention in this context. Here, the incremental change, the role of the EU and divisions among major actors can best be demonstrated through case studies themselves. In our opinion, the case study that is highly illustrative of the dynamics and the trajectory of the reform process in the judicial system concerns a conference, initially designed by two major universities of Turkey on “The State of Ottoman Armenians during Collapse of the Empire: Academic Responsibility and Democracy Problems”.⁶² Before going into further detail on the merits of the case itself, it needs to be mentioned that the Armenian issue is currently the longest lasting and remaining- albeit now partial- taboo in the Turkish political and public sphere. For many years, the events of 1915-1916 have merely been ignored in the country where any view against the official version of history has been persecuted. The issue has largely been viewed from the lenses of ‘national interest’ where any concession on the official views was even considered to lead to painful compensations including the Eastern territories of Turkey. While the taboo on the ‘Kurdish issue’ has to a great extent been dismantled, the efforts to open up the political and public sphere to discussions regarding the events of 1915-1916 are still at an infant phase. Such infancy puts judicial cases and delivered decisions on the issue under great scrutiny and provides yet another litmus test for the mentality shifts in the Turkish judiciary.

The conference on the Armenian issue was first scheduled to take place on 24 May, but was delayed due to reactions, most importantly from the Minister of Justice himself. The Minister of Justice, who is generally out-spoken on his relatively reformist position regarding Kurdish rights and the role of the military, this time blamed the universities for being ‘traitors’ who ‘stabbed us from the back’ and orchestrated the extreme right and left

⁶² The universities concerned are Bogazici University and Sabanci University.

dominated reactions to the conference.⁶³ The EU expressed grave concern, but no attempt was undertaken to reverse the decision. The universities decided in late September to hold the conference. This time, the main reaction came from the judiciary itself. The 4th Administrative Court in Istanbul (one of the lower courts), has openly gone beyond its area of jurisdiction, and decided to ‘stop the execution’ of the conference. The reasons cited focused on the eligibility of the invited speakers to speak on the issue and the ‘concerns’ over the prevention of alternative opinions. This time, the reactions against the court decision were particularly fierce. Academics, lawyers, main opposition party CHP, civil society organisations such as the History Foundation, Labour Unions and Human Rights Foundation expressed their reactions to the decision. Here, the fact that the court was indeed violating Article 130 of the Constitution (on the independence of the universities) was a strong catalyst in fuelling the reactions. The reactions hardly made any reference to the EU, but to the merits of democracy and free speech as well as an ideologically independent judiciary. One of the most outspoken reactions in this respect came from the Prime Minister Erdogan himself. He stated that he ‘can not possibly approve the decision of the court since it is incompatible with democracy, freedoms and modernity’.⁶⁴ In a similar fashion, Foreign Minister Gul condemned the decision, with a reference to the then upcoming 3rd of October EU decision on Turkey regarding the opening of accession negotiations. He stated that ‘we are harming ourselves in the wake of 3rd of October decision’.⁶⁵ This statement of course came in at the same time as the EU officials stated that this development would take its place in the Progress Report of Turkey. The conference could not be held in the first planned venue, Bogazici University, due to the court decision, but was instead held at Bilgi University. In fact, the Justice Minister himself hinted in his statements that this could be a way out of the court decision. He did not make an explicit repudiation of his previous statements but presented a more neutral stance, mostly due to isolation in the face of reactions, most particularly from within his own party. The conference proceeded in schedule and was faced with moderate peaceful protest by mostly extreme right and left wing groups outside the venue. Upon the completion of the conference, the Regional Administrative Court annulled the decision on the grounds that the previous decision was not within the confines of administrative court’s jurisdiction. Furthermore, what is even more striking is the fact that the only member of the court who did not vote against the execution of the conference in the 4th administrative court was later appointed to the Council of State, which is one of the most significant High Courts in Turkey.

This story of a single conference on the Armenian issue gives one many insights on the current state of the judiciary in Turkey. It is clear that there is currently a division within the judiciary itself, mainly based around ideological lines. Especially the lower courts are more intent on ‘preserving the national interest’ whereas the Higher Courts are a few steps ahead in the shifts of mentalities. The fact that the Higher Courts are increasingly referring to ECHR in their decisions and opting for democratic interpretations as seen in various cases regarding the Kurdish issue (see the report above) also help to complement the picture. While democratic demands from society are highly influential in the shifts, the role of the EU should not go missed. With respect to judicial decisions, by its nature, the role of the EU remains limited. Here, what the European Union seems to be doing is using the mechanisms of ‘democratic socialisation’ when it comes to the ideological matters of the judiciary. The intensive training on human rights and the freedom of expression, the translations of ECHR, available interpretations of ECHR cases, foreign language courses are all helping to expose the traditionally inverted judiciary to the outside world.

⁶³ See Radikal, 25 May 2005.

⁶⁴ See www.ntvmsnbc.com/news/342325.asp

⁶⁵ Ibid.

While the impact as such still seems to be limited, the case described above demonstrates that civil society is becoming more and more responsive to court decisions compromising democracy. One of the reasons for more democratic decisions at the High Courts is precisely because of the attention of civil society to crucial High Court decisions. One sees the impact not only in the follow-up developments to the conference on the Armenian issue, but also in the decisions regarding the re-trial of former DEP deputies. The growth of civil society in Turkey, with its demands for reform, predates Turkey's EU accession process. However it also has to be kept in mind that the EU has been influential in the changing of domestic opportunity structures in favour of NGOs. First of all, by strengthening freedoms through legal changes regarding the freedom of association and freedom of expression, the EU helps to widen the scope of civil society activity. The EU also provides important degree of financial assistance to civil society projects. Furthermore, EU emphasis on the rule of law strengthens the legitimate standing of some civil society organisations that had a relatively marginal stand in the past. For example the Helsinki Citizens' Assembly which has, since 1993, promoted freedom of expression among minority rights and multiculturalism have adopted a strong EU dimension in their activities and approach. Making the EU connection has enabled certain issues to be more visible and encompass wider circles of society.

When we look at the reactions of the political elite to the case described above, we see that the picture is rather mixed even within the same ruling party. While the various statements of prime minister Erdogan point to genuine acceptance of EU norms and values with barely any explicit reference to the EU itself (which is a finding reinforced by further cases analysed in the next sections on fundamental rights and freedoms), Foreign Minister's explicit linkage between the approaching EU decision and the decision of the administrative court point to the impact of democratic conditionality. The attitude of the Minister of Justice on the other hand goes to show how resistance can be so strong when it comes to such taboos around 'national interest' and can only be silenced through intra-party opposition and democratic conditionality in the wake of the crucial EU decision on Turkey.

In talking about the justice system and the reform of the judiciary, the role of public prosecutors deserves special emphasis. In fact, while some incremental change is occurring especially among higher level judges, public prosecutors seem to be important causes of resistance. The reasons behind resistance are not only ideological, but also caused by the fact their careers are at risk from judicial inspectors- who are themselves under similar ideological burdens - who believe they are not filing the necessary cases. We can hereby consider two recent cases to illustrate the situation in further detail. The first case involves the file brought against the famous Turkish novelist Orhan Pamuk. In an interview to a Swedish newspaper on February 2005, he was quoted to state that "1 million Armenians and 30 000 Kurds have been killed in this country". A case was immediately filed against him, requesting a 3 year sentence, on the basis of Article 301 of the new Turkish Penal Code that regulates offences which involve 'insulting Turkishness'. It also needs to be stated that this new Article which replaced the infamous Article 159 of the old Penal Code also states that statements that do not intent to 'insult', but criticise do not fall under such jurisdiction. The trial which is scheduled to take place in December has already attracted national and international media attention as well as reactions from civil society groups. The case against Pamuk goes to show not only the resistance of the public prosecutor despite the changes in the law, but also the loopholes within the revised law itself.

A similar situation can be observed in the case filed against a famous Turkish NGO activist and journalist of Armenian descent on the basis of an article he wrote on the need for Armenians in Armenia and the diaspora to make peace with their identity by refusing to see the Turk as their eternal Other. The article, loaded with metaphorical figurations was brought

to court by a public prosecutor on the basis of the same Article 301 and furthermore, the author was sentenced to 6 months' imprisonment. The court in this case seemed to totally ignore the expert testimony that the article is indeed 'misinterpreted' and took this decision. The case will be taken to a higher court and is expected to result in acquittal due to reactions from society and also due to the fact that higher courts are now expected to deliver judgments more in line with the principle of freedom of expression. However, the case is still important in showing the resistance among public prosecutors and specifically the lower ranks of judiciary on issues that concern the 'national interest' as such.

SECTION B

REFORMS MEANT TO STRENGTHEN LEGISLATIVE AND ADMINISTRATIVE CAPACITY

The history of Turkish parliaments goes back to late 19th century when the first written constitution was adopted on 23 December 1876.⁶⁶ Our objective here is not to give a full-blown account of even the main tenets of Turkish parliamentary history. However, we want to underline that although the Ottoman parliaments were short-lived and were not much effective in challenging the authority of the Sultan they nevertheless laid down an institutional memory and knowledge, which formed the basis of the national parliamentary experience that started to take root in early 1920s. Ever since there have been many attempts at developing the legislative and administrative capacity below we present a short history of legislative developments and underline the direction of capacity building efforts therein.

From the very start of the national independence movement that peaked with the establishment of a new sovereign Republic in October 1923, the Kemalist leadership used first the local provincial congresses bringing together primarily the leadership cadres of the Ottoman Anatolia. The next step was the founding of the Turkish Grand National Assembly (TGNA) in April 1920, which in consequence drafted a new Constitution that was adopted by the TGNA in January 1921.⁶⁷ The Constitution of 1921 brought the principle of national sovereignty which contradicted the will of the Sultan. In consequence the sultanate was abolished with a decision made by the TGNA on 1 November 1922. This very brief constitution was also short-lived and lasted until 1924. However, the 1921 constitution formed the very basis of the new Republic's fundamental new legislations, which prepared the way for the Republic and abolishment of the caliphate.

The Constitution of 1924, was the text with the longest life-span in Turkish Constitutional history. It remained in force for 36 years complete and uninterrupted until it was replaced by the 1961 Constitution, and thus played an important role in the development

⁶⁶ This section relies on the TGNA website (http://www.tbmm.gov.tr/english/about_tgna.htm) on 13/06/2005. This constitution, or the Fundamental Law, was not the result of a popular movement based on the will of the people, but was realized by the pressures of the "Young Ottomans" upon the sultan. This was by no means a satisfactorily sophisticated constitution, which guaranteed all basic rights of the citizens. However, despite all its deficiencies, it nevertheless constitutes a very significant step in the political development of the Ottoman State by providing the first written legal document in a non-democratic tradition commencing the "Constitutional" government. The first Turkish parliament, or the "General Assembly", convened a few months after the adoption of the Fundamental Law on 20 March 1877 as a bicameral assembly. After elections in two steps, the "Chamber of Deputies" or as it is sometimes expressed, the "Parliament", was composed of 115 members, 69 who were Moslem and 46 who were non-Moslem. The "Senate" was composed of 26 members who were directly appointed by the Sultan. This first experiment was short-lived and was dissolved by the Sultan a few months later during the heated days of the Russo-Ottoman War. On 13 December 1877, following the results of the elections held, the second assembly of national representatives in Turkish history was convened. However, again as a result of unfavourable developments in the Russian war, the Sultan also dispersed this second Assembly on 14 February 1878. Until 1908 there was no Parliamentary regime in the country. At the beginning of 1908, due primarily to gradually increasing foreign developments and violent opposition of the intellectuals, the Sultan was forced to summon the General Assembly to a meeting on 23 July 1908.

⁶⁷ The Constitution of 1921 was a rather short text composed of 23 articles. The first nine articles enumerated the basic principles on which the State was based. The principles were expressed in the most definite and open manner that unconditional, unrestricted sovereignty belongs to the nation, that the legislative and executive powers were gathered in the TGNA, which is the only and real representative of the nation, and the principles of unity of powers, and a state based on the people. However, significant deficiencies of the Constitution of 1921 were the lack of a head of State, the fact that the rights and freedoms of the citizens were not established, and the lack of provisions related to the judiciary.

of the Turkish political life. It gave way to the establishment of political parties and consequently to multi-party democracy with the 1946 election. The classic rights and freedoms were all included in it. Some substantial amendments were made in 1928, 1934 and 1937. The change of 10 April 1928 gave a secular character to the State. With the change of 5 December 1934, the complete right to vote and be elected was recognized for women. The change of 5 February 1937 was determining the attributes of "republicanism, nationalism, populism, statism, secularism and reformism".

The first multi-party election in the history of the Republic of Turkey was held on 21 July 1946. However, the election results were rigged in favour of the then ruling RPP and as a result RPP remained in power until the next election despite the fact that many expert nowadays believe ex post facto that the challenger DP might have won the 1946 election as well. Following this election, the institutional and legal backbone of a multi-party life was adopted in a short period of time. Within four years following the 1946 election, 25 more political parties were established in the country. In May 14th, 1950 election, the Democrat Party (*Demokrat Parti*-DP) won 397 of the 487 seats in the TGNA and came to power to replace RPP which had remained in power uninterrupted for 24 years.

DP in power had not only continuously increased its strong hold on the executive branch including the prime minister and cabinet offices as well as the office of the President in a partisan way but also remained uncooperative in the Parliament amidst increasing tensions in the country. As a result, DP government was overthrown by a military coup d'etat undertaken on 27 May 1960.

The military junta formed a "Constituent Assembly" to design a new constitution. Within a year a new and much more libertarian and modern constitution was prepared and submitted to a referendum on 9 July 1961. However, the DP tradition had severely opposed the new constitution which in consequence was accepted with only a total of 61.5 percent approval votes in a balloting wherein only 81% of the registered voters participated. Nevertheless, for the first time since late 19th century a constituent assembly prepared constitution was accepted by a popular vote.

In contrast to earlier constitutional documents the Constitution of 1961 was a long and detailed. It brought significant innovations such as the principle of a separation of powers. The legislative and supervisory power would be carried out by the TGNA; along with the executive departing from the assembly, the executive was formed as a separate organ by the President and the Council of Ministers; and the judiciary power would be carried out by independent courts.

Another one of the significant changes was the establishment of a "bicameral assembly" structure, composed of the "National Assembly" and the "Republic Senate". Furthermore, to determine whether or not the laws were contrary to the Constitution, a "Constitutional Court" was established and emphasis was placed on judiciary supervision. The basic rights and freedoms were established in a detailed manner, which had not been observed in any Turkish constitution up until that time. Limits were also put on the limitations of basic rights and freedoms. In addition, the constitution gave the responsibility for many social obligations to the State. The Constitution of 1961, together with the changes made in 1971, remained in force until the second military coup d'etat undertaken in 1980.

The Constitutional mechanisms established with long and detailed provisions did not operate well. A harmonious working environment amongst the institutions never developed fully. Some saw this as a result of a culture of opposition in Turkey that never developed much cooperative instincts. Some attributed it to a division of sovereignty among various organs. More concretely the newly established proportional representation system did create a more equitable distribution of seats in the Parliament. However, not surprisingly fairer distribution of seats also created Parliaments that were inherently unstable and coalition

governments became a necessity. Coming together with uncooperative political culture such Parliaments never functioned harmoniously and were taken hostage by small marginal groups. As a result of high economic and social change in the 1960s and 1970s political and social instability emerged as an uncontrollable force and paved the way to crises. As a result, the country was confronted with a second military coup d'etat on 12 September 1980. The Constitution was suspended and the political parties were closed. Political bans were brought to a large number of the politicians.

Just as in 1960, the military junta formed a "Constituent assembly" to design a new constitution. It took the Constituent assembly two years to prepare the new constitution which eventually was submitted to a referendum on 7 November 1982. Participation in the referendum was this time very high at 91.27 percent primarily as a result of legal provisions that brought punishment if a vote was not cast. With such a high participation rate the Constitution of 1982 was accepted with 91.37 percent of the valid votes.

The new Constitution once again brought a unicameral Assembly system. The executive, especially the office of the President as opposed to the Prime Minister and the Cabinet was more strengthened. New and more severe measures were brought on the subject of limiting freedoms. New statutes were given to autonomous organizations.

After the Constitution of 1982 was adopted, the first election for members of parliament was held on 6 November 1983 with the participation of the newly established Nationalist Democracy Party, the Populist Party and the Motherland Party, and without the political parties, which had previously been closed. The democratic process started once again. The General Elections for Members of Parliament held on 20 October 1991, was realized with a large number of freely established political parties and with all the politicians, whose rights to engage in politics had been taken away previously, succeeding in getting their freedoms once again. Parliamentary democracy succeeded in obtaining a working order with all its requirements.

In short, ever since the first competitive elections in 1950, albeit with interruptions of the military, there has been an institutional memory build up in the Turkish parliamentary system. Following a decade of increasing authoritarian tendencies of the popularly elected DP in power, the first military regime brought a constitutional framework that opened the country for a competitive multi-party system that allowed for a liberal institutional setting. Nevertheless, the turbulent two decades that followed ended with a reactionary constitution imposed by the 1980 military regime. Ever since, the civilian governments were unable to liberalise the constraining institutional setting imposed by the 1980 regime. The most recent reform packages were in a sense all aimed at this historical mission of freeing the Turkish Constitution from the impositions of primarily the 1980 regime. In other words, the reform movement of the recent few years are all rooted in the civilian efforts to liberalise the Constitutional framework during the last two decades. They are thus rooted in considerable intellectual heritage of not only running a competitive multi-party electoral system but also one in which a long series of policy initiatives for reform and capacity building in public administration has taken place. In this specific sense the Turkish experience stands as a unique example in comparison to other countries of the past EU expansions. Compared to Spain, Portugal and Greece as well as all of the Eastern European Republics of the last round of EU expansion Turkey has built a considerably longer tradition of reforms which were all conducive to building a resistance capacity through well established circles of interest groups in the bureaucracy and their collaborators in various sectors of the Turkish economy. As such, the historical heritage of Turkish reform movement forms a serious obstacle as well as providing a considerable accumulation of experience in reform.

From this point on we answer the questions raised in the research guidelines.

(a) Despite a long tradition of law making in TGNA there has been notable difficulties in its ability to pursue a coherent legislative program in the past. This has primarily been due to fragmented nature of the Parliament in most of the 1970s. However, with the coming of power of the Motherland Party (Anavatan Partisi-ANAP) in 1983 as a single party government a swift series of legislations have been passed with little difficulty. However, from 1991 until the last general elections in 2002, once again a fragmented parliament found it difficult to legislate on many important issues.

More serious shortcoming in the whole process of preparing a draft bill for the parliament has been the lack of serious participation in the process by the involved and interested parties. The law no. 3056 requires that in the preparatory phase ministries should consult interested institutions for their views and inputs for the drafted bill. The TGNA statutes also requires that all draft bills should contain a justification and detailed numbering of the items in the law. However, very often the justification for the proposed bill is poorly drafted and does not contain an assessment as to the impact of the newly proposed bill upon social, economic, institutional and political life in the country. The Emergency Action Plan prepared by the 58th Government (the first AKP government after the 2002 election) included a clause that points to the necessity of preparing such detailed justification and impact assessments. However, by and large this has remained a simple wish unfulfilled so far.

Similarly, Prime Minister's office is given the duty to harmonise the inner contradictions between the proposed bills and coordinate the ministerial agendas that might diverge in the process. Such coordination has typically remained poor for most the last decade similar to earlier periods.

As a consultative agency and a participatory mechanism for better production of legislation Economic and Social Council is instituted by the Prime Minister's office in 1995 but only given a legal status in 11 April 2001 (Law no 4641). The Council is composed of 39 members (15 Public officers and 24 private) and works under the State Planning Organisation (Devlet Planlama Teşkilatı-DPT). A short list of actions taken by the Council can be found at <http://www.dpt.gov.tr/esk/faaliyet/index.html> . It is clear from this list that nothing more than ineffectual conferences are being taken care of in this Council.

A continuing problem in law making is the high numbers of often conflicting legal pieces and the extremely complicated and badly written language of the laws. Adding to these the even more detailed and complicated nature of the statutes makes the bureaucratic chaos even bigger. So much so that, the President has vetoed for instance on 18 March 2002 some parts of the new Tax Law on the basis that its language is unintelligible and inconsistent legal terminology. Obviously, intelligibility of laws also has implications for accountability and transparency of the legal system in the country.

On March 19th 2001 the Turkish government adopted the National Program for the Adoption of the Acquis (NPAA) which sets out a large scale of reforms that Turkey declared its willing to adopt in all areas of political and economic life in order to align its legislation with the EU acquis. Ever since, the NPAA provided a detailed guideline for a series of legal including Constitutional amendments and changes. Details of the accomplishments and expectations as of the end of 2003 and 2004 are given Tables A.2.1 and A.2.2. What is striking here is that these legal adjustments have been undertaken first by a three party coalition of DSP-MHP-ANAP and then the single party government of AKP. Given the difficulties of running a coalition government the performances of these two governments have been in stark contrast to one another. Nevertheless both were able to keep a determined drive to continue the required reforms in a more or less predictable way.

As noted in Section D below the role of the National Security Council (NSC) and the control of the security or military budgets have been largely reformed and taken under the civilian control.

Table A.2.1 European Parliament - Report on Turkey's application for membership of the European Union-2003
A5-0160/2003 **20.05.2003**

Accomplished

Reopening of the trial against Leyla Zana and three other former DEP party MPs
Abolishing the death penalty in peacetime
Signing of Protocol No. 6 to the European Convention on Human Rights
Modifications to Articles 159, 169 and 312 of the Criminal Code and Article 8 of the Anti-Terrorism Act
Ending of the state of emergency in the South-East
Constitutional reforms (Oct 2001)
A new civil code (Nov 2001)
Three additional legal reforms (February, March and August 2002)
Harmonisation packages 4 and 5 (adopted on 10 and 24 Jan 2003 respectively)

Expected/Criticised

Ban death penalty to be extended to crimes committed in times of war
Lift the restrictions on the exercise of fundamental rights
Abolish the National Security Council in its current form
Free social organisations in the economic, social and cultural fields be promoted by the State
Fair retrial and their immediate provisional release Leyla Zana and three other former DEP party MPs
Ensure effective access to media broadcasting, and education in other non-Turkish languages
Corruption cases should be more public and monitored by the media and other watchdog organisations
Strengthen the principle of the primacy of international law over national law
Military representatives should withdraw from civilian bodies
Establish full Parliamentary control over the military budget
Establishment of a new constitution, explicitly based on European democratic foundations
Increase the awareness of Turkish citizens about the European Union and the obligations
Accession to the statutes of the International Criminal Court
Implementing the decisions of the European Court of human rights (ECHR)
Amnesty be granted to those imprisoned for their non-violent expression of their opinions
Improve the quality of the court system and the qualities of judges
Abolish the State Security Courts
Change electoral system to ensure that the parliament fully reflects the principle of representative democracy
Condemns the decision of the Turkish Constitutional Court to ban HADEP
Eradicate torture (zero tolerance)
Implement the international standards for prisons and to abstain from isolation of prisoners
Pass legislation to abolish Article 31 paragraph 1 of the Law 1992, No 3842
Ensure participation of the Kurdish population and members of other minorities in political life
Halt to any discriminatory activities of religious minorities, including in the field of ownership of property
Christian denominations be permitted to maintain theological colleges and seminaries to train their clergy
Equal treatment of the different Muslim communities
Facilitate the return of former inhabitants to 'emptied villages' and returning refugees from abroad
Take courageous steps in Cyprus problem, on the basis of the proposals of Secretary-General Kofi Annan
(1, 2, ...): Accomplished/Improved by the Report A6-0063/2004

Table A.2.2 European Parliament - 2004 regular report on Turkey's progress towards accession

A6-0063/2004

03.12.2004

Accomplished

Reduction of macro-economic imbalances
Abolition of the death penalty
Extension of important fundamental rights and freedoms
Reform of criminal procedure, strengthening the rights of the defence
Strengthened the principle of gender equality
Reduction of the role of the National Security Council
Given non-governmental organisations greater scope to take action
Release of Leyla Zana and her colleagues from the former Democracy Party (DEP)
Enabled schools to offer courses in mother tongues other than Turkish
Enabled media programs in mother tongues other than Turkish
Ratification of the OECD's Anti-Bribery Convention
Ratification of the UN Convention against Corruption
Membership of the Council of Europe's Group of States against corruption (GRECO)
Primacy of international law over national law ss far as the European Convention on Human Rights is concerned

Expected/Criticised

Eradicate all forms of harassment of human rights activists and organisations	
Article 305 of the new Turkish Penal Code, which targets freedom of expression, is incompatible	
Fair retrial of all imprisoned persons sentenced for the non-violent expression of opinions	
Lift all remaining restrictions in the area of broadcasting and education in minority languages	
Implementation thereof to education and broadcasting for non-Muslim minorities	
Fully implement a 'zero-tolerance' approach at all levels to the complete eradication of torture	
Abrogate the statute of limitations for all criminal cases when proceedings are opened	
Bring the Law on Associations, the new Penal Code and the Law on Intermediate Courts of Appeal into force	
Establishing the judicial police and the law on execution of punishments and measures	
Lift the geographical reservation to the 1951 Geneva Convention relating to the Status of Refugees	
Implement without delay the still outstanding decisions of the European Court of Human Rights	
End discrimination against religious minorities, including in property rights and the training of clergy	
Recognition of the Alevites, and for all religious education to be voluntary and to cover not only Sunni religion	
Abolish all existing restrictions applying to ships flying the Cypriot flag and involved in trade	
Reconciliation with those Kurdish forces who have chosen to abandon the use of arms	
Apply the ILO standards for trade union rights and prohibit the employment of children	
Allow trade unions to organise themselves and to promote freedom of association	
Act in accordance with the relevant case-law of the European Court of Human Rights	
Protection of the fundamental rights of all Christian minorities and communities	
Maintain the constructive attitude in finding a settlement of the Cyprus question	
Recognise the republic of Cyprus	Reform the Law on Foundations
Ensure a competent and independent judiciary	Disarm the village guards and disband the village guard system
Electoral system to be reformed by reducing the threshold of ten per cent	Provide full legal protection and judicial and economic aid to women victims
Limit political role of the army further through more reforms	Support and speed up the return of internally displaced persons
Re-open the borders with Armenia as soon as possible	Immediate re-opening of the Greek Orthodox Halki seminary
Crimes of honour are properly investigated and prosecuted	Establishment in the near future of the office of Ombudsman

(1, 2, ...): *Expectations/complaints of the Report A5-0160/2003*

Table A.2.3 List of Pieces of Legislation Relevant to Strengthening Legislative and Administrative Capacity and Combat of Corruption and Increased Stated Accountability			
	Law No	Law Name (in Turkish) and what the law is about?	Date
1	5078	Establishment of Military Courts via Military Criminal Law (Askerî Ceza Kanunu İle Askerî Mahkemeler Kuruluşu Ve Yargılama Usulü Kanununda Değişiklik Yapılmasına Dair Kanun)	22.1.2004
2	4389	Law on Banks (Bankalar Kanunu)	18.6.1999
3	5020	Law on Banks and other related changes (Bankalar Kanunu İle Bazı Kanunlarda Değişiklik Yapılmasına İlişkin Kanun)	12.12.2003
4	4491	Law on Banks and other related changes (Bankalar Kanununda Değişiklik Yapılmasına İlişkin Kanun)	17.12.1999
5	4761	Various changes pertinent to strengthening legislative and administrative capacity (Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun)	12.6.2002
6	4964	Various changes pertinent to strengthening legislative and administrative capacity Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun	30.7.2003
7	4744	Various changes pertinent to strengthening legislative and administrative capacity Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun	6.2.2002
8	5272	Municipality Law (Belediye Kanunu)	7.12.2004
9	5215	Municipality Law (Belediye Kanunu)	9.7.2004
10	4982	Right to Obtain Information Law (Bilgi Edinme Hakkı Kanunu)	9.10.2003
11	5019	Various changes pertinent to Greater City Municipalities (Büyük Şehir Belediyelerinin Yönetimi Hakkında Kanun Hükmünde Kararnamenin Değiştirilerek Kabulü Hakkında Kanunda Değişiklik Yapılmasına İlişkin Kanun)	11.12.2003
12	5216	Greater City Municipalities Law (Büyükşehir Belediyesi Kanunu)	10.7.2004
13	5190	Law pertinent to the abolishment of State Security Courts (Ceza Muhakemeleri Usulü Kanununda Değişiklik Yapılması Ve Devlet Güvenlik Mahkemelerinin Kaldırılmasına Dair Kanun)	16.6.2004
14	5275	Law pertinent to implementation of punishment and security precautions (Ceza Ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun)	13.12.2004
15	4963	Various changes pertinent to strengthening legislative and administrative capacity (Çeşitli Kanunlarda Değişiklik Yapılmasına İlişkin Kanun)	30.7.2003
16	4422	Law on Organised Crime (Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu)	30.7.1999
17	5128	Law pertinent to provision of information concerning commercial cases involving foreign countries (Hukuki Veya Ticari Konularda Yabancı Ülkelerde Delil Sağlanması Hakkında Sözleşmenin Onaylanmasının Uygun Bulduğuna Dair Kanun)	7.4.2004
18	5302	Law on Provincial Administration (İl Özel İdaresi Kanunu)	22.2.2005
19	5197	Law on Provincial Administration (İl Özel İdaresi Kanunu)	24.6.2004
20	5176	Law on the establishment of ethic council for public officials (Kamu Görevlileri Etik Kurulu Kurulması Ve Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun)	25.5.2004

Table A.2.3 (Continued) List of Pieces of Legislation Relevant to Strengthening Legislative and Administrative Capacity and Combat of Corruption and Increased Stated Accountability			
29	4734	Law on Public Procurement/Bidding (Kamu İhale Kanunu)	4.1.2002
30	4735	Law on Public Procurement Contracts (Kamu İhale Sözleşmeleri Kanunu)	5.1.2002
31	5018	Law on Public Financial Management and Regulation (Kamu Malî Yönetimi Ve Kontrol Kanunu)	10.12.2003
35	4483	Law on Prosecution of Public Officials (Memurlar Ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanun)	2.12.1999
36	5186	Amendments on the Law on Prosecution of Public Officials (Memurlar Ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanunda Değişiklik Yapılması Hakkında Kanun)	9.6.2004
37	5232	Amendments on the Law on Prosecution of Public Officials (Memurlar Ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanunda Değişiklik Yapılması Hakkında Kanun)	17.7.2004
38	4696	Amendments on the Law on Prosecution of Public Officials (Memurlar Ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanunda Değişiklik Yapılması Hakkında Kanun)	27.6.2001
39	5235	Adli Yargı İlk Derece Mahkemeleri İle Bölge Adliye Mahkemelerinin Kuruluş, Görev Ve Yetkileri Hakkında Kanun	26.9.2004
40	4672	Amendments to the Banking Law (Bankalar Kanununda Değişiklik Yapılmasına İlişkin Kanun)	12.5.2001
41	4589	Law on Prevention of Cross Border Organised Crime (Sınır Aşan Suçları Önleme Ve Mücadele Etmeye İlişkin İşbirliği Anlaşmasının Onaylanmasının Uygun Bulduğuna Dair Kanun)	30.6.2000
42	4445	Amendments to Law on Political Parties (Siyasî Partiler Kanununda Değişiklik Yapılmasına İlişkin Kanun)	12.8.1999
43	5191	Law on Prevention of Money Laundering and Apprehension of Financial Sources of Organised Crime (Suçtan Kaynaklanan Gelirlerin Aklanması, Araştırılması, Ele Geçirilmesi Ve El Konulmasına İlişkin Sözleşmenin Onaylanmasının Uygun Bulduğuna Dair Kanun)	16.6.2004
44		Founding of a Parliamentary Commission on Diagnosing the Roots of Corruption and the Necessary Public Policies for prevention of Corruption (Yolsuzlukların Sebepleri, Sosyal Ve Ekonomik Boyutlarının Araştırılarak Alınması Gereken Önlemlerin Belirlenmesi Amacıyla Kurulan Meclis Araştırması Komisyonu) (10/9)	
45	5237	Amendments to the Turkish Penal Code (Türk Ceza Kanunu)	26.9.2004
46	5271	Ceza Muhakemesi Kanunu	4.12.2004
47	4721	Amendments to Turkish Civil Code (Türk Medenî Kanunu)	22.11.2001
48	4954	Law on the Establishment of the Turkish Justice Academy (Türkiye Adalet Akademisi Kanunu)	23.7.2003
49	4518	Law on Prevention of Bribery (Uluslararası Ticarî İşlemlerde Yabancı Kamu Görevlilerine Verilen Rüşvetin Önlenmesi Sözleşmesinin Onaylanmasının Uygun Bulduğuna Dair Kanun)	1.2.2000
50	4782	Law on Prevention of Bribery (Uluslararası Ticarî İşlemlerde Yabancı Kamu Görevlilerine Rüşvet Verilmesinin Önlenmesi İçin Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun)	2.1.2003
51	4929	Amendments to the Law of the Court of Cassation (Yargıtay Kanununda Değişiklik Yapılmasına İlişkin Kanun)	15.7.2003
52	5065	Yolsuzluğa Karşı Ceza Hukuku Sözleşmesinin Onaylanmasının Uygun Bulduğuna Dair Kanun	14.1.2004
53	4852	Yolsuzluğa Karşı Özel Hukuk Sözleşmesinin Onaylanmasının Uygun Bulduğuna Dair Kanun	17.4.2003

(b) On May 21 2004 a new Law of Statistics has been sent to the TGNA. However ever since it has not been acted on and it still remains to be discussed and voted on in the Parliament. Collection of official statistics has been the official duty of the State Institute of Statistics (SIS). It is known that from time to time private and scientific collection of social data through surveys for example has been problematic. An odd and ambiguous wording in the law that instituted SIS was interpreted as saying that all statistical data collection has to go through SIS and has to be approved by them. Therefore private and scientific survey interviewing was restricted. The new law not only aims to provide a modern and unambiguous framework for data collection, storage and access but also aims to institute Turkish Institute of Statistics to coordinate all such efforts in the public sphere.

In the meanwhile SIS has speeded up its efforts to collect data on various aspects of Turkish social life that it traditionally has not touched before. Nevertheless these data are slow in being disseminated to the public. Scientific purpose access is also very limited to the university and research community. Raw data is not stored in a way that would make them accessible to statistical analysis properly to all users. Usually it is the insiders who get access to such usefully coded and stored data. For example, district level election results on rural and urban divide was made available to researchers only recently more than two years after the general elections. Census data also is known to be full of faults and access to it is restricted. In short, meaningful and dependable statistical data is still hard to access for public and they are full of contradictions across different sources that they originate from. These inconsistencies in monetary central Bank statistics have been corrected. However, the real sector data on regional investment figures across provinces come from different ministries in largely contradictory fashion. In short, reform of the statistical base has been slow in the making. While the monetary sector data has been largely made reliable, valid and consistent through the system, other types of data concerning real sectors, agriculture, culture and social life is relatively rare, unreliable and invalid for the policymakers to sensibly make use of them.

IMF and World Bank have been effective in pushing for better data collection and meaningful data storage in the monetary sector. The EU has spared aid to the betterment of other statistical data collection and improvement of the statistical system in the country. However progress has so far been slow. The primary reason for this slow pace has been the insufficient bureaucratic capacity and insufficient funding. Data collection has been so multi-layered and uncoordinated that joining long-established branches of data collection agencies under a single coordinated umbrella proved to be very difficult. Resistance in principle was not observed in this area.

(c & d) Similar to all previous reform discussions the last few years of legislating have witnessed the most comprehensive changes with regards to budgeting; its drafting, implementation, control and performance evaluations. Three fundamental laws have been drafted and only two have so far been passed from the parliament and approved by the President. First among these is the Basic Law on Public Administration (Kamu Yönetimi Temel Kanunu, No: 5227) which was approved in the parliament on 15 July 2004 but was resent to the parliament for reconsideration by the President on 3 August, 2004 and ever since has not been acted on. The President's justification for his resending the law back for reconsideration is a long and detailed document available on the Prime Ministry's website (http://www.basbakanlik.gov.tr/docs/basbakanlik/kanuntasarilari/kyyy/5227geri_gonderme_gerecelcesi.htm). Several points that are by no means an exhaustive list are noticeable in this justification. One concerns the relations and distribution of duties of the central as opposed to local and regional administrative units. The fact that the new law favours the local as opposed to the central administration and that provisions are made for the possible delivery of local

services by private sector are found opposing the Constitutional unity of the executive branch. Ambiguity in this newly cast role for the local administrations as opposed to the central administration is also seen as contradictory to the Constitution. More importantly perhaps is the objection by the President that the law in its article 4 stipulates that the fundamental duty of the public administration is "...to lift the barriers in front of individuals use of their rights and freedoms". The President objects that unless Constitutional limits are clearly referred to this article may be wrongly interpreted as contradicting these limitations therein. Furthermore another objection is for article 5.d which stipulates the general principles of public service provision wherein no limitations can be brought on these that limit basic human rights and freedoms. This is seen as a covered attempt to basically allow use of turban in public space for women and is reminded that no such allowance can be granted according to the Constitution and international court decisions. Similarly, external audit services are allowed to be carried out by private agencies according to article 40 of the law in question. This also is seen to contradict articles 128 and 160 of the Constitution. In short, it seems that it is extremely difficult to bridge these differences of opinion concerning reinterpretation of the Constitution and that is why the government seems to have let this legislation drop out of the agenda.

The two new laws concerning the administration and regulation of the municipalities have been less problematic and were finally approved by the President. First, the Greater City Municipality Law (Büyükşehir Belediye Kanunu, No. 5216) was passed from the Parliament on 10 July 2004 and was approved by the President and published in the Official Gazette on 23 July 2004. Next, and relatively more problematic was the Municipality law (Belediye Kanunu, No. 5272) which was passed from the Parliament on 7 December 2004 and was approved by the President and published in the Official Gazette on 24 December 2004.

These two new laws are revolutionary in many respects but I will only emphasize those that are most striking and consequential for decentralisation, strengthening local authorities and expanded participation of the masses into political life. New laws on municipalities bring forth what is called the strategic plan for the execution of local services (article 41). These strategic plans are shaped by active participation and are compulsory for all municipalities above 50,000 residents. However, administrative capacity for preparing these plans are not presently available in most if not all municipalities. Expert commissions such as those on reconstruction (imar) and budget are compulsory (article 24). These commissions are then opened up for participation by local headman (muhtar), NGOs, labor unions, universities, other public administrators for input and feedback. Article 75 stipulates that cooperation with the civil society is necessary when delivering services. Article 76 institutes city councils (kent konseyleri). Mayors are personally responsible for all actions undertaken by their municipality (article 63). If services are seen insufficient then central government is allowed to take over the municipality administration (article 57). Written or oral interpellation in municipal assembly is made possible (article 26). All in all the municipal assembly's control over local executive office is increased. The Assembly is required to be in session once every month. The neighbourhood is given a core importance in the organisation of participation, service delivery and control. Neighbourhood needs determine budget allocations (article 9).

Perhaps more important are provisions that expand the duties of municipalities. Such expansion in duties is also supported by expanding the democratic participation mechanisms starting from neighbourhoods and provision of new income to municipalities. Although duties are expanded the numbers of municipalities are decreased as a function of the stipulation that municipalities organise in settlements above 5,000 inhabitants which used to be only 2,000. Article 14 stipulates that municipalities regulate city traffic, development of local economy and commerce, protection of women and children, and could invest for hospitals and schools provided that these are covered in the original strategic plan for the municipality.

In short, despite the fact that Basic Law on Public Administration has been put aside many of its principles and objectives have been effectively incorporated into the municipality laws. Now we have a legal possibility that local development projects and incentive structures are undertaken by the initiative of the municipalities which previously was not under the jurisdiction of the municipalities. Social welfare services in the form of women and children's protection is also a possibility. More importantly, municipalities could now effectively undertake health and educational investments to improve their local conditions and respond to local demands. However, all of this starts with a new kind of citizen at the local administrative level participating in the formulation, implementation and control of policies. Unless such participatory mechanisms are followed intensely consequences could be minimal.

Lastly, a new draft bill is being processed on the Court of Accounts; the supreme audit institution of Turkey. The Turkish Court of Accounts (TCA) was created by an imperial edict of His Majesty Sultan Aziz I on 29 May 1862. By 1876 it became a constitutional institution when the first Ottoman Constitution was enacted. After foundation of the Turkish Republic in 1923 it was re-established and maintained its status in the republican Constitution. Under the Constitution and the Law on the Turkish Court of Accounts, the TCA is responsible for auditing on behalf of the TGNA the revenues, expenditures and property of government offices operated under the general and annexed budgets. As external auditors of central and local governments TCA audits some 12000 public sector accounts.

TCA's statutory mandate is to perform compliance audit on the basis of examining 100% of transactions i.e. all vouchers, their supporting documents, journals, ledgers and financial statements. With the 1996 amendment to its Law, the TCA is given the task of examining the extent to which the government offices under its jurisdiction use their resources with due regard to economy efficiency, and effectiveness. TCA's costs are funded by a budget specific to the TCA and its financial independence goes much further than this; since TCA prepares its own budget and submit it to Parliament without intervention of the executive.

The new form of TCA Law has not yet been passed from the Parliament. However, it primarily aims to unify the whole public budget control and improve performance evaluation via tighter and more effective control.

All of these pieces of legislation have had their own long running dynamics within the Turkish bureaucracy. Municipality reforms have been on the agenda since early 1970s and much of the discussion therein have crystallised in the new pieces of legislation. Nevertheless, the EU legal framework has had its impact at the very last stage perhaps. Similarly, draft TCA law has been primarily shaped by the inner dynamics of the bureaucracy and it remains to be seen how it will fit into the EU framework. In all of these new regulations the impact of IMF and World Bank has also been quite significant since they all have implications for the way the Turkish budget is being shaped and controlled and thus implicates the discipline of fiscal policy in the country.

(e-f) Civil service reform also has been on the agenda for decades in Turkey. There are elaborate looking merit, performance and promotion evaluation schemes. However, all in all these are far from being effective in de-politicising the administration of the bureaucracy. Most notable change over the last few years is the institutionalisation of a single bureaucracy entrance exam. The merit evaluation schemes within the bureaucratic institutions however, are simply out of date and ineffective. Most importantly they depend on the final appreciation and discretion of the supervisors. There simply are no objective evaluation schemes beyond examination results that are binding for promotions for example. Equally important in this chaotic environment is the fact that different institutions have different inner statutes for the regulation of their own personnel performance. Most notable among these are those found in

the Ministry of Foreign Affairs, Ministry of Finance, the Central Bank and of course the military.

The law on the right to obtain information (ROI) passed from the parliament in October 2003 (law no 4982) provides an extensive list of opportunities for regular citizens to ask for information from different branches of the public administration and they entitled to obtain these in due time. ROI law applies to all citizens as well as residing foreigners and foreign institutions and companies subject to reciprocity. Information

All units of public administration except the village administrations are subject to this law including the Central Bank, the Istanbul Stock Exchange (article 2). All data whose use is not restricted under the law that is in the possession of these institutions make up the information that can be asked and obtained (article 3c and 4c).

There are limits to what can be obtained from the institutions. These are primarily stipulated to be state secrets, information that can endanger state's economic, intelligence interests. Information concerning individuals' right to privacy, privacy of communication and commercial secrets and artistic and copyright related information are all excluded. The key question here concerns the extent to which state security and intelligence prerogatives can form a barrier to sensitive pieces of information. Moreover, implementation will determine the extent to which privacy of individuals can also be protected. If no exception is taken all information is required to be provided within 15 work days. If the information gathering and access is difficult, and requires cooperation of different units, this period can be extended to 30 work days with written declaration. The application for information is subject to fees that cannot exceed the costs of producing and provision of these information. If the application is turned down the applicants have the option of going to court for further action.

The main problem with ROI law is that there exists very little capacity in many branches of the public institutions to provide whatever information is being sought from them. Supply side of this process will have to develop over time and especially depending on the determination of the civil society and private citizens to pursue sensitive information in the courts if necessary. This brings us to the importance of the informed rational and determined demand side in this process. If organised demand for information is not present this law will not be effective and can not be developed into modern standards.

SECTION C

EFFORTS TO COMBAT CORRUPTION AND INCREASE STATE ACCOUNTABILITY

(a) In the last few years, has the government promoted open discussion of the most serious problems facing government and develop priorities for reforms needed to make government operations transparent and accountable? If so, what events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

The issue of corruption was a very salient issue in Turkish politics only a few years ago during the coalition government of DSP-MHP-ANAP that came to power after the general election in 1999 (see the general review of political background at the beginning of Section B). Back then it was seen as a prerequisite for economic reform that was aimed at saving unproductive segments in the economy that captured funds via corruption and therefore impeded economic growth. Several contextual factors also accounts for the then salience of corruption in Turkish politics. One already alluded to was the inherent instability and vulnerability of the ruling coalition. Actors in Turkish media and business interest groups were using this inherent instability to their advantage by constantly shifting the blame on one another. If an advantage can be gained by airing the corruption scandal against a political adversary then media was more then ready to help in the process.

Another factor was the vulnerable state of the overall economic balances. Fiscal discipline was long ignored, the domestic debt of the government was soaring when balance of payment deficits were also constantly increasing. Within this context the most profitable money making enterprise was lending money to the state and this was what the banks were doing at higher and higher interest rates. When interest rates were so high private finance needs could not possibly be met unless someone had a privileged access to finance sources. Coupled with this suitable environment was a soft regulatory agency who simply look the other way when questionable private entrepreneurs started to found or take over banks and started to collect funds to be lent to the state for a high return. As long as the state could pay these loans back they were to make good profit. However, these funds were also typically used for bad loans meant to be never paid back opened to firms of the same holding company that controlled the banks in question. In other words, bank owners were allowed to collect money from the market and loan it to the state as well as to their own holding company's firms which knowingly never intended even to pay these back.

These dynamics led to a few minor bank bankruptcies but when a major lender to the state went broke in the process the whole financial system started to feel the coming crisis. The fact of the matter was that this particular bank was over dependent on the assumption that the Turkish State would not default on its loans it was overextending loans to the State by simply borrowing from the overnight market to cover its daily cash needs. Such overnight borrowing was running on a thin ice which broke one day when a state bank could not simply find the funds to close its daily accounts.

A few months after the collapse of this major bank came a political crisis that broke the camel's back. When apparently there was harsh exchange of words between the President and the cabinet ministers at a regular National Security Council meeting the then Prime Minister Bülent Ecevit uncautiously went public and declared that there is a major crisis in the executive office between the government and the President. Interest rates immediately soared to an excess of 3000% overnight! The most serious economic crisis of the Republican period had begun.

At that stage everyone in the country was convinced that big businesses together with their allies in the bureaucracy were siphoning off the funds from banks. There were corruption scandals every other day that exposed one or the other coalition partner in a big public tender, or privatisation project etc. Civil society as reflected in the media, as well as in think tank activities--the most prominent one carried out by Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı-TESEV)--were all using this opportunity to keep the issue warm on the agenda and score points at each others expense.

The World Bank much more seriously than IMF was also pushing anti-corruption reform to show that loans obtained from the international funding agencies are being used properly and that the overall business environment in Turkey does not allow for serious state capture creating favours for some groups in the competition with one another and thus creating inefficiencies in the process. However, despite these pressures nearly nothing was accomplished when the economic crisis necessitated a new economic policy regime under the control of Kemal Derviş. The extraordinary circumstances that brought Derviş to head the Ministry of State in charge of the economy seem to have led Derviş and his team to underplay the importance of corruption. They focused on budgetary discipline and macro-economic balances and monetary policy aggregates rather than going into the real economy and its relationship via corrupt networks with the state. It seems like the crisis administration at the time did not want to muddy the waters by going into corruption scandals that can only disrupt business morale and break trust relationships between the private and the public sectors.

Within nearly 18 months after Derviş' arrival in Ankara an early election was on the agenda. No one again wanted to pursue anything that is even remotely associated with corruption. The budgetary discipline was in place and working and further reforms were not easy to obtain from increasingly divergent coalition partners. So an early election decision was taken.

Corruption did not surface to be one of the major points of contention during the election campaign. The economic crises had effectively depleted the political capital of all three coalition partners thus there were no easy points to be scored by claiming any further corruption charges. The new and credible competitors on the scene that is AKP and CHP also saw nothing much to gain in using corruption in the campaigns. They paid lip service to it but nothing further came out of that. It was clear at the time that the country was headed towards a single party government so it really did not make much sense to blame either one of the credible competitors for not talking enough about corruption since when either one came to power alone this could alienate the all powerful single party government. The only aspect of corruption was the discussion about the immunity of the parliamentarians. Both AKP and CHP agreed that there should be some degree of lifting of the parliamentarians' immunity. However, so far nothing was delivered on this.

When Abdullah Gül formed the first AKP government after the election, the *Emergency Action Plan* included some remarks about corruption. However, nothing substantial came out of it primarily because the whole approach of the politicians and the civil society players by then had been completely reshaped. AKP came to power when the emergency economic policies were already in effects for more than a year. The Iraqi crisis was getting near and uncertainty was continuing on the European front. So for the first few months AKP hesitated to do anything substantial about the economy. Then came the unexpected no vote in the Parliament concerning the American use of Turkish soil for military action in Iraq. Turkey then was faced with lukewarm, if not totally cold, welcome by the Americans and at best some uncertainty on the European front. Therefore AKP's first choice was not to create a mess in the economy because if need be the kind of help that may be forthcoming in that case might be substantially smaller than that that was guaranteed in previous crisis of 2001. Slowly but surely AKP adopted a wait and see and don't muddy the

waters policy. Civil society representative were also quite hesitant to air any concerns about corruption cases.

(b) In the last few years has the government established conflict of interests standards for public employees and effective measures against illicit enrichment, including setting strong penalties to punish those that use their public position to benefit private interests? What conflict of interest measures exists to prevent government officials (ministers, senior civil service etc.) from appointing family and friends to political jobs? Is it effective? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

(c) In the last few years, has the government adopted legislation or international treaties against bribery? If so, what legislation and which international treaties? What events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

For a long period there has been a number of precautions taken to regulate conflict of interest in the public sector especially concerning public sector employee and their conditions of work when and if they resign from their public office. For instance all public employee declare a detailed list of their properties and regularly are expected to up-date them. However, it is not surprising to see a high ranking state bureaucrat from the Treasury, or Central Bank, or some regulatory or investment ministry to resign from their posts only to immediately begin working for the private sector. Such experiences were very common especially in the banking sector prior to the 2001 crisis. Despite long-running regulations against this very little seem to have been achieved.

Over the past five years there has been a number of legislation passed from the parliament against corruption. Some have been international treaties. These are highlighted as yellow in Table A 2.3. Most of these legislations have been actively sought after by the World Bank and IMF. As shown on Table A2.2 the progress reports of the EU have also underline the necessity for these pieces of legislation.

(d) What measures exist to ensure free and fair elections to Parliament? Are these measures effective? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

(e) Does Parliament have a committee with power to question senior officials about use of public funds, appointments of personnel, awarding of contracts and public procurement? If not, have there been attempts to establish such a body? Have there been any significant legislative, institutional or policy changes designed to strengthen this function in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Parliamentary elections have a long history in Turkey which has held 15 general elections since 1946. In this nearly 60 years of elections only the very first one was widely accepted to be rigged by the incumbent party. The execution and regulation of elections is quite well organised. However, voters' records are poorly kept. Especially in dynamic urban settings many voters either take upon themselves to control and reinitiate their registration or simply cannot vote. Electronic record keeping is only partially available throughout the country.

A permanent commission in the Parliament does not exist to audit and control public accounts. This is being done by the TCA as discussed above. There different commissions in the TGNA such as the one for the budget, or public economic enterprises. However, their effectiveness, capability and expertises are limited. Ad hoc committees do exist and they do question senior officials in the bureaucracy as well as the political arena. Most of these investigations are driven by political ambitions to score against a political adversary. Most result with no definitive conclusion and very few are convicted of any crime.

(h) In the last few years, has the government facilitated access to information necessary for meaningful outside review? Is there effective access to information legislation? If so, please describe succinctly. Can journalists, NGOs and members of the public obtain government information in reality? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what event and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

(i) Are there legal measures to protect workers who expose corruption at their place of work? Are there effective measures to ensure freedom of expression/speech when it comes to exposing corruption? Have there been any significant legislative, institutional or policy changes in this area in the last 10 years? If so, what events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

(j) Are there any Anti-corruption watchdog agencies (for example, an anti-corruption agency or independent commission against corruption)? If so, please describe and cite relevant literature/reports published on these. Have there been any significant legislative, institutional or policy to strengthen these agencies in the last 10 years? If so, what events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

(k) Is there an Ombudsman system in the country? If so, please describe briefly and cite any relevant literature or reports published on this. What are the functions and powers of the Ombudsman? Have there been any significant legislative, institutional or policy to strengthen the Ombudsman system in the last 10 years? If so, what events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

As noted above a right to Obtain Information (ROI) law has been enacted. However, outside independent audit provision was vetoed by the President as part of the Basic Law of Public Administration as being against the Constitution. ROI law was primarily due to pressures from the EU getting together with domestic forces. However, it is too early to know if this new law is actually being used by regular citizens.

The issue of workers' protection in case when they are the whistle-blower in a corruption case has not been much discussed in Turkey and no provision for such protection is presently available. There also are no anti-corruption watchdog agencies. TESEV once formed a civil initiative for prevention of corruption but this was also short-lived. So far, there is no umbrella institution for coordinating the anti-corruption policies. International cooperation is mostly approved under the international treaties. However, who among a series of institutions will take up the responsibility to be the counterpart of these international agencies from other countries as well as international organisations.

The issue of an ombudsman has been brought to the public agenda several times. There seems little opposition to the idea but there is also little if any agreement as to who should undertake this responsibility. It seems that politically the idea of an independent bureaucratic entity not responsible to anyone and empowered by special legal forces is an idea that is foreign to Turkish elites who are typically very cynical and distrustful of one another especially an outsider. So, if only political culture would determine the outcome of this debate the surest expectation is that it will never happen.

(l) In the last few years have there been any significant legislative, institutional or policy changes to strengthen regulation of banking, competition, tax collection, public procurement or land allocation in an effort to combat corruption? If so please cite legislation or any related reports/literature. If so, what events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

(m) In the last few years has the government taken steps to strengthen cooperation with other countries in police, judicial and banking areas, to enable rapid investigation of corruption and money laundering?

(Including arrest and extradition cooperation). If so please cite legislation or any related reports/literature. What events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU? (For example in Justice and Home Affairs cooperation)

The Turkish banking sector has been passing through a series of reforms since 1999, driven by both international actors and internal dynamics. Between 1999 and 2004, nine banking acts and several notifications were adopted (www.bddk.org.tr/turkce/mevzuat/mevzuat.htm#1). Among these arrangements, establishment of the Banking Regulation and Supervision Agency (BRSA), autonomous body founded in 2000 to regulate and control the sector, was probably the most significant attempt to comply with the international banking standards.

The motivation to take extensive reformist actions in the Turkish banking sector grew out of the necessity to deal with the long-lasting structural deficiencies, such as insufficient risk management, lack of proper internal-external auditing, and nested relationships with other sectors (industry, media, etc.) of major shareholders. Disregarded by the political authority for a long time, these problems came to light finally with the failure of many private banks one after another. In fact, between 1997 and 2000, eleven banks were transferred to the Saving Deposit Insurance Fund (SDIF), in order to limit the domino effect in the sector and restructure their debts (www.tmsf.org.tr/docs/rapor/yenidenyapilandirma/tr/BSYYP_Gelisme_102003.pdf p. 7, 19).

The BRSA was established in this problematic context, few months after Turkey adopted a macroeconomic stabilization program suggested by the International Monetary Fund (IMF) in 2000. However, either it was too late to reverse the negative tide or the measures were not properly designed, the massive economic crisis broke out in February 2001. The impact of the 2001 crisis was destructive on both the banking sector and the Turkish economy: In years 2001 and 2002, nine other private banks were transferred to the SDIF. Total cost of reconstruction of the banking sector amounted USD 47.2 billion, USD 39.3 billion of which was put as a burden on the state (26.6% of the GDP) (www.tmsf.org.tr/docs/rapor/yenidenyapilandirma/tr/BSYYP_Gelisme_102003.pdf p. 7, 19).

In May 2001, the BRSA initiated its Banking Sector Restructuring Program. The main aim of the Program was to eliminate the distorting factors in the financial system and create a healthy, competitive banking sector at an international scale (www.bddk.org.tr/turkce/yayinlarveraporlar/sunumlar/krizdenistikrarabankaciliksektoru-8mayis2003.ppt#8). This aim was operationalized by comprehensive regulations to strengthen the capital bases of banks, installing risk management procedures, creating an auditing process at international standards, and so on.

While adopting and implementing these new regulations, the BRSA acted in accordance with the Basel Committee on Banking Supervision accords, which are parallel to the EU *acquis communautaire* (europa.eu.int/eur-lex/en/com/pdf/2004/act0486en05/1.pdf pg.2). Having Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States as member states, the Basel Committee sets Basel Accords, which aim to create a stable and effective banking system through common standards, as a recommendation to the individual authorities (www.bis.org/bcbs/). The initial one, Basel-I Accord, was proposed in 1988, and Turkey adopted these rules in 1989. However, the complementary notifications to Basel-I in 1996 concerning risk management aspects were not applied by Turkey until February 2001. The Basel Committee issued the extensive Basel-II Accord in June 2004, and these standards are planned to be compulsory in the EU for all banks (www.bddk.org.tr/turkce/basel/basel/10_Soruda_Basel-II.pdf, pg. 1-2).

The above picture indicates that, in the recent past, although some international actors (Basel Committee, EU, IMF) had a significant impact on the Turkish banking policies, the

main motive still seemed to come from internal dynamics; the 2001 economic crisis specifically. On the other hand, this crisis most probably created a structural change in the Turkish economy management irreversibly, in terms of applying international standards to strengthen the financial sectors and prevent such crashes in the future. As a matter of fact, the BRSA is currently working on the transition of the Turkish banking sector to the Basel-II standards (www.bddk.org.tr/turkce/basel/basel/10_Soruda_Basel-II.pdf, pg. 4), and increasing interest of foreign financial groups in acquiring Turkish banks after 17 December 2004, when the European Council agreed to open accession negotiations with Turkey by 3 October 2005, reflects a significant faith in this cause.

Here, as a special emphasis on fighting corruption, it must be stated that the banking laws ratified after 2001 addressed a widespread malpractice in the Turkish banking sector. In many of the failed banks, Sworn Bank Auditors of the BRSA detected that considerable amount of those banks' financial resources were transferred by big shareholders to their other companies, if not personal accounts. This phenomena was found out to be so much in common that it was given a specific name, 'siphonage' (hortuclamak, in Turkish). As a matter of fact, Act no. 4672 (2001) modified the Banks Act. no. 4389 (1999), and limited banks' ability to own or partake in companies other than complementary financial ones (Article 12-1.a), significantly (www.bddk.org.tr/turkce/mevzuat/mevzuat.htm#1).

In another field of fighting corruption, the Financial Crimes Investigation Board (FCIB) of Ministry of Finance is performing its role in preventing money laundering (Law no. 4208), combatting organizations pursuing illegal gains (Law no. 4422) and financial crimes (www.masak.gov.tr/eng/default.htm). These two laws were adopted in 1996 and 1999, respectively. Similar to the banking case, pressure coming from an international organization, the Financial Action Task Force (FATF) of OECD, played a central role in the ratification of these regulations. Established in 1989 by the G-7 countries, the FATF declared 40 criteria to combat money laundering as a recommendation to individual authorities in 1990. Turkey became a member of the FATF in 1991 and its coordination with this organization and other countries is functioning via FCIB. However, it was only after the 2001 crisis that the FCIB finally functionalized its control, by extending the scope of submission of proof of identity in financial transactions, in the General Notification 4 (Rg. 24932) in 2002 (www.masak.gov.tr/).

Thus, it can be concluded that major reforms and their implementation in financial affairs were conducted at the last resort in Turkey, although their necessity had been strongly mentioned by the international community for a long time. Still, the 2001 economic crisis and its aftermath incite that Turkey got its lesson, tough from the hard way, and keeps its track in adopting the international standards to regulate its banking sector, and fight corruption.

SECTION D

POLICE REFORM AND CIVILIAN CONTROL OF SECURITY FORCES

Are there security agencies (military, police, secret service) that operate wholly or partially outside the effective control of the civilian government? Please elaborate. For example, do security services collaborate with organized crime, involved in drug running, gambling or extortion? Do they engage in killings or intimidation outside the boundary of the written law, or any other unlawful activity? Please cite examples. In the last few years have there been any significant legislative, institutional or policy attempts to bring security agencies under greater control? If so, please elaborate. What events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

The discussion in this section concerning uncontrollable secret police and the like's activities is obviously going to be largely speculative due to its nature. However, Turkish media has over the last decade been able to unearth several areas of secret service operations in Turkey that obviously remained beyond the civilian or for that matter even the security establishment control. The most famous of these came to be known as the Susurluk affair wherein police, parliamentarians and organised crime were all cooperating with one another for financial and political benefits. Another such event was the speculative death of the chief of the gendarmerie in a questionable helicopter accident. For over a decade state security support was claimed to have been given to various political organisations which carried out killings of convenient targets of intellectuals, businessmen of Kurdish, Islamist or secularist orientations. Most recently a provocative bombing of a bookshop in an eastern province led to mass protests wherein more than half a dozen people were killed. The media claimed that these bombings and the ensuing mass protests were all makings of the secret branch of the gendarmerie intelligence.

One pattern that seem to underlie all such events is a clear inclination of the state intelligence services to cooperate with or to be co-opted by the organised crime especially in networks that deal with drugs trafficking. Not surprisingly, the geographically problematic eastern and south-eastern borders of the country where various Kurdish tribes are dominant provide a convenient milieu for such activities. Money generated by drugs trafficking is said to be funding the separatist terror of the PKK. Nevertheless speculation is that the state security services also are involved in various capacities in this business for not only using these links in their fight against separatist groups but also for personal gains.

Following the capture of the PKK leader such events seemed under control. However, following the Iraq war and its turbulent aftermath in the northern Iraqi territory which now is under the control of Kurdish peshmerga guerrillas the security environment gradually deteriorated. The speculative news is that due to strategic concerns of the US occupying forces the Kurdish separatist presence in Northern Iraq is left largely uncontrolled. Although speculative once again such loose control over geographically difficult terrain is responsible for the recent rise of uncontrollable activities of the security forces in the region that are again linked to drugs and this around human trafficking. It seems that at least for the time being economically motivated rather than ideologically or politically motivated killings are on the rise.

There have been a number of highly publicised parliamentary investigations that produced a huge sum of evidences on these matters. However, all of these led to no concrete results and seem to have been covered up by the executives then in power. The fact that Turkey now undergoes the accession negotiations is expected to have an impact on such developments but so far the same old habits seem to continue.

What measures exist to ensure civilian control over the police and security forces? In the last few years have there been any significant legislative, institutional or policy changes to strengthen civilian control of the police? If so please cite legislation or any related reports/literature. What events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

The role of the military in the Turkish context deserves special attention since it is very much linked to the issue of democratic governance and the rule of law in the country.⁶⁸ Since its first intervention in 1960 with a *coup d'état*, the military has been one of the most important actors in Turkish politics. It intervened again with further coups in 1971 and 1980, and although each intervention only lasted a reasonably short period, the military gained important guarantees that enhanced its role in the subsequent civilian regime. This was accomplished through two main strategies. One was to incorporate into the constitution certain substantive values cherished by the military – i.e. territorial and national integrity of the state and the modernising reforms of Kemal Atatürk. The second was to create formal institutions dominated by the military with the duty of preserving such values, namely the National Security Council (NSC).⁶⁹

It was the 1961 Constitution which institutionalised the role of the military through the establishment of the NSC. The members of the NSC were the President of the Republic; prime minister; minister of foreign affairs, defence and interior affairs; the chief of staff and the commanders of the army, navy, air force and the gendarmerie. The NSC was responsible for preserving a very broadly defined concept of internal and external national security via its advisory role to the government. This advisory status of the NSC was gradually transformed with the 1971 and 1980 interventions. Following the 1971 intervention, NSC was made responsible for ‘recommending measures’ whereas after the 1980 coup, ‘the government had to give top priority to the recommendations made by NSC’.⁷⁰ With the rise of political Islam and Kurdish separatism in the 1990s, military members of the NSC became particularly concerned with these two issues which further reinforced the role of the NSC. Whenever the military officials reached the conclusion that civilian governments were incapable at dealing with these threats, they proposed certain measures which, in the lack of adoption, even led to forced resignation as seen in the so-called postmodern coup of 1997 when the Islamic Welfare Party was peacefully removed from power.⁷¹ NSC was not the only instrument through which the military exercised its power. State security courts – mixed courts composed of civilian and military judges – were established to deal with crimes against the security of the state, subject to review by the civilian Supreme Court. A Supreme Military Council was also established as a body of high-ranking generals and admirals who were charged with the important task of making final decisions concerning the promotion and retirement of military personnel. No judicial appeals were allowed against its decisions. Despite their formal separation, a partnership based on an “imperfect concordance” was formed among the military and political elites in Turkey.⁷² Although military-civilian relations seemed to be normalising by the early 1990s, the resurgence of Kurdish nationalism and terrorist activities together with the rise of political Islam brought it back to the forefront in the mid-1990s. This served to demonstrate

⁶⁸Parts of this section draw from Senem Aydın and E. Fuat Keyman, ‘European Integration and Transformation of Turkish Democracy’, Centre for European Policy Studies, EU-Turkey Working Papers, No.2, August 2004, pp.19-22.

⁶⁹See Ergun Özbudun (2000), *Contemporary Turkish Politics: Challenges to Democratic Consolidation*, Boulder Colorado: Lynne Rienner Publishers

⁷⁰ See Metin Heper (2005), “The European Union, the Turkish Military and Democracy”, *South European Society and Politics*, Vol.10, No.1, p.36.

⁷¹Ibid., p.36.

⁷²See Nilüfer Narlı (2000), “Civil-Military Relations in Turkey”, *Turkish Studies*, Vol.1, No.1, pp.107-27.

the two fundamental values of the Turkish military, namely the indivisible integrity and the secular character of the state.

Relationships of the military with the executive and the legislative also do not resemble one of complete subordination to civilian authority today. In Turkey, the Chief of Staff is directly accountable to the Prime Minister rather than through the Ministry of Defence. Responsibilities regarding planning, policy-making, programming and budget execution lie with the office of General Staff rather than the Ministry which only has a supporting role in the process. The Ministry neither has the capacity nor the authority to be the main locus of decision-making where its main source of activity relates to procurement of military supplies. Hence, the overall defence organisation displays a ‘twin stovepipe character’, with coordination and cooperation between the Ministry and the General Staff, with no direct connection.⁷³

In the last few years, there have indeed been serious attempts to realign civilian-military relations in Turkey. It can confidently be stated that the European Union’s emphasis on ‘aligning civil-military relations in Turkey with European practice’ in order for the country to fulfil the Copenhagen political criteria was an important driving force in these reforms. The issue has been brought up regularly in Progress Reports of the Commission and in various reports of the European Parliament. However, change on this front did not occur due to purely exogenous pressure. In fact, the reforms were the outcome of the interconnection between the changing domestic climate and EU accession. The political costs of compliance were reduced to a considerable extent by the end of terrorism in 1990s, weakening the previous opposition of the military establishment. Moreover, as Metin Heper highlights, the military’s more or less acceptance of the new reforms was also driven by the self-reassessment of the military’s role in Turkish politics.⁷⁴ ‘Giving politics a chance’ has long been regarded by the military as a high risk strategy in the face of the past legacies. The EU accession process is now acting as a provider of security, increasing the will of the military to move out of politics and creating a conducive environment for further reforms.⁷⁵

Against this background, Turkey chose to reform those areas specified clearly by the EU⁷⁶, such as the powers of the NSC, the presence of military representatives in public bodies and budget transparency and control. With the 2001 Constitutional amendments, the sixth and seventh harmonisation packages and the May 2004 constitutional amendments, a number of fundamental changes have been made to the duties, functioning and composition of the NSC as well as to the conditions relating to the control of military spending (see below for measures regarding military spending). The number of civilian members of NSC was increased and the NSC secretariat has been transformed into a consultative body that is no longer able to conduct national security investigations on its own initiative. The secretariat of the NSC is now deprived of its executive powers, such as “requesting reports from government agencies on how they were dealing with the threats for which the NSC had

⁷³See “Turkish Civil-Military Relations and the EU: The Further Alignment Challenge”, First Expert Report of a Task Force convened under the aegis of a project on *Governance and the Military* organised by the Centre for European Security Studies (CESS), in association with the Centre for Eurasian Strategic Studies (ASAM) and the Istanbul Policy Centre (IPC); and submitted for discussion at an International Conference in Ankara, 14 September 2004, p.20.

⁷⁴See Metin Heper, “The European Union, the Turkish Military and Democracy”, *South European Society and Politics*, Vol.10, No.1, April 2005, pp.33-44.

⁷⁵See Nathalie Tocci, “Europeanization in Turkey: Trigger or Anchor for Reform?”, *South European Society and Politics*, Vol.10, No.1, April 2005, pp.73-83.

⁷⁶EU’s requirements for reform in the area of civil-military relations have been rather fuzzy. Apart from specific issues addressed such as the role of the NSC, influence of the military through SSCs and transparency of military spending, the EU chose to refer to unidentified ‘informal mechanisms’ and ‘implementation’ in its reports regarding the issue. This can partially be explained by the EU’s general reluctance to offer specific recipes in areas of reform as well as the underlying societal reasons behind the omnipresent role of the military in Turkey.

recommended specific measures'.⁷⁷ Instead of proposing 'recommended measures', the NSC can now only 'convey its views upon request'. The government also no longer 'gives priority' to NSC views and recommendations, but 'assesses the views conveyed to it'. The representatives of the NSC in civilian bodies such as the High Education Council (YÖK) and High Audio-Visual Board (RTÜK) have also been removed.

Thus, important steps have been taken on the way to attaining further civilianisation of Turkish politics, due to a combination of EU conditionality and a favourable domestic climate. However, issues such as the limited role of the Ministry of Defence in all areas of decision making still remains unaddressed, both by the EU and the domestic actors

Who sets and controls the budget of the security agencies? Is there legislative oversight over all sources of money that go to the military, police and other security agencies? In the last few years have there been any significant legislative, institutional or policy attempts to tighten civilian control and oversight over the budget? If so, please elaborate. What events and actors have driven these changes? Have external actors played any role in changes in this area? Has the EU?

Until recently, the authority of the legislative on the military, particularly with respect to military spending, remained rather modest. The Turkish military, like in the conduct of all its affairs, has the authority and *de facto* autonomy over the preparation of its budget. According to the law, the Parliament has the power to scrutinise and propose changes to the budget prepared by the Armed Forces. In practice, however, parliamentarians have traditionally shown reluctance to use this power. The source of this reluctance can be partly sought in the fact that many MEPs were aware of the limited amount of information provided to them in the first place, due to high amounts of off-budget funding and the 'veil of secrecy' over many military activities.⁷⁸ A more important reason behind such reluctance was the prevailing perception of the 'sensitivity of national defence'. This is a consequence of the fact that the role of the military in the Turkish context does not only derive from institutional mechanisms, but it is also a reflection of the public's beliefs and expectations. The military remains the most trusted institution in Turkey and its declarations on political issues are still regarded highly by the politicians and the population at large. The intense focus of the media, academia and political elites on NSC meetings in the wake of key decisions such as the one to send troops to Iraq in the autumn of 2003, the decision to re-launch negotiations in Cyprus and to favour referenda over the Annan Plan shows how expectations take time to change, requiring a deeper 'socialisation' process in Turkish society.

Attaining transparency in military spending has also been a major aspect of the reforms regarding military-civilian relations. The seventh harmonisation package and the May 2004 constitutional amendments brought state assets utilised by the military under the inspection of the Court of Auditors, with no reservations regarding 'secrecy clauses'. With the new Public Finance Ruling and Controlling Law that entered into force in January 2005, the long-criticised extra-budgetary funds were brought into the defence budget and more detailed information and documents are now required with defence budget proposals. Parliamentary control is further enhanced by changes in the method of budgeting, which now require performance reports to be submitted to parliament and related institutions. The new law also paves the way to value-for-money inquiries by the parliament.

⁷⁷ See Metin Heper, "The European Union, the Turkish Military and Democracy", *South European Society and Politics*, Vol.10, No.1, April 2005, pp.33-44.

⁷⁸ See "Turkish Civil-Military Relations and the EU: The Further Alignment Challenge", First Expert Report of a Task Force convened under the aegis of a project on *Governance and the Military* organised by the Centre for European Security Studies (CESS), in association with the Centre for Eurasian Strategic Studies (ASAM) and the Istanbul Policy Centre (IPC); and submitted for discussion at an International Conference in Ankara, 14 September 2004, pp.26-27.

Despite the fact that the new laws passed give the parliament enhanced capabilities to review a now more transparent military budget, it still remains to be seen whether the lawmakers themselves will be willing to make use of their new rights.⁷⁹ There is already some evidence that the Turkish legislature is now more forthcoming than before on questioning the military's bids for funds. Regarding the preparation of the 2005 budget, the Minister of Defence has stated that one-third of the proposed defence budget was reduced by parliamentary reviews, leading for the first time in a decade to the fall of military spending to second rank behind education.⁸⁰

REFORM AND THE MILITARY

The above analysis demonstrates that reform regarding the role of the Turkish military has to an important extent been driven by EU conditionality. Once again, we see that the most crucial reform packages dealing with the issue (most specifically July 2003 package on the NSC) have been adopted in the period between the Copenhagen Summit of 2002 and the December Summit of 2004 when the credibility of accession was most strengthened with the promise of accession negotiations and the delivery of financial and technical assistance. However, it was not only pure EU conditionality that achieved reform on this front. The reforms demanded by the EU in this field coincided to an important extent with the governing party AKP's own agenda. Relations between Islamic political parties and the military has never been smooth in Turkey. Despite the fact that AKP's moderate standing has so far not had a significant straining impact on its relations with the military, decreasing the military's role in politics would certainly send a positive signal to its constituencies and enhance their legitimacy. Hence, there was hardly any resistance from government circles to reform in this area.

There was, however, some resistance within the military establishment itself which did not translate itself into any significant attempt to block the process. The Secretary General of NSC at the time of NSC related reforms stated that

(This) reform package has rendered the NSC functionless. Political Islam and ethnic separatism remain to be serious threats. The appointment of a civilian secretary general to that body would politicise it. One should not have weakened the NSC for the sake of democracy and the EU.⁸¹

This view did not seem to enjoy any support with the Chief of Staff who attributed the statements to personal views of officers and added that 'new democratic values and changing concepts of sovereignty make it necessary that we come up with new ideas and doctrines for the better fulfillment by the Turkish armed forces of the arduous tasks in question'.⁸² The strict hierarchical organisation in the Turkish army meant conforming with what is laid out out by the Chief of Staff. Hence, the reforms were passed without the military itself acting as a veto player. Internalisation of EU values, hence a genuine belief in the subordination of the military to civilian authorities is difficult to argue for at this point. However, the evidence

⁷⁹Ibid., p.28.

⁸⁰"Eğitim Bütçesi Savunmayı İlk Kez Aştı (The Budget for Education has for the First Time Exceeded the Defence Budget", *Hürriyet*, 1 July 2004.

⁸¹*Milliyet*, 16 August 2003. Cited in Metin Heper, "The European Union, the Turkish Military and Democracy", *South European Society and Politics*, Vol.10, No.1, April 2005, p.38.

⁸²*Milliyet*, 31 August 2003. Cited in Ibid., p.41.

shows that EU conditionality, since EU accession is perceived by the Turkish military as a final stage of Turkey's vocation to modernity as laid out by Ataturk, seems to have prevented any significant unified resistance to the reform process. As the Chief of Staff highlights, 'the Turkish Armed Forces played a pioneering role in the modernisation of Turkey. Thus, the Armed Forces always favours Turkey's becoming an EU member'.⁸³

In the case of military reforms, one sees a high degree of rule transfer with the legislative changes adopted mostly in 2003. Rule internalisation for the governmental elite is not a new issue here since this is already a part of their ideological leanings and a further guarantee to their political survival. It is, however, difficult to argue that such internalisation is yet present in the object of reform, that of the military itself. However, despite the lack of internalisation of such values and the existing 'threat perceptions', rule implementation is gradually occurring due to a combination of EU conditionality, government support and the relative decrease in perceived adoption costs of the military, especially with the weakening of the terrorist organisation PKK. There are a few significant examples that demonstrate this process at work.

Despite the willingness of the military establishment to intervene in Iraq, it has refused to exert pressure on the government on the issue and the parliament's March 2003 decision to disallow the deployment of American troops through south-eastern Turkey prevailed. The US Department of Defence, which traditionally emphasised Turkey's strategic significance and enjoyed extremely close relations with the Turkish military, has blamed the Turkish military for not putting enough pressure on the government, provoking great resentment among the Turkish public. Another case where the military-security establishment chose to remain silent concerns the Cyprus conflict. Despite being attacked by some members of the opposition party and the conservative voices in the media for not adopting a stance on the issue prior to the referendum on the island over the Annan Plan, the military made it very clear that this was a political matter that would be handled by the governing parties in Turkey and Northern Cyprus. The fact that the military did not try to reverse these decisions underlines the process of change in the modalities of governance in the country.

When one looks at some examples from more domestic issues regarding political Islam and separatist terror, the picture is similar. The debates in May 2004 on the access of graduates from religious schools (Imam Hatip Liseleri) to any faculty positions in secular universities once again triggered the debate over the influence of the military in politics. Although the military made a declaration regarding its opposition to the proposed measure, parliament still went through with the vote and adopted the recent constitutional package of amendments that included this measure.

Rising PKK activity in the summer of 2005 once again brought the role of the military to the forefront. The Chief of Staff has stated in August 2005 that they are 'fighting against terrorism with their restricted capabilities'.⁸⁴ Due to reactions from the media and civil society, as to what this might indicate with respect to the future of democratic reforms in the face of rising terror, he responded that there would be no reversal of the reform process and that 'the fight against terror would take place within the framework of democratic rules'.⁸⁵

⁸³ Milliyet, 10 January 2003. Cited in *Ibid.*, p.41.

⁸⁴ Radikal, 6 August 2005.

⁸⁵ Radikal, 31 August 2005.

SECTION E

STRENGTHENING PROTECTION OF BASIC RIGHTS

What main legal and institutional measures have been adopted by the government in the last 10 years to improve respect for and protection of basic human, civil and political rights? What main measures have been proposed but rejected by the government/parliament? Please refer in particular to the following areas, where relevant:

- Measures to abolish the death penalty (including international treaties)
- Measures prohibiting the deprivation of right to life, freedom and personal dignity (including institutions and policies to enforce legislation in this field)
- Measures to detect and punish torture, cruel or inhuman punishment
- Measures to promote freedom of thought, expression and the media (including measures to protect journalists, intellectuals and political dissenters)
- Measures to protect property rights
- Measures to protect and promote freedom of religion and minority rights
- Measures to promote equality between men and women and to prevent other forms of discrimination in private, work and public life
- Measures to promote children's rights, care for the elderly and for people with physical or mental disabilities
- Measures to protect workers, health and safety at work and to strengthen freedom of collective bargaining and trade unions
- Measures to improve universal education, health-care and social security

Especially since late 2001, fundamental reforms in the area of basic human, civil and political rights have been undertaken in Turkey. Although the reforms are not yet fully complete or in effective implementation, it is an irrefutable fact that the most extensive process of democratic change in Turkey's Republican history is currently in the making.

After the Helsinki Summit of 1999, the European Commission published the first Accession Partnership document in March 2000, which was followed by the preparation of the Turkish 'National Program for the Adoption of the Acquis' by the Turkish authorities in March 2001. Immediately following the approval of the national programme, the silence on political reform was broken with a record number of 34 constitutional amendments in October 2001, under the former coalition government led by Bülent Ecevit. The amendments were not just restricted to political rights, but extended over a large area of socio-political life. Although most of these amendments dealt with details or were simply changes in language that did not create a new legal situation, some of them were constitutional reforms, such as the shortening of pre-trial detention periods, changes that made the prohibition and dissolution of political parties more difficult and the expansion of the freedom of association. Another important amendment concerned the abolition of Art. 15, which had banned the constitutional review of acts passed during the National Security Council regime established after the 1980 coup. Those acts, many of which contain significant anti-democratic elements, can now be challenged in the Constitutional Court.

After the constitutional amendments, the new Civil Code entered into force on 1 January 2002, introducing significant changes in the area of gender equality in marriage, protection of children and vulnerable persons. It established new practices and institutions in Turkish law, such as pre-nuptial contracts for the management of family assets. The law guaranteed that in the case of a divorce, women's rights to property accumulated during the marriage would be recognised. Given the patriarchal nature of Turkish culture in matters relating to the family, the Civil Code was a major breakthrough in terms of gender equality.

These in turn were followed by three ‘harmonisation packages’⁸⁶ adopted in the follow-up to the Copenhagen summit of 2002. These not only aimed at translating the above-mentioned constitutional amendments into action by harmonising Turkish law with them, but also introduced further reforms, particularly in the fields of human rights/protection of minorities, freedom of expression and freedom of association. The most notable of the packages was the third one adopted in August 2002 that abolished the death penalty in peacetime; eased the restrictions on the right to broadcast in different languages and dialects traditionally used by citizens in their lives, namely Kurdish; revised the Anti-Terror Law and opened the road for the retrial of all the cases that the ECtHR found to be in violation of ECHR.

Four comprehensive sets of democratic reforms entered into force in 2003, aiming at improving the most-criticised aspects of Turkish democracy, such as limits to freedom of speech and expression and freedom of association, along with the strong influence of the military on domestic politics. With the two democratisation packages that entered into force in January 2003, the Political Parties Law was further liberalised, the fight against torture was strengthened, freedom of the press was further expanded, the procedures for setting up associations were eased and the restrictions that applied to the acquisition of property by non-Muslim community foundations were abolished. The fight against torture was also strengthened by the amendments to the Penal Code that prevented sentences because of torture being converted into monetary fines. Similarly, the Law on the Trial of Civil Servants was revised to eliminate the requirement for the superior’s permission to try civil servants. This is particularly important for torture cases since such permission has in the past provided one of the biggest barriers to the trial and persecution of torturers. The retrial of cases on the basis of decisions taken by the European Court of Human Rights was also now operationalised, paving the way for the retrial of some former Kurdish nationalists such as Leyla Zana. The sixth reform package that entered into force in mid-July 2003 became widely famous for the lifting of Art. 8 of the Anti-Terror Law⁸⁷ (thus further expanding the freedom of speech), as well as the limitation on use of the death penalty by the adoption of Protocol 6 of ECHR⁸⁸ and the expansion of broadcasting rights in Kurdish. It was the last set of democratic reforms, however, which entered into force at the end of July 2003, that has probably attracted the most attention, owing to its emphasis on strengthening the civilian control of the military as well as additional measures it has introduced to strengthen the fight against torture and the exercise of fundamental freedoms.

In May 2004, a further set of amendments to the constitution was approved, some of which consisted of harmonising the constitution with the previous democratisation packages. The amendments further enshrined the abolition of capital punishment, strengthened gender equality, abolished the State Security Courts (SSCs), provided the further civilianisation of Turkish politics (particularly through the removal of the military representative from the High Education Board-YÖK) and expanded the freedom of the press. The subordination of domestic law to international law in the area of fundamental rights and liberties was now secured in Article 90 of the Turkish constitution. The eighth democratisation package adopted in July 2004 resolved yet another long criticised issue by repealing the provision that had allowed the nomination of a member of the High Audio-Visual Board (RTÜK) by the Secretariat-General of the National Security Council. This package also removed the already

⁸⁶A term of reference for a draft law consisting of a collection of amendments to different laws designed to amend more than one code or law at a time, which was approved or rejected in a single voting session in the parliament.

⁸⁷Article 8 of the Anti-Terror Law criminalised ‘propaganda against the indivisible unity of the state’ and had been used in the past to imprison a large amount of journalists and publishers.

⁸⁸All death sentences were converted to life imprisonment.

abolished death penalty from the Turkish constitution and changed Article 46 of the Penal Code by converting death penalty sentences to prison sentences.

The Law on Associations, expanding the freedoms accorded to civil society organisations by reducing the possibility for state interference and a Law on Compensation of Losses Resulting from Terrorist Acts were adopted in November 2004. A new Press Law, strengthening the rights of journalists not to disclose their sources, reinforcing the right to reply and correction, replacing prison sentences with fines, removing sanctions such as confiscation was introduced in June 2004. A new Labour Law, recognising the principle of equal treatment in employment was adopted in May 2003. The new Penal Code, introducing progressive measures particularly on women's rights was adopted by the Parliament on 25-26 September 2004. Due to pressures from civil society organisations regarding some provisions of the Code constraining in particular the freedom of press, the law is currently being revised and is expected to enter into force in June 2005.

Various international covenants and protocols, which Turkey was in the past reluctant to adopt, were signed since 1999. In January 2004, Turkey signed Protocol 13 to the ECHR abolishing the death penalty in all circumstances, including wartime. In the summer of 2003, the Turkish Parliament ratified the International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, although some reservations remained with respect to some of the latter's provisions on women's and minorities' economic and social rights. Turkey has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in October 2003.

Acknowledging the progress achieved by Turkey since 2001 in the area of constitutional and legislative reforms, in June 2004, the Parliamentary Assembly of the Council of Europe lifted the monitoring procedure on Turkey. In addition to legislative changes, the government has also taken specific steps geared towards securing their effective implementation, the most notable of which was the establishment of 931 human rights boards in provinces and sub-provinces, responsible for handling human rights complaints and referring them to the prosecutors' office. A special Reform Monitoring Group composed of various representatives of selected ministries and government bodies was established in Ankara, to monitor compliance with the legal reforms. Under the chairmanship of the deputy prime minister, this group holds weekly meetings. The remit of the group includes fact-finding missions intended to identify difficulties experienced in the practical implementation of reforms. The group is also entrusted with the task of ensuring that allegations of human rights violations are investigated.

With respect to training on basic rights and freedoms, the Turkish authorities have pursued a number of programmes targeting relevant personnel in the Ministry of Interior Affairs, Ministry of Justice, the gendarmerie and the police. The most comprehensive of these involved the training of 225 trainers, responsible for training over 9000 judges and public prosecutors.

These reforms led to significant improvements, specifically in the areas of fight against torture, freedom of expression, freedom of association, minority rights and gender equality, albeit with remaining problems. Reports of torture incidents have decreased⁸⁹ and the EU fact finding mission which conducted an investigation in September 2004 in response to allegations of systematic torture in Turkey found such claims to be ungrounded.⁹⁰ The

⁸⁹According to the Human Rights Foundation, from 2003 to 2004, there has been a 30% decrease in reports of torture incidents in Turkey.

⁹⁰See European Commission, "2004 Regular Report on Turkey's Progress Towards Accession", COM(2004)656 Final, Brussels, 6 October 2004, p.35.

government's 'zero tolerance' policy towards torture seems to point to successful rule internalisation and implementation on this front.

Legislative reforms regarding the freedom of expression have begun to be applied in practice. Since January 2004, 103 court judgements contained a reference to Article 10 of ECHR, leading to acquittals. However, as seen in the section on judicial reform, the issue is far from being fully resolved. Despite the positive developments, non-violent expression opinion is still being persecuted and punished in Turkey. Here, one of the most important issues concerns the methodological difference between Turkish courts and the ECtHR in determining whether an expression threatens public order. The ECHR takes into account four different conditions when determining whether thoughts or opinions create a real danger to public order: the content of the relevant statement, the identity of the speaker, the context in which the statement is made and the form of the expression of the statement. The Turkish courts on the other hand have traditionally taken into account only the content of the expression, resulting in contradictory decisions.⁹¹ There have recently been some cases where the High Court of Appeals has adopted the methodology of the ECtHR and delivered interpretations in line with its standards, but it is evident that the 'trickling down' effect will indeed take some time in the Turkish judiciary. The case of the university conference on the Armenian issue and the Armenian journalist, discussed in the section on the judiciary, goes to show the resistance of lower ranks of the judiciary in internalising and implementing the new rules on the freedom of expression. This situation becomes particularly severe when the cases at hand concern the crucial ingredients of the Sevres Syndrome⁹² such as the Armenian taboo. The new Penal Code, despite its progressive measures, still provides loopholes in the system to which Article 301 is a good example. Hence rule transfer is well advanced, but still inadequate in this context.

The New Law on Associations has resolved many of the state restrictions that hampered civil society activity until recently. However, the Regulation that was published on 31 March 2005 restricts many of the rights granted by the new law, especially concerning the funds from organisations or individuals in foreign countries.⁹³ Another unresolved issue in this sphere relates to the excessive use of police force as displayed in the events on women's day demonstrations in Turkey. The problematic aspects of the right of association is very much linked to the debate on the protection of minorities.

Regarding the protection of minorities, progress has mostly been achieved on the discursive front where the issue has in fact for the first time penetrated into the public sphere as well as on the legislative/institutional front where certain advances have been made with respect to the status of both non-Muslim and Muslim minorities, in particular the Kurdish minority in Turkey. The legal status of minorities in Turkey was established by the 1923 Treaty of Lausanne, which defined minorities on the basis of religion. The main problems suffered by religious minorities in Turkey have been the lack of legal personality and the impossibility of acquiring or selling property. Despite the fact that the reform packages (specifically the third, fourth and the sixth) have addressed the problem by allowing non-Muslim minorities to register the property they actually use as long as they can prove ownership, the regulation that was issued following the amendment required foundations to follow incredibly lengthy and cumbersome bureaucratic procedures as well as creating the

⁹¹See Oktay Uygun (2004), Freedom of Expression under the ECHR and Turkish Law, paper presented at the Human Rights General Assembly: European Convention of Human Rights and Turkey, Istanbul, 17-19 May 2004.

⁹² The prevalence of the fear of separatism and partition of the country among different ethnic groups in Turkish society, known as the Sevres Syndrome, is named after the infamous Sevres Treaty that partitioned the Ottoman Empire among the European powers.

⁹³“Yasa AB’ye Yönetmelik Bize (The Law is for the EU, the Regulation is for Us)”, Radikal, 27 April 2005.

mechanisms for further bureaucratic intervention in the process. Moreover, it failed to bring a just solution regarding the return of their already confiscated properties by the state. A new Law on Foundations has currently been prepared by the General Directorate of Foundations and submitted to the Council of Ministers. While it expands the grounds for claims to property, the new Law in its current format also fails to resolve the problems with confiscation.⁹⁴ The issue of direct state interference in non-Muslim religious and educational institutions, running contrary to the rights established by the Treaty of Lausanne, also remains untouched by the reform initiatives. Rule transfer and implementation is very slow in this respect where it is hard to speak of internalisation for a bureaucracy that devises such cumbersome regulations for the initial rules. Hence the bureaucracy itself is one of the major veto actors in this reform sphere.

Similarly, the reform process triggered by the eventual defeat of PKK by the Turkish military and the emergence of EU conditionality saw some change in the official views on the Kurdish issue, leading to certain reforms that directly intended to improve the lives of Kurds in the country. In addition to those steps such as the granting of the right to broadcast in Kurdish, the right to learn the Kurdish language and the right to name children in Kurdish, which were also subsequently implemented, human rights reforms in general have also had a significant impact on the lives of the Kurds in the country. However, the shift from a traditional monolithic interpretation of the Turkish nation to a redefined notion of political community, which requires a more inclusive concept of citizenship and the recognition of cultural and ethnic pluralism in the country is proving to be a painful process. An official report on “Minority Rights and Cultural Rights in Turkey” was prepared by the Human Rights Advisory Board of the Prime Ministry in October 2004. The Report which underlined the insufficiency of minority rights and cultural rights in the country and emphasised the virtues of multiculturalism was attacked first and foremost by the Ministry of Interior as well as prominent members of AKP and certain segments of civil society. Ongoing cases were filed against the President of the Board and the Rapporteur, showing the prevalence of the Sevres Syndrome which is the major impediment to the internalisation of political reforms in all spheres in the country.

The real litmus test in this front occurred in the spring and summer of 2005 when separatist PKK terror was once again on the scene, albeit much weaker than in 1990s, forcing the country to walk the thin line between human rights, the rights of minorities and security. It is ironic to see that terror was being revitalised at a time when the country was attempting to undertake reforms to improve the lives of the Kurdish minority. The Europeanisation process in Turkey contributed to the increasing perception of the Kurdish problem as a minority issue with socio-economic and identity-related dimensions to it, rather than just a military matter. Democratisation, which is the key to the resolution of the Kurdish issue, by eroding the support base of the PKK, seemed to threaten the grounds on which the terrorists felt comfortable a few years ago. The fact that their activities had intensified in the period leading up to October, when the negotiations with the EU were scheduled to start, testify to this view.

The extreme nationalist Kurds were not alone in feeling threatened by the democratic transformation in the country. They were joined by extreme Turkish nationalists both on the right and left end of the political spectrum who, upon recent terrorist attacks, have been calling for a curbing of the recent democratic reforms and even for the reestablishment of the state of emergency in the South East. Until now, there has been no such reversal. While the government is currently working to revise some provisions of the Anti-Terror Law, the outcome of which is uncertain, the Minister of Justice and Prime Minister Erdoğan have

⁹⁴“Vakıflardan Bu Kadar Artık Gözler Hükümette (The Foundations have done Their Part, now it is the Government’s Turn)”, Radikal, 15 April 2005

stressed on various occasions that there would be no going back on the Copenhagen political criteria.

In a similar vein, just before his trip to Diyarbakır upon the escalation of terrorist activities, Erdoğan agreed to meet some prominent Turkish intellectuals who called for an end to terrorist activity on the part of PKK and for further democratisation efforts on the part of the government. On a speech in July 2005, he called out to “all those individuals who have the same rights and freedoms on the basis of citizenship”, stating that “we know from past experience that the only power that makes you successful in the fight against terrorism is belief in and commitment to democracy, peace, rule of law and universal values.”⁹⁵ This can be contrasted with the speeches he made prior to being elected to power where the issue of democratisation barely mattered. In fact, it mattered only when it concerned the possibility of a political ban against himself. In one of these speeches he formulated the linkage by stating that ‘the death penalty has been abolished for those who shed blood to the south-east and yet political bans still persist’.⁹⁶

These point to increasing rule internalisation over time on the part of the governing party. It is difficult to talk of ‘rule transfer’ in the case of the Kurdish minority issue since the EU refrains from providing prescriptions in this field to candidate countries. This ambiguity leaves the candidate states with wide options to pursue. In the Turkish context, since the Kurdish issue is historically linked to wider human rights matters, one can argue for a high degree of rule transfer in this respect (as seen in the measures described above), whereas reform exclusively oriented for the Kurdish minority (i.e. language rights) remain limited in both legal terms and in implementation. Rule implementation in general is still incomplete mostly due to resistances from the bureaucracy and the judiciary (as discussed above). As for rule internalisation, the ruling political elite seems to be committed to real reform on this front, going beyond purely formal adoption. However, this does not mean that no cost-benefit calculation is involved. In fact, AKP is currently the second strongest party in the South-East after DEHAP – the pro Kurdish party. Since DEHAP is unable in any national election to reach the 10% national threshold – remaining mostly around 5%- their seats are disproportionately taken over by the AKP. However, the debates over the need to reduce this excessive threshold for the sake of democratic deliberation is very prominent in Turkey as well as in the EU discussions over Turkey and give the impression that it is only a matter of time that this will be achieved. In such a case, AKP will then have to struggle harder for the votes of the Kurdish minority which involves the recognition of their problems and measures for their solutions.

Regarding economic and social rights, despite the legal and institutional initiatives to reduce discrimination and domestic violence against women, the situation of women and gender inequality continue to be a major area of concern in Turkey. The new Civil Code and the Penal Code contain progressive measures on this matter, ensuring equality regarding property acquired during marriage in the case of the Civil Code and addressing such crimes as “honour killings”, sexual assault and virginity testing in the new Penal Code. One of the fundamental areas where civil society activism led to significant results concerns women’s rights. The Women’s Coalition – a network of NGOs working on women’s issues – made an impressive effort to strengthen women’s rights in the new Penal Code by legislative screening and intensive meetings at the Parliament with MPs. The case where we see EU conditionality strengthening the legitimacy of domestic civil society actors to bring about change concerns the struggles over the ‘adultery clause’ in the Penal Code. The government’s wish to criminalise adultery in the new Penal Code in September 2004 was harshly criticised by the Women’s League, to result in the abortion of the attempt only after strong reactions from the

⁹⁵ See www.akparti.org.tr, 29 July 2005.

⁹⁶ See www.akparti.org.tr, 2 October 2002.

EU in the wake of December 2004 EU summit. This was one of the examples of the interaction between the internal and the external to bring about change in a specific realm of political reform. While such legislative guarantees are necessary for improving the status of women in Turkish society, rooting gender equality in Turkey requires a long-term socialisation process leading to a change of mindsets within society. Legislative guarantees based on the notion of individual human rights are insufficient to bring women protection in a context where ‘honour and the family set the frame for all social, cultural and political relations at the level of the everyday’, where the modern patriarchal gender regime is continuously being reproduced.⁹⁷ While a certain amount of rule transfer and implementation is occurring, rule internalisation in this realm is still a long way away, particularly for the governing political elite and important segments of Turkish society.

As for other significant measures that fall within the scope of economic and social rights, the new Labour Law adopted in 2003 represents an important step in fighting discrimination. Recent amendments to legislation, the increase in compulsory schooling and increasing cooperation with the ILO is leading to some progress in combating child labour with the decrease in the number of working children between the ages of 6 and 15. Nevertheless, the issue is still far from being resolved due to problems of implementation and remaining legal shortcomings such as the exclusion of certain sectors from the ban. Important constraints on the right to organise and to collective bargaining, including the right to strike, still exist in Turkey. While the social dialogue needs to be strengthened, little steps have been taken on the issue so far.

⁹⁷See Nükhet Sirman, “Kinship, Politics and Love: Honour in Post-Colonial Contexts-The Case of Turkey” in Shahrzad Mojab and Nahla Abdo (eds), *Violence in the Name of Honour: Theoretical and Political Challenges* (2004), Istanbul: Istanbul Bilgi University Press, p.56.

SECTION F. ANALYTICAL CONCERNS: PREPARING FOR A CONCLUSION

(a) Are domestic policy-makers (the ruling elites) generally satisfied or dissatisfied with the existing domestic situation and the direction that the country is heading in? Please elaborate. In the last 10 years have there been domestic crises (such as political violence or critical failure, economic crisis) that have themselves directly caused the government to conduct large rule of law reforms? Please elaborate.

The introductory background summary of developments partially answers this question. The most important segment of these questions concerns the economic reforms that became necessary in the aftermath of the 2001 financial crisis. As we noted above these reforms have largely been undertaken following the economic crisis and the guidance and impositions of the IMF and the World Bank. However, the political agenda in Turkey changes quite drastically in relatively short periods of time. In many such occasions the real underlying causes of these changes remain at best blurred especially in the shorter run. We have to therefore underline that our below diagnoses can be easily countered with examples pointing at contradictory directions. However, despite such objections we tend to see the diagnosis of overall trends as our main objective and hope to have captured those rather than short run blimps of contradictory and ambiguous nature.

At the time of our writing this report in early Summer 2005 there was little actualized reasons for the ruling AKP elites to be dissatisfied with the domestic challenges as well as the overall direction of the country. Repeatedly the AKP elite have committed themselves fully to the ongoing EU related reforms. The opposition, which ironically has a traditional pro-European constituency and overall political stance, has sometimes harshly criticized the AKP government for their EU related reforms but this had not found much of electoral support. As of February 2005 a survey of the urban population by one of the authors of this report reveals that about 50% support exists for the AKP and about 80% supports EU membership.⁹⁸ Obviously, these are only about the urban voters but such high level of support is unlikely to be much different in the rural sector which only comprises about 35% of the total population.

In early Spring 2005 there were a few highly publicized incidences in small Anatolian provinces where militant nationalist crowds have violently intervened into protests by small groups of protestors who were either Kurdish or were sympathizers of Kurdish groups. Such militant nationalist reactions have not spread ever since. However, the government's curious silence against and reluctance to suppress these nationalist sparks have led some to worry that the AKP government is undergoing an evaluation of the potential political dangers that EU adjustments involve towards the start of the negotiations in October 2005. It is hard to come up with an objective risk assessment of the situation for the government since the conditions in Turkey is a complex mixture of domestic as well as international developments. On the international front the uncertainty is due to the constitutional referendum in France, the brittle political situation that the social democrats face in Germany which both directly have an influence over the start of the negotiations in October and the bottleneck that seem to be blocked in Cyprus. The uneasy condition of the Turkish-USA relations and the risky situation in Iraq does not help ease the pressures on the government since both have implications for the explosive Kurdish minority issue in the country. On the domestic front the economy seems to be doing quite well but it still continues to be fragile especially with respect to rising oil prices and the economy's reactions to crises in the European front. The only potent domestic opposition is likely to come from the nationalist circles and they are grinding their axes and hoping that the European train will derail opening them opportunities to score political gains against AKP.

⁹⁸ This is yet an unpublished research on informality in Turkey conducted by Ali Çarkoğlu together with Mine Eder of Boğaziçi University.

None of these potential risks are potent enough to cause serious discomfort for the AKP. However, uneasiness nevertheless exists within the ranks of AKP itself as well. The AKP groups could be easily broken into three camps; one that has more centre-right tendencies following the lines of ANAP and DYP or the moderate right tradition of DP and AP of the 1950s and 1960s. However, it also has a considerable contingent of the nationalist and pro-Islamist orientations which are quite uneasy about the EU direction of AKP. These constituencies are engaged in a well wrapped up competition for the party's leadership especially in the wake of the up-coming Presidential elections in 2006. It seems at least on paper that the PM Tayyip Erdoğan if he wanted could get himself elected to the Presidential office which would ease the hand of the AKP governments in the future in face of potential vetoes cast by the President so far against their legislation. However, realistically such legal resistance is likely to continue even if there is no collaborating President in office since these vetoes have long been firmly grounded in constitutional reasoning. The opposition could easily bring their case to the Constitutional Court which in all likelihood would act if there is room for interpreting the new pieces as breaches of constitutional principles. So, elimination of legal resistance despite breaches of constitutional principles would not be possible and the young and dynamic PM would find it quite unpopular to rubber stamp his original party's legislation and his impartiality would be constantly questioned. We also think that Erdoğan's dynamism would find the relatively secluded and ceremonial job of the president not too satisfying at this stage of his career. These are obviously speculative and many in the Turkish media claim that the plan is to have him at the top of the Turkish political system to secure AKP's pro-Islamist tenure for the years to come. However, behind all such speculations there seems to lie an inherent claim that AKP after all its successes in many fronts has a hidden agenda of capturing and transforming the secularist principles of the Turkish Republic into one that is closer to Islamist principles. This in fact is a claim about the insufficient democratic socialisation and internalisation of the rule of law principles by the AKP leadership. From this perspective it is important to track where these debates about the Presidential election leads the AKP leadership.

Those who have been making claims about inherent pro-Islamist objectives of the AKP leadership would rightly show the controversial claims of the one of the leading figures in the AKP the Head of the Parliament Bülent Arınç who had claimed in Spring 2005 that as elected representatives of the Turkish people they could, if they wanted to close down the Constitutional Court who act against popular demands, he claimed, and create nuisances to the AKP government on legal technicalities. Underlying all of these obviously undemocratic remarks that contradicts the very foundation of a rule of law system is the on-going debate about allowing turban wearing women attending universities and having public employment with their religiously significant attire. As we have noted above, this issue underlies many of the vetoes of the President and resistances of the Constitutional Court to even the remotely related areas of legislation concerning municipalities.

The most recent re-flaming of this debate came with the refusal of the European Court of Human Rights (ECHR) of an case from a Turkish covered women student who had been dissociated with the university resulting her inability to continue her education unless she opens up and changes her attire from a religious one into a non-religiously significant one. The AKP leadership had long been hopeful that their constituencies' court cases would one day result against the Turkish State and thus compliance with the ECHR decisions would automatically resolve the deadlock on the turban case in the country. This line of planning proved to be a simple wishful thinking and as a result the rhetoric of the AKP leadership has immediately rose to an unprecedented level of Islamic argumentation that severely contradicted any rule of law principle. For example the PM Erdoğan said in one instance that the turban issue should be left to the religious theologians or the *ulema*. The fact that the

ulema has no legal status in Turkey and that the intended decision to allow covered women attend universities is ruled to be against the Turkish Constitution and that such a decision does not violate such covered women's inalienable human rights seem not to matter for the Prime Minister.

Such an argumentation is obviously evidence of lacking internalisation of not only the EU principles but also could be regarded as proof of disrespect for the rule of law in the country despite nearly three years in the executive office. Such a line of argument has re-started the never ending debate about the hidden agenda of the AKP. However, from an optimistic perspective one could also claim that besides the rhetorical reactions of the AKP leadership nothing significant came out in concrete policy changes. As such the rhetorical appeals to some small pro-Islamist constituency could only be taken at face value as damage control efforts and not as policy reversals.

One factor that may explain such rhetorical reactions could be the erosion of electoral support for the AKP as a result of their reforms and pro-EU positions and the resulting refusal of the reversal of the turban policy by the ECHR. However, there seem no concrete poll results suggesting any downward trend in the AKP support. In fact, no matter how unreliable and contextually volatile such polling results can be, what we observe is a solid support level for the AKP at about 10 percentage points higher than where they were in the election that is around 40 to 45% of the popular votes. It seems questionable that any other party besides the current main opposition of the CHP could make it above the 10% nation-wide threshold. As such the ultimate electoral reasoning for being uneasy with the reform movement does not seem to exist in Turkey for the Fall of 2005.

(b) According to some commentators, rule of law and other democratic reforms are more likely when the domestic political situation is “fluid” – i.e. in the immediate aftermath of a change in leadership (new government, new president or new king). According to this idea, when there are new elites who just come to power, they are more likely to be influenced by external actors suggesting reforms.

There is an opposite explanation, which is that governments will institute rule of law and other democratic reforms when there is stability and when they feel secure – for example when they have a very large parliamentary majority. Based on your assessment of rule of law reforms in the country, do you find evidence to support or refute either of these explanations? Please elaborate.

Our introductory historical overview again addresses some of these questions. We tend to believe that the big impetus for the EU related democratic rule of law reforms started in the fluid political environment of the pre-election months of November 2002 elections and the post-economic crisis days of the Spring 2001. However, these reforms were not part of a coherent ruling elite of a comfortable majority in the parliament. Therefore only with the AKP coming to power did the Turkish rule of law reforms gained a coherent momentum. In short, the predictable and sole responsible and accountable ownership of the AKP made the reforms much more palatable and easier to pass from the Parliament. However, the resistance of the bureaucratic elite that drag its feet in a political manner seem to have delayed implementation. Especially implementation of the native language rights of the Kurdish minority has become tricky for the AKP government. Just because they find themselves as the sole accountable owner of these reforms not in the passing phase but in the implementation phase seem to have scared them and slowed their implementation. Nevertheless, it is hardly imaginable that in an uncertain coalition government implementation would have been easier and quicker. In fact, under ambiguous ownership of a coalition it is more likely that the bureaucratic resistance would be much more decisive and potent.

(c) Do domestic policy-makers engaged in rule of law issues never/rarely/sometime/always look outside the country for solutions to economic, social and regulatory problems? If they do look outside the domestic system, where do they look to? (America, Europe, Russia, the Arab world, UN, other)?

Turkish rule of law policy-makers have always had a western orientation in their search for role models to help for their solutions to economic, social and regulatory problems. In the post-1980 economic liberalization period until mid-1990s the main inspiration source was coming from the World Bank-IMF circles in the U.S.A. (See Öniş, 19??; Waterbury, 199?). However, these were almost exclusively in the economic and social policy arena. The only salient political inspiration from the U.S.A. was within the debates about a Presidential system for Turkey. This debate was primarily sponsored by the ex-President Süleyman Demirel and with his effective retirement from politics in 2001 the whole debate seem to have vanished from the agenda. From time to time it resurfaces and the TUSIAD circles are known for their support of a presidential system. However, with AKP's single party government indecisiveness of the executive office have largely ceased to be a problem for the business circles so this debate seems to have considerably weakened. On the democratization front, the source of inspiration have predominantly originated from Europe. Since the late Ottoman periods democratic reforms have been designed on the basis of the European examples and the most recent reforms were no exception. What is important to note is that even the pro-Islamists in Turkey have note made a credible claim for inspiration to be sought after in the Arab or Muslim world. The old leader of the pro-Islamists have made such references to cooperation amongst the Muslim countries or establishing an economic cooperation organisation but all of that received no mass following and now are erased from the popular debate. In one curious incident a prominent general made reference to a cooperative arrangement between Turkey, Iran and Russia in a speech he gave in Istanbul. However, he was quickly ridiculed almost unanimously and the debate in public at least seems to have ended. These however were largely economic and military cooperation possibilities and never one that involved a political ideal for the whole country as an alternative to competitive democracy in western European style.

(d) What is the relative political power of pro-Western, liberal, democratic elites, as opposed to non-Western oriented, illiberal elites in: (i) the executive; (ii) legislature; (iii) judiciary; (iv) security agencies; (v) civil service? (cite percentages if possible).

This question is also quite hard to be answered objectively with solid data of any sort. The way the question was asked pushes us to give a head count and percentage of head count assessment. This assumes that liberal, pro-Western elites or individuals would always behave accordingly and that all categories are distinct with no overlaps in between. We believe that individuals take positions on different issues rather than defining their self-image first and then leaving the issue based decisions to their ascribed identity. Accordingly, the table below gives a subjective assessment of the percentage of times elites in different institutional set ups would take a liberal as opposed illiberal positions.

It is also important to note that many times different groups cooperate with one another and try to maximize their social effectiveness. Mass public is highly manipulable by the elites and thus an estimate of the relative power of the liberal vs. illiberal elites are also added to the table. These elites co-opt or are often co-opted by the judiciary as well as the civil service in their struggle for reform or creating obstacles in front of the reform movement.

		Liberal, pro-Western	Illiberal, non-Western
Executive		65	35
Legislature		70	30
Judiciary		60	40
Security agencies	Police	60	40
	Military	80	20
Civil Service		65	35
Elite citizens		65	35

As noted above a differentiation has to be made for the Turkish case amongst the police and the military within the security agencies. We believe that in its rank and file the more educated and organised military has a higher level of support for the pro-western positions than the police. However, it is hard to conceptualise this as a liberal position as well. The military's support for a western style competitive democracy has always been made public. However, many times their uneasiness with the liberal implications of such a system in approaching the Kurdish minority and freedom of speech in the country was also quite apparent. So, we caution the readers that for the military the emphasis is more on pro-western rather than liberal.

Perhaps the surprising estimate here is the one about the elite citizens which reflect only a small margin in favour of liberal pro-Western predispositions. This is primarily due to our assessment of the Sevres phobia quite prevalent amongst the elites in Turkey. Every now and then these elites are found to make arguments that inherently anti-western and conspiratorial in their core. This especially concerns nowadays their attitudes towards the United States. Many nationalist circles proved to be quite widespread amongst the highly educated elites in their mobilisation of the masses as well as the state apparatus around the issue of Armenian genocide discussions over the past year. As such, we believe there exists only a slight margin amongst the elite in favour of liberal pro-western positions.

(e) Do pro-Western, liberal elites seek to enhance their power by making reference to closer ties with the EU? To what extent are they successful in doing so? Which sectors of society are most pro-integration with the EU, and which sectors are most opposed? In the last 10 years has there been a trend of political strengthening of pro-EU elites and a weakening of anti-EU elites? Conversely, has there been a strengthening of anti-EU elites? What explains the trend?

There exists very little if any significant difference between different party constituencies when it comes to supporting or being against Turkey's EU membership. Among the general attitudinal bases of resistance to EU membership, religiosity and anti-democratic attitudes--together with Euro-scepticism--form the sources of resistance to EU membership. In other words people with intense religiosity and anti-democratic attitudes and scepticism towards EU tend to be much more likely to be against Turkey's membership in the EU.

As Turkish voters' expectations from membership grow, their tendency to support membership also significantly grows. Finally, geographic and generation gap are among factors that inhibit consensus on EU membership. There is no evidence that being in the agricultural sector as opposed to the industrial sector makes much of a difference in determining people's attitudes toward EU membership. Although regions with a heavy Kurdish ethnicity seem to have a relatively higher level of support for membership, when we look into those individuals who can speak Kurdish they do not seem to be significantly more likely to support membership than those who cannot speak Kurdish.

From a policy perspective, the so-called "sensitive issues" that can easily be used by those groups and parties who chose to oppose EU membership do not form a significant stumbling block in front of creating support for EU membership.⁹⁹ These issues are certainly candidates for public expressions of anti-EU rhetoric. Therefore, they are being conveniently exploited, within a nationalistic, euro-sceptic and religious rhetoric so as to make them more palatable to a largely EU-supportive Turkish public. However, after taking other attitudinal factors such as religiosity, democratic values and euro-scepticism together with various demographic variables into account the impact of sensitive issues on support for EU membership ceases to be significant.

Choice of rhetoric on EU related issues may significantly change the level of support for or against policy modifications necessary for compliance with the Copenhagen criteria. One reason for such fragility of EU support and manipulations of the anti-European camp is the apparent lack of information about the EU membership process and policy requirements of full membership. Accordingly, despite mass public support for EU membership, the polarised elite resistance to membership may find ample opportunities for manipulating the public agenda. However, attempts to shrink the mass support for EU by providing misinformation to the public and strategically shaping the rhetoric around the "sensitive issues", especially concerning the cultural rights of those citizens of Kurdish origin and abolition of death penalty, does not lead to significant reduction in likelihood of support for EU membership. This is a major reason for optimism concerning the future of mass support for EU membership in Turkey. Short run manipulative issue linkages to EU membership do not seem to be effective. Longer-run tendencies reflected in attitudinal characteristics of the respondents such as their democratic values, their religiosity, their age and ethnicity and education level are more important determinants.

Given these findings, leadership and public relations campaigns in favour of EU membership may be highly effective. As people perceive that the general populace is more supportive of EU membership their tendency to be supportive of EU membership also increases. Especially important in this respect is the finding that as the perceived willingness

⁹⁹ "Sensitive issues" are those issues concerning the use of languages other than Turkish (including Kurdish) in education and broadcasting as well as abolition of the death penalty.

of anti-EU party leaders for EU membership increases, the respondents' own willingness to support EU membership also increases. The catch here is that as the perceived willingness decrease for these anti-EU camp leaders it pulls the respondents' willingness to support EU membership down. So the key here is to counter balance such leaders anti-EU rhetoric with equal effectiveness.

The above discussion concerning the salience of EU membership and related issues is also directly linked to the issue of advocacy for EU membership by the political elite. The historical gamble by the centrist parties in passing the EU adjustment package in August 2002 did not yield electoral pay-off primarily because of the low salience these issues occupied in the minds of the voters. The pro-EU forces failed to shape the agenda of the November 2002 election around EU membership and the social and political transformation this necessitates. Ex post facto, the pro-EU forces leave the impression of being intimidated by the anti-EU camp on the grounds that the "sensitive issues" might work against them in the election. However such a detrimental impact from the "sensitive issues" was never effectively binding.

Looking into the future, the threat from the anti-EU camp will continue on the basis of, once again, "sensitive issues". To counteract such resistance, a concerted effort and coordinated leadership are needed especially to gain support from the large Turkish youth that dominate the electoral scene in the country, especially the critical regions of EU resistance in central Anatolian provinces.

There is no doubt that over the last 10 years the pro-EU elites has gained considerable power at the expense of the anti-EU camp. This has especially gained momentum in the months preceding the December 2004 meetings in Brussels that led to the decision to start negotiations in October 2005. The most important factor that explains this up-ward trend in public opinion at large and amongst the elites is the unmistakably strong and positive leadership that the AKP government has shown during their tenure. Compared to the previous coalition government AKP has portrayed a unified and unambiguous support for EU membership which then convinced its constituency to follow suit. The convincing power or credibility of AKP leadership was helped a great deal by their quite successful economic performance which created an atmosphere of optimism in the country. If the economic crisis were to continue the mass support behind the EU project could have easily been diverted by the Euroskeptic forces.

(f) The prospect of a closer relationship with the EU can influence domestic governments either directly, through bargaining, or indirectly through the differential empowerment of domestic actors. In the latter sense, conditionality changes the domestic power dynamics in favor of domestic actors with incentives to adopt EU rules and norms and, strengthening their position in relation to opponents in government and society. Is this true? Does the prospect of a closer relationship with the EU (membership or closer association) empower reformists? Does it weaken opponents to reforms? Please elaborate, citing concrete examples, wherever possible.

Impact of EU Prospects for empowerment of pro-EU forces Certainly, the prospect of a closer relationship with the EU in the form of eventual full membership does empower the reformist in Turkey. Whatever degree of uncertainty exists in this eventual membership prospect hinders the reformist causes. Concrete examples are not difficult to found in the last few years' experience in Turkey. One is the government's determination to resolve the Cyprus issue with even making open concessions if necessary just to clear the obstacles in front of December 2004 decision for the start of negotiations. If the EU prospect were to be absent then no one could even suggest to concede for any kind of resolution of the conflict. The fact that Turkey now is clearly behind a UN sponsored solution is a step forward in recognizing the international rule of law within the context of the UN and does certainly help the process of establishing a strong momentum towards rule of law domestically. The others

are to be found in the abolishment of capital punishment and teaching of and broadcasting in languages other than Turkish back in August 2002. PKK leader Abdullah Öcalan was on death row at the time and the public pressure to execute him was considerable. However, the pro-EU leadership were able to use the prospects of membership for justifying the changes in law and in the meantime controlling the reactions and calming the reactionaries with the use of benefits from EU membership. Yet another issue was the new institutional form given to the National Security Council (NSC) which brought it under the control of civilians.

(g) Some commentators argue that countries where external actors have had a strong influence on domestic rule of law reforms are countries where there are few and weak “veto players” – i.e. actors whose agreement is necessary for a change in the *status quo*. Veto players are likely to be established elites or sympathizers with the old regime or ideology, who are afraid that improvements in the rule of law will damage their interests. In other words, we should expect that where these actors have power they will block or otherwise prevent real change in rule of law policies. Based on your assessment of rule of law reforms in the country, do you find evidence that rule of law reforms and the acceptance of new norms is greater where the number of veto players is small and where anti-reform actors are weak? Or are there cases where there are strong veto players but the reform still goes ahead? Is such reform effective, or do veto players manage to block actual implementation? Please elaborate, citing examples. Are there specific areas where this explanation is more true and others where it is less true?

Veto players In order to evaluate the role of veto players whose agreement is necessary for a change in the status quo we first need to determine the relevant players within the game of EU related reforms. We can conveniently divide the relevant players into four groups. The first is the parliamentarians or parties in the Turkish Grand National Assembly (TGNA). The second one is the civilian and security bureaucracy within which we should take the military rank and file or most importantly general staff as a prominent player. However, in this second group we can include the members of the judiciary as well. The third, is the business community and the fourth is the mass public at large. Was reform more difficult (easier) when there were more (less or single) veto players? One example for analyzing this aspect of the rule of law reform can be found in the recent new regulations passed from the Parliament concerning the role of the military in Turkish politics.

These new regulations were obviously primarily motivated to meet the European Union’s emphasis on ‘aligning civil-military relations in Turkey with European practice’ in order to fulfill the Copenhagen political criteria. However, as we argued in section A.4 above change on this front did not occur due primarily to exogenous pressure. In fact, the reforms were the outcome of the interconnection between the changing domestic climate and EU accession. Now that a unified single party government was in power it became quite difficult for the military to actually use its veto concerning any of the involved issues. At the same time, since PKK related terrorism was brought to a virtual end by 1999 the domestic political costs of compliance with the EU criteria were reduced to a considerable extent, weakening the previous opposition of the military establishment. Metin Heper argues that such reluctance to use its veto power was also partly due to the self-reassessment of the military’s role in Turkish politics.¹⁰⁰ Nathalie Tocci also argued that the EU accession process is effectively acting as a provider of security for Turkey and this alone is enough to increase the will of the military to move out of politics and creating a conducive environment for further reforms.¹⁰¹

¹⁰⁰See Metin Heper, “The European Union, the Turkish Military and Democracy”, *South European Society and Politics*, Vol.10, No.1, April 2005, pp.33-44.

¹⁰¹See Nathalie Tocci, “Europeanization in Turkey: Trigger or Anchor for Reform?”, *South European Society and Politics*, Vol.10, No.1, April 2005, pp.73-83.

The fact that besides the military there were no other significant interest constituencies to question or veto decisions regarding the role of the military in Turkish politics actually made the reformers job easier in this case. If there were civilian security circles exercising some influence on this process, any progress could have easily gotten much slower. The same argument could be easily made about the reforms concerning education of languages other than Turkish and broadcasting in such languages. Once the civilians which back then were not even as strong and unified as the current AKP government is, convinced the military that domestic security threat was not significant and obtained their support even the lack of mass approval for such legislation did not constitute much significant barrier in front of the civilian elites.

It seems on the other hand that when there were more veto players involved progress did actually get much slower. Administrative reform and efforts to combat corruption and bribery involves not only the parliamentarians from the executive office holders and the opposition but also the business community and their counterparts in the civilian as well as the security bureaucracy. In other words, all relevant players are involved in these reform packages and their implementation. The result is far from being a success. Neither the full spectrum of legal changes was passed from the Parliament nor is the implementation of those that have been passed satisfactory.

(h) Some commentators argue that countries and policy-areas where there are effective formal institutions are much more likely to be able to adopt and implement rule of law changes. By contrast, where the state institutions are weak – in that they lack human capital and material resources – they are far less able to undertake and implement reform. This idea would indicate that the issue is not “veto players” and “lack of political will”, but the action capacity of the domestic institutions responsible for implementing the reforms that determine whether external pressures for reform will be effective or not (see above, A.5). Based on your assessment of rule of law reforms in the country, do you find evidence that supports this explanation? Please elaborate, citing examples. Are there specific areas where this explanation is more true and others where it is less true?

Action capacity of the domestic institutions For those segments of the formidable reform needs to comply with the EU standards in various aspects of the Turkish politico-economic system that have been passed from the Parliament the next big step is implementation. As we underlined in various places above the implementation of the reforms sometimes lack political will, but many times administrative capacity is equally if not more binding. Bureaucratic and administrative capacity in different branches of the Turkish public administrative circles seem to be among the most binding constraints on the bureaucracy. Performance evaluation necessitated by the new changes in the law of municipalities and public budgets allowing for more participation and interaction between relevant civic circles simply necessitates significant public policy capacity. Similarly, the judiciary is simply blocked due to lacking capacity to handle the daily demands.

An important point to note is that along with lacking bureaucratic capacity to implement new laws an equally important capacity problem exists for the civilian players who simply could not use their newly provided rights to take part in a constructive manner into local policy-making. Lacking capacity for implementation of policies at different layers of the Turkish bureaucracy is most apparent for the judiciary and the civilian security establishment. Almost all controversial cases against the pro-EU elites around the issues of minority rights and the Armenian issue in Turkey are brought to the agenda by a group of reactionary civil society members co-opting some segments of the judiciary. Once the case is brought to the agenda it takes very long to clean it through the judicial processes.

Perhaps more importantly at this stage where the country has started the negotiation process, is the fact that there seems no effective organisation for running the process on the

Turkish side. Even the most effective organisation of the Ministry of Foreign Affairs seems to have failed to bring together an effective negotiation team. The Ambassador of the European Commission Representation in Turkey has publicly complained about this fluid and ineffective organisation of the negotiation team but no change so far is observed. All in all, action capacity is a very important limiting factor for pushing for a new reforms and implementation of the already passed reform bills.

(i) According to some commentators what explains the degree of influence by external actors on domestic rule of law reforms is the presence of “change agents” (or what are sometimes called “norm entrepreneurs”) in the domestic system. These change agents can be NGOs, universities, the media, political parties, professional associations (lawyers, doctors, businesspeople) but also state bureaucracies and politicians. They engage with similar organizations and people in the EU and form “transnational networks” and “epistemic communities” through which social-learning occurs. To what extent do such “agents of change” exist in your country of study? What types of agents are they (universities, NGO, business, government circles etc.)? How do they try to influence the government (education, publicity, lobbying, generating ideas for closer relations)? How powerful are they in influencing the government to adopt EU rules, institutions and policies?

Change agents Many institutions have taken on the role of change agents in Turkey either consciously or unconsciously. The highest impact change agent has been the political leadership of first the government party AKP but also other minor parties and their leaders as well. Besides the party leadership ministry of foreign affairs obviously have taken a role of promotion for the EU cause. Especially in this context the Secretariat General for the EU Affairs (Avrupa Birliği Genel Sekreterliği-ABGS) within the ministry has had a big positive impact in providing information and financial aid for the EU cause. Nevertheless the level of information for the masses concerning the EU has remained very low; so the overall success cannot be high. Over the years the overall image and effectiveness of the police has changed considerably favourably. Lastly, the municipalities have adopted minor but effective roles in adopting a more open role promoting the EU cause. However, so far there is very little being done within the state bureaucracy to promote EU and what ever exists does not leave a coordinated image.

Within the civil society a number of different players have emerged. One is the Turkish Industrialists and Businessmen Association (TUSIAD) which has taken the role of support from the highest echelons of Turkish business community. TUSIAD however seems to provide more approvals and feedback on EU related issues rather than actively promoting the EU cause for larger masses. Perhaps this is primarily a result of the fact their constituency comprises the largest business which have already quite committed to EU cause.

Another is the the Union of Chambers and Commodity Exchanges of Turkey (Türkiye Odalar ve Borsalar Birliği-TOBB) which is relatively much more active than TUSIAD on the EU front. Other prominent civil society organizations are Economic Development Foundation (İktisadi Kalkınma Vakfı-İKV), Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Araştırmalar Vakfı-TESEV), Turkish Third Sector Foundation (Türkiye Üçüncü Sektör Vakfı-TUSEV), TUSES, Human Right Association (İnsan Hakları Derneği-IHD), Helsinki Citizens’ Assembly (Helsinki Yurttaşlar Derneği-HYD). Open Society Institute (OSI) has a very effective and well organised program in Turkey that provides considerable funding for the promotion and support of the EU cause. OSI has been active in supporting NGOs such as TESEV but also provides independent support for academics and intellectuals working on EU related areas. OSI has funded a promotion campaign that included prominent European politicians coming together to support Turkey’s membership cause which proved to be very effective in European circles. TESEV worked on the Cyprus conflict together with Oslo Institute of Peace which again helped mobilise solution forces on the Turkish side of the island. **(check these facts and names.....)**

Universities are also increasingly active in EU affairs. Major universities now have EU studies programs. What is interesting is that most of these programs are self-financed programs that require students to pay their own tuition which amounts to considerable funds. As such public funding for EU related training is not available. Centres of research on EU issues are slowly taking shape. The most prominent one amongst these is in the Middle East Technical University which recently established an EU funded centre for excellence. Boğaziçi University also has a small but effective centre that promotes EU studies and research. All private universities have programs and research centres devoted EU. One that is most directly working of rule of law promotion is Bilgi University which runs a program on human rights law education.

(j) Please describe any informal channels by which elites interact with EU member states/institutions colleagues in a way that could facilitate rule transfer and social-learning. For example: are there relevant university exchanges, NGO links, journalist, educational links. What opportunities are there for think tanks, research institutions and advocacy groups exchanges with similar organizations in the EU?

Informal Channels of influence for EU related reform Informal channels by which elites interact with EU member states or institutions colleagues have increased tremendously over the last decade and especially over the last two years since the Copenhagen meetings of December 2002. However, describing these even in a summary fashion is a formidable task since they are by definition dispersed all over the spectrum of activities and no central list of information was found on them. However, university exchanges are increasing both in numbers of institutions as well as the number of students taking part in them. Nevertheless potentially these exchanges could increase considerably over the next few years when institutions become more experienced in making use of the funding opportunities for their students as well as guiding them through the complex web of applications. However, the real challenge will be to enlarge these into the Anatolian mass of institutions and students. Most if not nearly all of these exchanges effectively are channelled for Istanbul and Ankara institutions and students from there.

NGOs are increasingly more active in the European field but their capacity seriously lags behind their level of interest and willingness to take part in projects for the EU cause in their related fields. Capacity building in NGOs remains the main obstacle in front of their effectiveness in promoting the EU cause.

There are only a few knowledgeable journalists in the Turkish media who understand and intelligibly converse about EU related topics. They are first of all ignorant about the complexities of the EU issues and do not have the time to get acquainted in them. Secondly they tend to look to EU issues from dense ideological lenses which bias their vision and evaluations. They lack any sense of historical as well as cross country comparison that will help them make sense of the newly forming Turkish experience. Equally important is lacking institutionalized links between professional journalists in Turkey and in the EU.

Only a few think tanks such as IKV, TESEV, TUSEV, TUSES and the like that have links with their counterparts in the EU. However, these seriously lag behind the potential and the existing level of need in the country.

(k) Are there domestic bureaucratic circles that are very pro-EU and try to push for adoption of EU law and institutions (the *acquis communautaire*) and promote closer integration with the EU? Please elaborate. Which ministries and state agencies have these circles? Do they try to promote voluntary harmonization with EU rules and norms, or do they largely respond to EU pressures for reform?

Bureaucratic leaders in pro-EU reform As noted above in the section concerning agents of change the AKP leadership in government and especially the ministry of Foreign Affairs tops the list of bureaucratic circles for the promotion of EU related reform. Much smaller circles of

bureaucrats have started to work in their respective ministries for EU related reform. These are increasingly active, visible and influential in their respective institutions. However, they are far from being the dominant powers in their institutions.

(l) Do the systems of government, economies and culture of EU member states represent a model that the ruling elite in your country: (i) view as an example/inspiration, and (ii) want to emulate and be like, or do they see the EU as representing foreign and even antagonistic values? (Please elaborate). How do opposition elites see the EU? How does the general population view the EU member states? If given the option would the majority of elites want to become members of the EU? Would the majority of the general population want to become members of the EU? Where possible, please provide evidence – polls, media surveys etc.

EU as a role model? As noted above in the background section the history of Turkish involvement in the formation of Europe as we know it is a very long and intense one. EU-Turkey relations also has a long and winded history. Increasingly historians and social scientists view Turkish modernization as an integral part of Turkish relations with Europe ever since the early Ottoman reforms of the 17th century. From these early beginnings there existed a duality amongst the Turkish elite concerning the role of Europe as a role model for Turkey. There is a deep running antagonistic side as well as a sincere sense of belonging to the new European project as represented by the EU in Turkey. Nevertheless, it is very difficult to claim that any non-western and in fact non-European project of modernization, democratization and economic development has any significant popular appeal in the country. The European project in this sense is the only dominant one in Turkish intellectual agenda.

As noted above the level of support for EU membership has been fluctuating in response to nationalistic manipulations and the course of the relationship between EU and Turkey. However, the level of support has typically been above 65%. The most recent surveys in the urban sector show 80% support. Typically all party constituencies have a clear majority in support of EU membership even the most Euro-skeptic ones have the majority of their voters in favor of membership. However, as people become more religious, nationalistic and anti-democratic in their attitudes they are more likely to be against membership. Most importantly however, the level of information about the EU and involved issues has remained very low, in fact Turkey has the least informed population the whole European continent about the EU (See Euro-barometer 6.2, 2005). This may reflect some potential danger for maintenance of this popular support in the country. As people learn more and get more experienced in European affairs and Turkish-EU relations they may be less willing to support the EU cause. However, at the present time survey results suggest that those who have a higher level of information about the EU are more supportive of membership.

(m) Do the (i) ruling elites; (ii) opposition elites and; (iii) general population view integration with the EU as “the only game in town” – i.e. the only real and viable foreign policy option for the country? Or do these groups have affiliations and find support from other international actors (the USA, Russia, the Arab League, any other system or community)?

EU as the only alternative for Turkey Among the elites some “alternatives” to the EU and the European project have been put forward in the past. These involved intensification of cooperation in both socio-economic and cultural levels with the Islamic or Turkic peoples of the Middle East or Central Asia. Mostly, these have been ridiculed by the respectable elite circles in the media and academia. They once had some, and only speculatively significant following at the time of the RP’s rise to power. Even the nationalist Euroskeptic MHP did not seem to want to have its name associated with these alternatives. The mass preferences in this

respect is unmistakably and unwaveringly pro-European. Prior to the Iraqi war and the events that preceded and followed it an American sympathy was present but now that has long been abandoned.

Nevertheless, pragmatic economic cooperation with many different countries irrespective of their ideological and political positions always have some following in Turkey. Although there is little support for the Israeli policies in Palestine Turkish people are not very resentful towards Israel and seem to allow intensified cooperation between the two militaries. However, how much popular support there is behind long-term increased cooperation between Turkey and Israel is not clear. The elites are strongly behind such cooperation for pragmatic reasons. Iran has been mentioned by significant figures in Turkish intelligentsia and bureaucracy as a viable alternative for Turkey together with Russia. Mostly energy strategy drives these views. However, naively they seem to ignore the unambiguously high regard for democracy within Turkish masses.

(n) In the case of groups that do see the EU as an “inspiration” and a model to be emulated: what is it about the EU that is attractive? Is it economic prosperity? Democracy? Security? Prestige? Modernity? Legitimacy? Realization of a historical vision? A “return home”? Please elaborate. In the case of groups that see the EU as a threat or an interference, what arguments do they make?

Underlying reasons for being inspired by the EU The above section on political background already addressed some of the issues being asked in this section from a mass players’ perspective. The picture from politicians’ angle is a bit different however there are certain similarities as well. As to the similarities the most remarkable one concerns the expected impact of the membership in the EU for the Turkish economy. Not really possessing much of information masses of Turkish voters tend to equate EU membership with economic prosperity and welfare. The same is true for the elites and especially the politicians and the business community. However, while the masses only see this flow directly from their limited experience with the Europeans and their again limited observations concerning Europe and European life style the politicians and the business community reach this conclusion by simple necessity. The economic crisis of 2001 proved to them that a populist irresponsible state led economic policy simply bankrupted the Turkish economy which chronically could not generate funds to finance its economic development. Whatever funds become available are siphoned out by state capture out of public causes into private accounts. As a result despite growing population and needs of the people nothing seems to have been adequately achieved in development front. To put it in a nutshell what is expected from the EU in the economic front is simply credibility for international funds to flow into the economy as well as a discipline in the public sector to accountably and professionally administer development.

Both politicians and business community also care about other benefits of membership such as democracy, security, prestige, modernization and realization of a historical vision for the country. However, these are mere secondary compared to economic benefits. Second reason for supporting membership for these two groups is modernization and prestige. Both groups are aware of the fact that unless Turkey joins the EU it is bound to be marginalized in the global world. Especially some of the most advanced sectors of the country have locked themselves onto this cause and want to be an integral part of the western circles of decision making. It is thus very hard to differentiate prestige from greater profit and economic development. For politicians continual political credibility is integrally bound to economic prosperity so their primary emphasis or expectation being economic is not surprising. For both politicians as well as the business sector, public sector administrative reform is necessary if economic growth is to be sustainable.

Security also links to this line of reasoning for both the politicians as well as the security circles in the military and civilian bureaucracy. Hard security in the international

arena in the aftermath of the Cold War has been very problematic for Turkey. Simultaneously with the elimination of the Soviet threat and rise of new kinds of less organized and “soft” threats in the form of terrorism, mass migration and proliferation of mass weapons of destruction into rogue states or terrorist groups came the eventual marginalization and virtual evaporation of the once assuring NATO umbrella for Turkey.

Within Turkey’s security circle in the Caucasus and the Middle East were Azeri-Armenian war, Chechnian struggle in Russia, unrest in Georgia, Iran and Syria and war in Iraq erupted within a few years. All meant that effective threat to Turkish security in the years to come will be coming from these regions. Domestic threats as well in the form of rising Islamist movements to Kurdish separatism all have their roots in economic unrest in large segments of Turkish society. If domestic threats were to be secured, Turkey needed uninterrupted economic growth, which, as noted above, is directly linked to the EU project.

Militarily there is very little that could be done unless real economic prosperity and socio-economic guidance can be given for these hotspots in Turkey’s neighbours. Economic prosperity thus is a sine quo non for effective security policy in the region. Especially when the NATO umbrella is effectively not present the only viable real option for security alliance in Turkey’s immediate neighbourhood was the newly shaping European security system. Although there is yet nothing really serious about the European security system at the moment for hardcore security provision in the years to come Turkish security circles sense that they cannot afford to stay out of it and let the NATO be reduced into insignificance. This effectively means that Turkey becomes a buffer zone in between EU and North Africa, Middle East Caucasus and the Central Asia. Costs of being such a buffer zone state are just too great to bear.

For the intelligentsia neither economic prosperity nor security arguments are as salient as the democratization argument in support of EU membership. Progressive western oriented and traditionally left leaning liberal intellectual circles see democratization as a natural result of the century’s long struggle in Turkey for freedoms, human rights and democracy since the late Ottoman Empire periods. Religiously conscious and pro-Islamist, traditionally suspicious and sceptical towards the West as a whole, the conservative intelligentsia supports EU related reforms and membership as a way of *de jure* guaranteeing their impact and control over the Turkish state and legitimization of their coming to power after nearly half a century long struggle since the mid 1950s.

(o) Would the government in your country of study adopt the reforms called for by the EU if the benefits of the reward are greater than the domestic political costs of compliance? Please elaborate. How do domestic elites decide whether to accept or reject calls for reform? Do they “balance” the benefits and the costs and then decide?

A rational choice explanation for EU support by the elites As noted above there are obvious political and economic costs of compliance with the EU reforms that motivate and maintain Euro-sceptics in the country. However, one could easily argue as we tried to above that refusing to comply with these reform principles and changes would bring an even greater cost onto the country. If we were to divide the costs and benefits incurred in the process of adopting and implementing EU reforms into economic and political the logic of decision making by the Turkish elites can be better traced. From an economic perspective the EU rule of law reforms practically anchors Turkey with the EU market and thus gives credibility to Turkish government in its pursuit for designing economic policy. Irresponsible fiscal or monetary policy or patronage based sectoral policies or high corruption in public administration in an EU member country or a country on the way to membership is not at all expected. Such anchoring brings not only easy credits from the international financial markets but also attracts foreign direct investments. Together with internal domestic dynamics that are

expected to work in favour of increased productivity and effective and efficient economic performance such a flow of international credit as well as FDI is obviously going to generate growth and ease pressures of income distribution and poverty. As a result the incumbent government expects to reap political benefits in the form of longer term support. Such economic benefits seem quite high and thus form the backbone of government's willing to accommodate the EU cause.

On the political front the lines of causation are not so obvious. We certainly cannot assume that economic factors are constant or for the sake of analysis can be assumed to be constant even. However, if we were to make that assumption then where could political costs or benefits come from for Turkey? Several possibilities come to mind. First, concerns the international arena when it comes to reshaping Turkish foreign policy concerning Cyprus. Another concerns the US policy in Iraq especially the northern Iraqi Kurds as well as the developments in Israel. Developments in these international politics issues may spark unrest and wild reactions within the country against the government. Once these reactions take hold in the country then the incumbent government may not be able to risk alienating large masses of people. Because then masses of Anatolian conservative farmers together with pro-Islamist elements within AKP constituency may chose to stir some uneasiness.

(p) Has the EU set out a clear “road-map” for reforms that tells policy makers exactly what they need to do to? Or are EU demands for reform vague and unclear? Do you consider that having a clear “road map” for reforms is an important condition for achieving successful rule of law reforms? For example, does it allow reformists within the government to know exactly what needs to be done (what rules to adopt, what institutions)? Similarly, does it allow critics of the government to point to a specific, concrete programme of reform that needs to be adopted, rather than to just say that the country needs “more democracy” or “better rule of law”? Would your country of study benefit from a more precise “road map” for reform?

A clear “road map”? The two referendums in France first and then in the Netherlands not only sent shock waves all over the world creating pessimism for the future of Europe but also shaken up the slowly emerging consensus among the Turkish elites about the future place of Turkey in the EU. The dominant perspective about Turkey's future journey into the EU was optimistic after the December 17th 2004 decisions to start negotiations on October 3rd 2005. There were sceptics of course, claiming that the issue of Cyprus is bound to become a road block which may prove very difficult to remove or jump over. Others emphasized that open ended start of negotiations left the ultimate reward for negotiations still uncertain for Turkey. Until the results of the referendums optimists were proven right in the sense that the official perspective of the Justice and Development Party (*Adalet ve Kalkınma Partisi*-AKP) which claimed that an open and full recognition of the Republic of Cyprus was not necessary for the start of the negotiations. An addendum to the Customs Union Treaty allowing direct trade with Cyprus would be acceptable for the start of negotiations and that would not mean full diplomatic recognition thus making it palatable to nationalist reactionaries in Turkey. Concomitantly remaining fully cooperative for an ultimate solution to the Cyprus conflict within the contours of the Annan Plan, Turkey seemed to have convinced the major EU players for the start of the negotiations.

Now that France and the Netherlands have rejected the European Constitution what will become of Turkey at Europe's door? There is so much uncertainty at this early stage of the developments that both optimists as well as pessimists have merits in their various arguments. Despite the start of negotiations such speculations have not ended. Both sides however agree that the referendums are a major crisis for the EU. However, there is disagreement as to whether this will prove to be of serious consequence for the ultimate goal of creating an economically as well as politically unified and integrated Union for Europe. Optimists agree that enlargement, or what ever remained of it, may slow down but to protect

the credibility of the EU prior commitments for the next circle of enlargements including Bulgaria, Romania and eventually Croatia and Turkey should continue. Any turning back from these would seriously undermine dynamics of EU foreign policy and interplay within the member countries. The Turkish contingent of optimists agree that the EU should not, and would rationally not turn from its commitments for the October *rendez vous* to start the negotiations and they were proven right. Legally institutionally these referendums and the negotiations are not linked. More important message of the optimists however concerns Turkey's commitments for further reform and implementation of these reforms in both the economic as well as political arenas.

Pessimists underline that the elite nature of the enlargement project which has never been fully convincingly communicated to the masses have finally broken down. There is no unified support for further enlargement and time should now be spent to heal the wounds of rapid expansion and creation of mass support for the present state of the Union. The Turkish pessimists agree and add that Europe is shying away from taking Turkey in. The referendums in France and the Netherlands may be the first signs of an electoral conservative avalanche in the making. German elections in Fall 2005 is bound to tip the balance in favour of conservatives in Europe who are openly dragging their feet for further enlargement especially one that would take Turkey within the decision-making body of the Union. However, even after the formation of grand coalition in Germany and the preceding start of negotiations with Turkey the idea of privileged partnership has been dropped from the official documents of the EU. In Germany the coalition program however still refers to an ambiguous purgatory concerning Turkish membership. Ultimately, if Turkey is unwanted from the mass political perspective the EU cannot deliver its promises and would further demand concessions especially in Cyprus and likely concerning the Armenian issue and other minor policy specific adjustments. All such prospects make the path in front of Turkey towards the EU membership more and more blurry and ambiguous rendering the pro-EU reformers in the country more reluctant to push forward with further reforms and implementation.

Both sides of this debate are right and wrong on different points. Optimists are being naïve in their claim that referendums will in the long run be inconsequential. They are right perhaps that in the short run, that is by the end of 2005 and thus about the start of negotiations, there will be no major shift in policy commitments on both the Turkish as well as the European sides. However, a democratic Europe would be very hard pressed to ignore persistent resistance of the masses for further enlargement and deepening of the integration. The pessimists are perhaps exaggerating the ideological longevity of this anti-enlargement movement which obviously have a contextual and temporal element in it. Once and if the economies of Europe and especially the French and German economies start climbing up the business cycle the public mood for enlargement and deepening will expectedly pick up rising as well. However, will the European economies recover in time for the politically relevant decisions is the big question for Turkey.

(q) Full membership in the EU is the “ultimate reward” that the EU can offer. But do you think that lesser rewards (such as full access to the Single Market, or a privileged economic and political relationship which does not involve membership) can have a similar effect on domestic decision-makers? (Please elaborate). Are there specific policy areas where you think weaker rewards could work and ones where they can’t? (Please elaborate). Can you point to specific cases where the prospects of a relatively weak reward (e.g. membership in the OSCE, Council of Europe, or a non-membership related benefit from the EU) could not persuade the government to adopt certain reforms, whereas the prospect of a closer relationship to the EU did persuade the government to adopt certain reforms? If not, why? Please elaborate.

A less than perfect ultimate reward? Perhaps the most dangerous development for Turkey is an implicit coalition between the European conservatives and the anti-European nationalists in Turkey. Almost as soon as the French decision on the referendum became clear Euro-skeptic intellectuals and columnists in Turkey started to praise the privileged partnership arrangement for Turkey. For the sake of being realists they argued that perhaps a middle ground between remaining an outsider and being a full member might not after all be so bad. Economic as well as political convenience of such an arrangement might gather electoral force as well to push the AKP government’s resolve to further seek implementation and reform in the country. After all, an argument similar to the one about European’s being tired of enlargement can be made about Turks being tired of reform.

No matter how discredited the privileged partnership for Turkey might be at this stage as long as a major party in a major member country such as Germany remains committed to this idea, there will be a less than perfect ultimate reward on Turkey’s agenda. The obvious unfortunate development in this respect is that reactionary forces in Turkey use this as an opportunity to garner support behind them and push reform implementation down in public agenda.

Weaker rewards especially impede developments in the human rights and minority rights implementation around the reform initiative concerning the judiciary. On economic reforms such weakening of rewards are not effectively delaying much reform initiative as long as they do not change the investment perspectives of the domestic and international players. Such impact on investment decisions are not going to come in the short run so their impact are not directly felt on the reform process. However, the nationalist reactionary forces do effectively halt the reform process on minority and human rights by mobilising populist mass support and thus threatening the stability of the AKP government from an electoral perspective.

CONCLUSION

Role of Domestic Actors in Promoting Change

The political reform process in Turkey was far from being a solely externally induced course of change. In fact, rather than the external factor, namely the EU, imposing internal change in the country, domestic change can best be explained by the interaction between internal and external factors, resembling Putnam's two-level game, where the EU anchor was perceived and used by the domestic actors to gain the credibility and the legitimacy to further the necessary reforms.¹⁰²

An important actor behind political reform, the inconsistencies in some of their policies withstanding, was undoubtedly the ruling Justice and Development Party (AKP) that came to power after the November 2002 national election, from which the impact was felt like a political earthquake. On the evening of 3 November 2002, as the final vote count came in, an electoral shock reverberated through Turkish politics. The three parties that had formed the coalition government after the 1999 elections, as well as two opposition parties, failed to pass the 10% national threshold and found themselves left outside parliament. This electoral punishment was so dramatic that the winner of the 1999 elections, the Democratic Left Party (DSP) lost almost its entire constituency. Other parties found themselves thrown out of parliament by losing more than half of their electoral support. The winner of the election, the AKP, received 34.2% of the popular vote, gained 66% of the parliamentary seats and formed a single-party majority government. The Republican People's Party (CHP), with 19.4% of the popular vote and 34% of the parliamentary seats, became the single opposition party in parliament.

The election results demonstrated the popular feeling in Turkey that the ineffective and undemocratic governing structure based on economic populism, clientelism, corruption and democratic deficiencies had run its course and that a strong single-party government with institutional and societal support could make Turkey a democratic and economically stable country. In fact, the advocates of a previously religious based anti-establishment party played a significant role behind political reforms due to a combination of interests and ideological concerns. First and foremost, the AKP viewed EU accession and the necessary reform process as a tool to increase its legitimacy and guarantee its political survival vis-à-vis the secular establishment in Turkey. In a similar sense, the EU also provided increasing legitimacy for the AKP's heavy emphasis on democracy and the protection of individual rights and freedoms in its political ideology. Hence, democracy as advocated by the EU became the "catchword and the strategy through which the former Islamists seek to change the system at the same time as they change themselves".¹⁰³ In fact, the reforms were often justified to the public on the grounds that the reforms themselves were more important for the country than eventual EU accession. Questioned on the possibility of a negative outcome at the December 2004 European Council Summit, Prime Minister Erdoğan frequently stated that in such a case, Turkey would continue pursuing the path of reform regardless of accession perspectives, arguing that the Copenhagen criteria would then be named as the 'Ankara Criteria'.¹⁰⁴ He frequently underlined that they would 'continue progressing on our own path even if the EU

¹⁰²See Nathalie Tocci, "Europeanization in Turkey: Trigger or Anchor for Reform?", *South European Society and Politics*, Vol.10, No.1, April 2005, pp.73-83.

¹⁰³See Duygu Bazoğlu Sezer (2002), "The Electoral Victory of Reformist Islamists in Secular Turkey", *International Spectator*, Vol.37, No.4, pp.7-21.

¹⁰⁴"Ankara Kriterleri der, Devam Ederiz (We would Continue Along the Ankara Criteria)", *Milliyet*, 8 November 2004.

fails to open accession negotiations with Turkey'.¹⁰⁵ Such justification on the part of AKP shows that 'logic of appropriateness' is giving way to behavioural change rooted in the different interpretation of the situation through a learning phase.¹⁰⁶ It needs to be said that increasing political interaction with the EU and separate member states have also helped the AKP in this process. In addition to the AKP, the opposition party in the Parliament, namely Republican People's Party (CHP), also gave full parliamentary support to the political reforms, despite resistance on some occasions of the prevalent conservative Kemalist elements within the party. However, their general stance on democratisation points to the fact that their embracement of the EU goal does not necessarily overlap with their commitment to EU norms and values.

The civil society also had a prominent role in promoting political reform in the country. Since 2000, there have indeed been strong societal calls for the further democratisation of state, societal and individual relations in Turkey. The profound political and economic transformation initiated in 1980s, especially de-ruralisation coupled with the failed policies of the strong state and the increasingly corrupt parties of the centre, had already paved the way for the emergence of a stronger civil society and identity-related politics in Turkey, most notably regarding political Islam and the Kurdish identity. By helping to create a strong language of rights in the country, the EU started to play an important role in furthering the change in state-societal relations and provided legitimacy for a vast amount of civil society organisations calling for a more democratic Turkey and demanding recognition of cultural/civil rights and freedoms.¹⁰⁷ For example, while civil society organisations have for long years demanded a reform of the Law on Associations, change on this front has been brought by the momentum of EU accession on the previous groundwork prepared by the domestic actors.¹⁰⁸ Similarly, as discussed above, EU conditionality helped in transforming the demand of women's groups into action. A number of civil society organisations and think-tanks from liberal, left-wing and religious backgrounds, operating in various fields have worked in their own ways for further democratisation and modernisation. Among the most notables were the economic actors, such as the Turkish industrialist and businessmen's organisation (TÜSİAD), the independent industrialist and businessmen's organisation (MÜSİAD) and the regional and provincial industrialist and businessmen's organisations (the SİADs). The February 2001 financial crisis and Turkish-IMF relations in its aftermath led such economic actors to realise that a strong and stable economy requires the democratisation of the state and its governing relations with society. Hence, along with other organisations, they have become an important element of Turkish politics not only through their discourse on democratisation but also their associational and lobbying activities. In this respect, in addition to the reform process being pushed to a certain extent by the civil society actors, the process itself also helped to widen the scope of civil society activity and strengthen civil society organisations in Turkey.

The military's role in the adoption of political reforms has already been dealt with in the previous section on 'police reform and civilian control of security forces'. Their role was significant in the way in which they did not oppose the reforms, rather than actively promoting them, pointing to the increasing self-awareness within the military establishment to keep out of politics. This, however, did not occur as a mere result of exogenous pressure, but

¹⁰⁵ www.turkishpress.com, accessed 3 September 2004.

¹⁰⁶ See Gamze Avci (2005), "Turkey's EU Politics : What Justifies Reform ? » in Helene Sjørnsen (ed.), *Enlargement in Perspective*, ARENA, University of Oslo, p.142

¹⁰⁷ See E. Fuat Keyman and Ahmet İçduygu (2003), "Globalization, Civil Society and Citizenship in Turkey: Actors, Boundaries and Discourses", *Citizenship Studies*, Vol. 7, No. 2, pp. 219-33.

¹⁰⁸ See Nathalie Tocci, "Europeanization in Turkey: Trigger or Anchor for Reform?", *South European Society and Politics*, Vol.10, No.1, April 2005, p.81.

also due to the changing domestic environment where adoption costs for the military were significantly reduced with the defeat of PKK.

Such direct or indirect support does not come to mean that there was no domestic opposition to the reform process in the country. In fact, according to those on the nationalist right and the nationalist left of the civilian and the military establishment, the reforms provided a serious security threat for the country. One only needs to remember how the Nationalist Action Party (MHP), the coalition partner in government from 1999 to November 2002, opposed and slowed down the reform process in the very same period. The nationalist left is in alliance with the extreme right in opposition to EU membership. ‘Sovereignty’ and ‘national interest’ seem to define the major tenets of Euroscepticism in Turkey. Despite the fact that these negative outlooks were gradually sidelined with the increasing prospects of Turkish accession, their future strength relies in EU’s stance towards Turkey as much as it does on the domestic environment.

Role of External Actors in Promoting Change

Although Turkey enjoys close links with international organisations operating in this field, such as the Council of Europe, the EU is undoubtedly the most influential external actor in facilitating the adoption of measures, strengthening of institutions and monitoring of implementation in the area of basic rights and freedoms. Two important points have to be kept in mind in elaborating EU impact in the adoption of reforms. First is the above-mentioned interconnectedness of external anchor with the changing domestic environment in promoting reform. Second is the nature of EU conditionality itself.

There is a widespread consensus in the literature that the most crucial factors for conditionality to bear full fruit are its ‘consistent’ and ‘credible’ application and the low costs associated with compliance/rule adoption.¹⁰⁹ Until recently, EU’s relations with Turkey were characterised by the lack of the prospect of membership and very small amounts of aid and assistance. The Helsinki Summit of December 1999 caused a significant shift in the EU’s policy towards Turkey by declaring it a candidate country and by subjecting it to the same formal mechanisms used for the Central and Eastern European Countries to guide and measure progress on the Copenhagen criteria. This implied that Annual Progress Reports would be prepared by the EU to monitor progress on EU criteria.

This decision was followed by constitutional amendments and three harmonisation packages, culminating in the EU’s Copenhagen Summit decision of December 2002, which concluded that “if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the EU will open negotiations without delay”.¹¹⁰ This decision was received with considerable disappointment in Turkey as general expectations had been raised in the country by the political elites as well as by the media that the decision to actually launch accession negotiations with Turkey would have been taken at that summit. Contrary to some theories circulated by the more fervent Eurosceptics in Turkey, this disillusionment has not led to a slowdown in the reform process, nor has it led to the abandonment of the EU project – as it is often referred to in Turkey. Just the opposite, in fact, has happened. The Copenhagen summit has fostered a “sense of certainty” in EU-Turkish relations by giving a specific date for the

¹⁰⁹See Karen Smith (2000), “The Conditional Offer of EU Membership as an Instrument of EU Foreign Policy: Reshaping Europe in the EU’s Image”, *Marmara Journal of European Studies*, Vol.8, No.2, pp.33-46; see also Frank Schimmelfennig et al. (2003), “Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey”, *Journal of Common Market Studies*, Vol.41, No.3, pp.495-518.

¹¹⁰European Council (2002), *Presidency Conclusions*, Copenhagen European Council 12-13 December 2002, SN400/02.

beginning of accession negotiations.¹¹¹ Even though 2004 was a conditional date, it was nevertheless a significant step forward, as “it has provided Turkey with the prospect that full EU membership is a real possibility”.¹¹² Meanwhile, the EU also decided to significantly increase the amount of financial assistance to Turkey. Hence, EU impact was not only confined to pure conditionality but extended to cover technical and financial assistance. Pre-accession financial assistance would reach €250 million in 2004, €300 million in 2005 and €500 million in 2006 to “help Turkey prepare to join the EU as quickly as possible”.¹¹³ Similarly, administrative and judicial capacity building mechanisms, the most prominent of which is the Twinning instrument, was now employed to make EU member states’ expertise available to Turkey through the long-term secondment of civil servants as well as short-term expert measures and training. The strengthening of the credibility of conditionality was immediately reflected in the four subsequent reform packages adopted by the Turkish government and two sets of constitutional amendments.

It is evident that the prospect of EU membership becoming more ‘real’ clearly contributed to the emergence of effective conditionality in the case of Turkey. As stated beforehand, it became impossible to separate the domestic and external spheres from each other. The perceived decrease in adoption costs, in particular with relation to reforms on minorities, also facilitated compliance by Turkey. Reforms focused mostly on human rights and the protection of minorities, albeit with some remaining problems. While those problems were mostly due to internal factors outlined in the first section above, they were exacerbated by ongoing debates over Turkey’s place in Europe and the desirability of its accession, hampering consistency and credibility of EU conditionality and decreasing the perceived benefits of EU in Turkey. Nevertheless, progress on this front has been considerable compared with relatively little improvements achieved on social and economic fronts such as social dialogue, education, health care and social security, rights of children and people with disabilities. The fact that these do not figure highly in the Copenhagen political criteria¹¹⁴ can help us understand why relatively fewer changes have been made in these areas.

Council of Europe and international NGOs such as Human Rights Watch and Amnesty International have for long applied normative pressure on Turkey, albeit with little success. After a more credible and consistent application of EU conditionality, COE monitoring reports as well as various reports by the international NGOs also gained relative strength. The meetings of the prime minister and government officials with the representatives of Amnesty International in February 2004 were regarded by many as a symbolic attestation of the attitudinal changes of the Turkish state apparatus in that respect.

¹¹¹ See Ziya Öniş and E. Fuat Keyman (2003), “Turkey at the Polls: A New Path Emerges”, *Journal of Democracy*, Vol. 14, No. 2, pp. 95-107.

¹¹² See E. Fuat Keyman and Ziya Öniş (2004), “Helsinki, Copenhagen and Beyond: Challenges to the New Europe and the Turkish State”, in Mehmet Uğur and Nergis Canefe (eds), *Turkey and European Integration: Accession Prospects and Issues*, London: Routledge.

¹¹³ European Commission Representation to Turkey (2003), *EU-Funded Programmes in Turkey: 2003-2004*, December (retrievable from <http://www.deltur.cec.eu.int/english/eufunded2004/01eufp04.pdf>).

¹¹⁴ The Copenhagen political criteria requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. See European Council (1993), European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, SN180\1\93 REV1.