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NEW YORK ■ WASHINGTON D.C. ■ BUDAPEST

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Democratization in Turkey



Freedom House Europe Kht.
Falk Miksa u. 30
1055 Budapest
Hungary
www.freedomhouse.hu

Freedom House Inc.
1301 Connecticut Ave. NW, Floor 6
Washington D.C. 20036
U.S.A.
www.freedomhouse.org

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Published 2008
Printed in Hungary

ISBN 978-963-06-4932-2



Printed by Demax Művek Kft.
www.demax.hu
Managing Directors: János Miklóssy and Szabolcs Tábori



Graphic design by Grafikus Operátor Centrum Kft.
www.gocpont.hu

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Preface & Acknowledgements

The main objective of this report is the in-depth assessment of Turkey's democratic performance at a time when that performance is called into question in many European circles and when, domestically, the country is facing a host of challenges from the worrying rise of nationalism and politically motivated violence to intensifying political confrontations over the boundaries of secularism and growing skepticism towards closer European integration.

This stand-alone report is based on the methodology utilized by one of Freedom House's flagship publications *Nations in Transit* (NIT), which annually assesses progress and setbacks in democratization in the countries of Central Europe and Eurasia. The unique framework of *Nations in Transit* means that this inaugural survey of Turkish democratic performance will immediately enable broad comparison with 29 other countries, among them many of Turkey's immediate neighbors and, more importantly, the new EU member states of Central Eastern Europe. This comparability can help to broaden the discussion on the direction and character of the Turkish democratic progress and will hopefully contribute to the emergence of a more nuanced picture of the country's domestic politics.

Since 1996, *Nations in Transit* has been analyzing and measuring the process of democratization in 29 countries, prominent among them the Central European democracies that joined the European Union in 2004 and 2007. NIT's country reports assess democratic performance in seven key areas: National Democratic Governance; Electoral Process; Civil Society; Independent Media; Local Democratic Governance; Judicial Framework and Independence; and Corruption. In each of the seven areas analysts are working with a set of questions that allow them to rate the country's performance in that specific area. This methodology makes NIT unique as it allows the countries included in the report to be compared across a comprehensive set of indicators. Turkey's inclusion in the *Nations in Transit* annual report will provide a valuable additional source for impartial assessments on how far Turkey has come in its democratic development and what the specific areas for further improvements are. In addition, the opportunity for comparison with the new EU member states will provide a further dimension to the ongoing debate about Turkey's aspirations of EU membership. For more information on *Nations in Transit* – including past editions and detailed description of the methodology – please visit www.freedomhouse.hu. For more information on other Freedom House publications, please visit www.freedomhouse.org.

Freedom House Europe would like to thank the following for their dedicated work, valuable contributions and helpful assistance during the preparations of this report:

Ms. Nigar Göksel is the lead writer and analyst of this report. Nigar is a Senior Analyst at the Istanbul office of the European Stability Initiative (ESI), a think tank headquartered in Berlin conducting policy research and analysis. Since 2003 she has also been the Editor-in-Chief of the Istanbul-based policy journal, Turkish Policy Quarterly (TPQ), published by the ARI Movement. Nigar studied international relations at Koç University in Turkey.

The ARI Movement provided invaluable assistance and partnership for Freedom House Europe from the inception of this report. Founded in 1994, the ARI Movement aims to contribute to the development of participatory democracy in Turkey through encouraging volunteerism, fostering information-based policymaking, and strengthening international links. ARI's four main areas of work are youth, women, international relations and political awareness. In order to contribute to the development of future leaders, ARI holds educational seminars throughout Anatolia, coordinates exchange programs with a number of countries, engages young people in civic activities, and supports their voices to be heard in the public discourse. For more information on the ARI Movement, please visit <http://www.ari.org.tr/>.

Oguz Alyanak translated the report into Turkish and **Defne Kadioğlu** provided valuable research assistance during the writing.

Executive Summary

Since the start of the decade, Turkey has made significant progress in democratization. Fuelled by the process of EU integration, domestic political reforms were accompanied by greater civil awareness and participation, an increasingly vibrant press, overall economic success, and further empowerment of the middle class. Benefiting from a single-party government and a clear roadmap provided by the EU and the IMF, the Justice and Development Party (AKP) governed with relative stability, presiding over an impressive slew of reforms.

However, suspicion that the AKP carried a “hidden agenda” of Islamization prevailed among certain segments of Turkish society and state institutions. This, combined with a newly active PKK and consequent upsurge in Turkish nationalism, meant that 2006 and 2007 were characterized by growing domestic political polarization over secularism and separatism, and in this period Turkey’s reform agenda and the constructive debate surrounding it have stalled. This meant that a host of key policy issues that will have to be addressed to keep the country on its so-far promising and successful track of EU-oriented democratic reforms in the political and economic spheres were pushed off the agenda and still require attention and action.

Freedom of expression, especially when it involves criticism of public and political actors, needs to be further safeguarded and respected. Beyond the passing of key reform legislations and the creation of new institutions, more attention and resources must be committed to their implementation and to ensuring that they function as envisioned. Further strengthening of the public administration sector is also necessary; as it is not yet able to deal proficiently with the needs of the large, changing, and diverse population – the state’s capacity as an efficient and neutral provider of public services needs to increase. Strengthening the ability of the state apparatus to empower and invest in ‘the individual’ will serve as a safeguard, reducing the appeal of controversial informal structures.

Overall, Turkey has shown impressive progress in democratic political reform, economic liberalization and serious commitment to European-oriented reforms. The domestic political tensions, culminating in the early elections of 2007, were eventually resolved within the boundaries of Turkey’s expanding democratic playing field, despite the fierce debates that at times touched the very core of the republic’s identity.

As a strategically significant country, Turkey’s democratization and continued commitment to closer European integration is vital not only for the country but also for its neighborhood and beyond. The country’s success, or its failure, in reconciling its identity as a modernizing, Muslim-majority country with its commitment to democracy, secularism and liberal market economy sends an important message well-beyond its borders.

Continued support and encouragement from both the EU and Turkey’s other Western allies will be invaluable contributions to reinvigorating the Turkish public’s traditional support for democratic reforms and the country’s pro-EU stance. A weakening in the public’s motivation for EU membership in Turkey is related to the loss of conviction that membership is a viable prospect. This is due in large part to discouraging statements about Turkish membership aspirations by some key European states.

Turkey’s prospects for continued democratic consolidation are therefore promising and the country’s leadership deserves praise for its committed policies in almost all important areas. Over the coming years, however, even more effort is needed to overcome the often bruising political polarization, while making sure that gains in freedom of expression, human rights, and good governance are taking roots and the risk of backsliding is avoided.

Background

Turkey's recent stage of political transformation was mostly triggered by the December 1999 Helsinki Summit. Before this, especially throughout the 1990s, the country made little progress, largely due to its populist policies. In 1999 the EU granted full membership candidacy status to Turkey, marking a political turning point for the country. Other developments also contributed to a more open debate and increased the rate of political progress, such as the capture of Abdullah Öcalan, the leader of the PKK (Kurdish Workers' Party), a terrorist organization claiming to represent Kurdish separatism, and a devastating earthquake in which civil society proved in some cases to be more effective than the state. A stronger demand by the population for good governance and transparency, as well as consistent benchmarking from the EU, locked the country into a cycle of transformation.

The EU Accession framework and roadmap drawn up for Turkey served to anchor both reforms and the public agenda, especially between 1999 and the end of 2004. Media and NGOs utilized EU guidelines to pressure politicians to carry out long overdue reforms. The IMF program, which was initiated in February 2002, prescribed budget discipline, increased transparency and less governmental interference in the decisions of economic institutions. As a result, populist policies at the macroeconomic level were relatively curbed. Economic stability has largely been maintained due to a continuous rise in foreign direct investment (FDI), although not accompanied by adequate growth in employment.

The two governments that served since 1999 invested in the EU guidelines and recommendations via constitutional amendments and reform packages. EU Accession negotiations with Turkey began in October 2005; screening was completed in October 2006.

The November 2002 parliamentary elections resulted in a sweeping victory for the Justice and Development Party (AKP). Winning almost 35 percent of the vote allowed the AKP to form a single-party government. A purge took place of parties previously in power. Though only two parties passed the ten percent threshold for parliamentary representation, as a result of splits from these parties, six parties were eventually represented in the Parliament. The roots of AKP are from within the religious-conservative movement (AKP was formed by the reformists who broke away from the 'Islamist' Fazilet Party in 2001). AKP made an effort to place progressive issues at the forefront of its campaign, including the pledge to end corruption, be more representative to the rising Anatolian middle class¹, and to further the country's EU membership credentials.

Enjoying the benefits of being a single-party government and having a clear roadmap provided by the EU and IMF, the AKP governed with relative stability, passing an impressive number of reforms. However, suspicion that the AKP carries longer-term objectives ranging from creeping Islamification to imposing Shariah law prevail among certain segments of Turkish society and state institutions.

Political Tension throughout 2006 and 2007

In March 2006, the public prosecutor from Van province, Ferhat Sankaya, as part of an indictment looking into whether the military was behind a bombing incident that occurred in November 2005, called for an investigation of high-ranking military commanders. The investigation included allegations that Yasar Buyukanit (the current Chief of General Staff) established a secret military force to fight the PKK. The situation turned into a war of words with the Republican People's Party (CHP) Chairman, Deniz Baykal, accusing the AKP of engineering a coup against the military and Prime Minister Erdogan calling Baykal a 'crisis engineer'. In April 2006, the High Council of Judges and Prosecutors dismissed the Semdinli prosecutor in Hakkari province after he pursued a case against members of the military accused of plotting a bombing campaign. (Please see the National Democratic Governance and the Judiciary sections for additional details).

In May 2006, the killing of a top judge in the Turkish High Court/Council of State (Danistay) was characterized by the mainstream press and opposition leaders as an attack on Turkey's secularity, and again sparked discord in the national political discourse. The revival of terror after the PKK ended an earlier ceasefire in summer 2004 further increased political tension.

President Sezer delivered a speech in April 2006 in which he underlined firmly that the country faced serious threats from separatism and religious fundamentalism.

In 2007, these polarizations increased, as did PKK terror and a nationalist backlash. The term of President Ahmet Necdet Sezer was set to end in May 2007. The issue of Presidential elections caused fierce debates. The legitimacy of the AKP-controlled Parliament to elect a president was challenged with claims that it did not have enough support from the general population to decide on this post. Due to technicalities of the electoral system, in 2007 the AKP had 66 percent of the parliamentary seats (363 seats of 541) despite having won only 34 percent of the popular vote in 2002. This was argued to be insufficient representation to decide on the critical post of Presidency. With an AKP loyalist in the presidency it was feared that the party would have full control over both the executive and the legislature as well as too much influence over the judiciary; separation of powers would be lost. This was particularly significant because in the Turkish system, the President has more far-reaching powers than in most parliamentary systems.

The fact that the AKP candidate's name was not announced until only one day before the vote was to take place was heavily criticized among the opposition and opinion leaders of the mainstream press. Both the opposition and many in the press demanded that more time was needed for the public to debate the merits of the candidate.

The AKP's choice of a presidential candidate was declared to be Abdullah Gül on April 24th. Gül, then Foreign Minister and Deputy Prime Minister, has roots in political Islam and a wife wearing a headscarf (also seen as a symbol of political Islam). His candidacy sparked strong controversy as secularists perceived a threat to Turkey's orientation and image abroad.

On April 27 the first round of voting was held in the Parliament. Based on vague wording in the law, a debate ensued about whether a two-thirds quorum was needed for the vote for the President to be valid. The opposition parties chose not to attend the voting session. On the same day, the Turkish General Staff (TGS - The General Staff of the Turkish Armed Forces) issued a strongly worded warning about secularism being under risk. This statement was seen as interference in the political process by many observers. Abdullah Gül failed to obtain the required majority in the first or second round of the voting.

The Constitutional Court, in a decision criticized as being politically motivated, ruled by a majority of seven to four that a quorum of two-thirds (367 deputies) was necessary for the first and second rounds of the presidential elections in Parliament to be valid. The voting process was declared invalid. This decision was seen as being partial by AKP supporters and a considerable segment of society because such a ruling had not been made in similar situations in the past. Abdullah Gül withdrew his candidacy without continuing with the third round of voting.

Meanwhile, demonstrations to "defend secularism" and accusing the government of conspiring to challenge the secular nature of the regime were held in major cities throughout Turkey. The sequence began with a rally in Ankara on April 14 that drew a reported 300,000 demonstrators. The Istanbul rally on April 27 brought together up to one million people; demonstrations followed in the cities of Çanakkale, Manisa, Marmaris, İzmir and Samsun.

Due to the deadlock, the government was left with no choice but to call early elections for July 22, 2007, bringing them forward from November to July. Fourteen parties and 699 independent candidates ran in the elections. In the election campaign, the opposition parties largely played the nationalist card. The AKP received 46.6 percent of the votes and 341 of the 550 parliamentary seats. Two other parties also passed the 10 percent threshold required to be represented in Parliament. With 20.9 percent, the CHP obtained 112 seats, but after the elections 13 of these representatives rejoined the ranks of the Democratic Left Party (DSP). The Nationalist Action Party (MHP) received 14.2 percent of the votes and 70 seats. There were 27 independent candidates elected; 20 of these were from the Kurdish nationalist Democratic Society Party (DTP), and were subsequently able to form the fourth parliamentary group. On September 5, the new government was officially endorsed by Parliament.

Overall the AKP increased its share of the popular vote from 34 percent in 2002 to 46.6 percent in 2007. With the renewed and strengthened mandate given to the AKP in the elections, the argument about AKP's legitimacy to elect Gül as President subsided. The MHP attended the parliament during the presidential voting ensuring that the two-thirds quorum (requiring a minimum of 367 attendees) was met. (If the parliament had failed to elect the president within 30 days from the start of the process, Turkey would have been forced to undergo another round of early general elections). Abdullah Gül was elected the eleventh President of Turkey on August 28, 2007 with 339 votes. The constitutional and political crisis was overcome in the way in which it was "reaffirmed the primacy of the democratic process" in Turkey.²

A referendum was held on October 21 for the proposed constitutional amendments which Parliament had adopted on May 10, 2007. The public approved the amendments by a vote of 69 percent in favor, although with a relatively low turnout. The package made the following changes: The president will be elected by popular vote for a renewable term of five years rather than being voted in by the Parliament for a single seven-year term; the term of a government in Office is reduced from five to four years; and the quorum for all parliamentary decisions will be one-third rather than two-thirds.

Amongst all the infighting of the past two years, which reached a peak in spring 2007, Turkey's reform agenda and constructive debate stalled. Turkey made very little progress in terms of satisfying the EU's political conditions and only four chapters of the *acquis* have been opened for negotiation (science and research, industrial policy, statistics, and financial control).

Perceived European double standards towards Turkey, resentment towards the U.S. for its Middle East policies and particularly the U.S.' unwillingness to take firm action against PKK bases in northern Iraq, increased emotional

reactions and spurred further nationalist sentiments. This atmosphere was not conducive to progress on cultural diversity; in this sense the positive transformation of Turkey lost momentum.

The fate of the quasi-autonomous Kurdish region in northern Iraq is seen as a threat to Turkey's territorial integrity and is a highly sensitive issue. In 2006 and 2007, this issue increasingly strained Turkey-U.S. relations, culminating in strong rhetoric and preparations for a military invasion into northern Iraq. From mid 2007 onwards, the AKP government was under pressure from the opposition to respond more aggressively to PKK activity in northern Iraq.

In October 2007, the Turkish military made preparations for cross-border military operations to target PKK bases, and the Parliament approved a motion authorizing a cross-border operation into northern Iraq (an operation was indeed carried out in early 2008).

The PKK/northern Iraq issue renders Turkey crisis-prone. The east of the country, in general, remains socio-economically underdeveloped with little debate about how to break the vicious cycle. As of November 2007, tensions were also rising between the DTP-associated parliamentarians and the nationalist camp as the (Kurdish) DTP was perceived to be associated with Kurdish separatism.

Increase in religious and ethnic tension:

Nationalism resurfaced in various forms in 2006 and 2007, ranging from hate crimes to popular publications reflecting radical interpretations of the threats Turkey faces. Hrant Dink, a Turkish journalist of Armenian origin was assassinated in January 2007. Afterwards, both solidarity for Dink and reactions to this solidarity were strongly expressed, depicting the polarized state of Turkish society. Shady relationships suspected between police and others related to the Dink murder has heightened the tension revolving around the case.

In October 2007 The Foreign Affairs Committee of the U.S. House of Representatives approved a resolution calling the massacre of Armenians in 1915 by Ottoman Turks "Genocide." The House resolution led to fierce verbal reactions from the Turkish public and politicians. Eventually the bill was not brought to the House floor for a vote due to the implicit threat of the Turkish government to retaliate by closing the Incirlik airbase to the U.S. This would have had a significantly negative impact on U.S. military operations in Iraq. The period was marked with high tension and in the end, with increased bitterness in Turkey towards America.

Around 99 percent of the population in Turkey define themselves as Muslim. Of these, around 80 percent are Sunni-Hanefi; the remaining 20 percent are composed of other Sunni groups such as the Şafii Sunni's and the Alevi's (figures of Alevi's range from 5 to 20 percent of the society). The statistics on religious groups vary widely. The Christian and Jewish communities largely make up the non-Muslim 1 percent of the population. Armenian Apostolic, Syrian Orthodox, and Greek Orthodox are the largest Christian groups. There are also Syrian and Armenian Catholics, and few Protestants. In total the Christians amount to around 150,000 persons. The size of the Jewish community is between 20.000 and 26.000, primarily Sephardic Jews.

The current government, though eager to move forward with religious freedoms for practicing Sunni Muslims, has made little progress in easing the restrictions faced by those of other religious beliefs (Though, a law passed in early 2008 partially eases restrictions on religious foundations).

Although the visit of Pope Benedict XVI to Turkey in November 2006 was marked by an atmosphere of reconciliation, there were demonstrations against non-Muslims on the eve of the visit.

Other expressions of intolerance to non-Muslims included the killing of a Catholic priest in Trabzon in February 2006 and the killing of three Protestants in April 2007 in the province of Malatya. The Malatya murder also spurred a debate about possible crony relationships between the prosecutor of the case and the perpetrators.

A new civilian constitutional draft has been prepared by a group of academics commissioned by the government. This would replace the current constitution, introduced after the 1980 coup, which hinders the enactment of some necessary reforms. The proposed new draft sparked heated debates throughout Fall 2007. Unlike former President Sezer, Gül is not likely to block government initiatives on issues such as public administration or higher education. Coupled with a new constitution, it can be expected that the government will be able to pass more far-reaching legislation in 2008 and beyond than in the past two years.

Despite 2007 having been marred by political confrontation, the fact that the society at large showed a clear preference for stability and the pursuit of the reform agenda over an interruption of the democratic process offered an optimistic dimension to the challenging times. Continued confrontation between the secularists and the AKP can be expected for the near term.

Main Report

National Democratic Governance

Turkey is a democratic, secular, and unitary republic. For the most part political groups and citizens do not challenge the democratic system of the country. However there are concerns in certain segments of the country that there is an Islamist secret agenda, aiming to use democracy to obtain power to change the regime. Another important issue with an impact on institutions of national governance in the country is the threat to territorial integrity posed by Kurdish separatism, likely emboldened by developments in northern Iraq.

The public administration system in Turkey is very centralized and not sufficiently efficient or effective. Though a public sector reform process has been initiated in the past few years, the president vetoed the framework law on public administration in 2004. As a result, central government powers have not been completely transferred to new bodies established at the local level to promote decentralization. It is argued that the constitution needs to change in order for such structural changes to be made, and a constitutional draft is indeed in preparation.

Areas that are deemed particularly weak in public administration in Turkey are inter-agency cooperation, policy formulation processes, implementation capacity, human resources, strategic planning and performance evaluation, and accountability. For regional disparities to be overcome, a system fostering regional policymaking may be necessary. Over the years, the debate on these issues has been distorted by an emphasis on the political implications of decentralization as opposed to practical dimensions.

The EU has been instrumental in bringing these issues to the fore with an emphasis on rationalizing the public administration system. EU technical assistance is being provided to develop administrative capacity. For example, since 2003, strategy development units are being established in public institutions, internal control and audit systems are being established and staffed, and training of civil servants is being carried out in several areas (such as public procurement, project management, evaluation capacity, and territorial organization).

The deficiencies of public administration are most starkly observed in southeastern Anatolia, which traditionally has a clan-based/ feudal social structure. This structure has posed a larger challenge for the central state in terms of the state's effectiveness. The situation has been aggravated by economic underdevelopment and the conflict concentrated in this region of the country for more than 15 years. Village guards, paid by the state to secure pockets of the southeast, further complicate the security and social structure of the region. It's estimated that more than 350,000³ internally displaced persons (IDPs) from the southeast were forced to flee their villages during the armed conflicts with the PKK, especially in the 1990s.

In November 2005 a bomb exploded in a bookstore in Şemdinli (located in the southeastern Hakkari province, on the border with Iran and Iraq) killing one man. The incident led to imprisonment of two gendarmerie officers (noncommissioned officers) for forming an illegal gang as well as to tense verbal clashes in the country regarding the security forces' role in orchestrating unrest. The indictment prepared by the Van Prosecutor, Ferhat Sarıkaya, had included serious accusations against senior officers of the military and an inquiry into his conduct was begun after the indictment was made public. The Supreme Board of Prosecutors' and Judges decided to disbar Sarıkaya for preparing a faulty indictment, setting-off fierce debate about judicial independence.

In 2006 and 2007, PKK driven incidents threatened the reform process and the climate in the country. The Kurdistan Freedom Falcons (TAK), and the right wing Turkish Revenge Brigade (TIT) are other organizations that have claimed civilian deaths in the past two years.

Torture by the state security forces is less widespread than the past and the methods have "softened." However, it still allegedly takes place. The recent increase in PKK terror has created reactions that made it harder (and politically less expedient) to argue on behalf of increased Kurdish rights.

Separation of powers in Turkey is characterized by relatively weak legislative oversight of the executive branch. The prime minister, who is traditionally the leader of the political party that forms the government, is hardly challenged due to the political party law which grants the party leader the ability to create the party list, thus breeding loyalty to the party leader rather than to constituents. (Please see the Electoral Process section for additional detail).

The judiciary and the president play an important role in providing checks and balances in the country. However the judiciary is also susceptible to too much control from the executive branch. The Minister of Justice heads the High Council of Judges and Prosecutors, which is staffed by Justice Ministry bureaucrats. The High Council of Judges and Public Prosecutors is the principal body charged with responsibility for accepting prosecutors and judges into the profession, as well as decisions for rotation, appointment and disciplinary penalties of judges and prosecutors. The High Council being headed by the Justice Minister prevents sufficient autonomy of the judiciary from the executive. The necessity for presidential approval of high courts has kept them from being pro-government (and caused tensions in the appointment of high court judges). However, now that the President and government are from the same party, this balance is shakier. The need for an overall National Reform Strategy for the Judiciary is often expressed, but not currently on the agenda.

President Sezer was particularly adamant about vetoing AKP legislation that he believed threatened the secular structure of the state. These moves at times blocked EU-related reforms and liberalization. If a law is sent back to the President a second time unchanged by the Parliament, the President is obliged to approve it. However President Sezer (who was formerly president of the Constitutional Court) in some cases also appealed to the Constitutional Court for examination of the 'Constitutionality' of laws the Parliament passed. The checks and balances that former President Sezer provided could be weakened with his replacement by Abdullah Gül. Coming from the inner circle of AKP, it is unlikely that Gül will fundamentally diverge from AKP's vision. The exact level of neutrality he will practice is yet to be seen.

MP Canan Aslan-Akman sums up the limited capacity of the legislative as follows: "As MPs, we are not working with expert staff; for example, we lack qualified advisors. We do not even have sufficient time to read draft bills on the agenda of the committees. The working conditions of the MPs are not satisfactory enough to be productive. There are also financial problems."⁴ The Parliament's bureaucracy is cumbersome and requires streamlining of paperwork.

The Parliament adopted a law establishing an Ombudsman in October 2006 (also called the Public Investigation Law) to allow Turkish citizens to monitor the public administration. However, the Constitutional Court suspended this law in November 2006 when then-President Sezer appealed to the Court for a ruling. (Sezer pointed out that the law would enable parliament to appoint the investigators of the ombudsman institution and also the institution itself would be affiliated with the leadership of the Parliament—both of which would result in conflicts of interest).⁵

The army continues to have political influence in Turkey although the official role of the military in political decisions decreased significantly with EU-related reforms introduced since 2000. The implementation of the legislative changes in this area (such as discontinuance of the appointment of military members to the Council of Higher Education, the Turkish Radio and Television Corporation and the State Security Courts, as well as increasing the number of civilian members of the National Security Council at the expense of military members to constitute a majority) have been smooth.

Though military supplies have been placed under the control of the Supreme Court of Accounts (Court of Auditors), implementation lags and there are significant items that are not audited. Though constitutional articles and laws have changed, the Law of the Supreme Court of Accounts was not modified accordingly. Parliamentary oversight of the security sector budget is carried out through the Parliamentary Planning and Budget Committee, but extra-budgetary funds and projects are not examined. Though considerable strides have been made in recent years, the EU Progress Report states that further progress regarding civilian oversight of military expenditures did not occur in 2007.⁶

In July 2006, former Commander-in-Chief of the Turkish Land Forces, General Yaşar Büyükanıt, became Chief of the General Staff. He took office in August 2006. Büyükanıt, who replaced General Hilmi Özkök, has been more outspoken than his predecessor about political affairs.⁷ His appointment coincided with an increase in clashes with the PKK as well as a political atmosphere in which the fear of increased Islamization of the country's secular regime is high on the agenda. General Büyükanıt has made pointed public addresses about the escalation of separatism and political Islam. On the evening of April 27, 2007, the Turkish General Staff (TGS) issued a strongly worded warning on its website (labeled by different analysts as an e-memorandum, e-ultimatum, or e-coup) that the country's secular system was at risk and stating that it would "openly display its position and attitudes when it becomes necessary."⁸ The EU has been critical of increased involvement of the armed forces in state affairs.

Civil servants have been faced with dramatic legislative change since 1999 considering the many reforms undertaken. Implementation according to the new frameworks has lagged behind and been inconsistent.

Civil servants are hired on the basis of examinations but patronage plays an important role.⁹ AKP has been criticized for gradually replacing civil servants with pro-AKP personnel. There have been claims that 95 percent of high level personnel having been replaced between 2002 and 2006.¹⁰ In March 2003 the parliament passed a law lowering the retirement age for civil servants from 65 to 61. This led to 4,000 spots freeing up in the civil servant sector and made it easier for the government to staff according to its preferences. The main opposition party, CHP, has published a report accusing AKP of partisan appointments.¹¹

The EU Progress Reports have consistently noted the weakness of regulation in public service. But certain improvements in 2007 were also noted, such as the amendment of the Public Financial Management and Control (PFMC) law and the circular on the implementation of the Regulatory Impact Assessment (RIA), both in April.¹²

The Ministry of Justice increased the budget for training and recruitment of civil servants in 2006 and 2007. Nevertheless, differing interpretations among judges of new laws can be observed, indicating inconsistent internalization of the mentality the new laws were meant to introduce.¹³ (Please see the Judiciary Section for additional detail).

The Law on Right to Access to Information came into force in April 2004 and gives citizens the right to information over all public institutions and their workings, except for state secrets, judicial investigation etc. The Freedom of Information Council began examining appeals in June 2004. "The law aims to provide a right to information to all citizens according to the principles of equality, impartiality and openness" (Akdeniz 2006)¹⁴ In terms of implementation, some Ministries have been more effective than others. In 2006, the law was amended to enable citizens to dispute any denial of information by state agencies. Transparency in public administration is said to have increased with these new measures.¹⁵

In terms of human rights abuses, Turkey made progress in recent years, such as training for judges, prosecutors and police on human rights, the establishment of rights-monitoring boards and a Parliamentary Human Rights Investigation Committee. However Human Rights organizations continue to point out violations and human rights defenders can still face prosecution.¹⁶ The Norwegian Helsinki Committee pointed out the need for a comprehensive Human Rights Plan of Action.¹⁷

Due to the conflict with the PKK in the southeast of the country for nearly two decades, many people were displaced as a security measure. A Damage Assessment Commission was formed based on the 2004 compensation law to deal with compensation issues for the internally displaced persons.¹⁸ The figures of the number of displaced people ranges widely, from 350.000 to over a million, the numbers are naturally not easy to verify. There is also a Return to the Village Project. However the capacity to process applications is low, compensation amounts are insufficient, and the people in the region are suspicious about fair treatment from the state institutions.¹⁹ Village guards and landmines are other important problems of southeastern Turkey.

Electoral Process

The Republic of Turkey is a parliamentary democracy. The 1982 Constitution stipulates that elections are to be held on the basis of free universal suffrage with direct, equal, and secret balloting. Ballots are to be sorted and counted publicly under the supervision of judicial authorities. The Supreme Electoral Council and the Council of the State (Danıştay) have jurisdiction over all electoral proceedings. Elections are in line overall with international standards.

Parliamentary elections

The votes of the Turkish people are represented in a unicameral parliament, the Turkish Grand National Assembly (Parliament). The 550 members of the Parliament are elected by a party list-proportional representation system (D'Hondt method). Members are elected for five-year terms. There are 85 electoral districts.

The Electoral Law of 1983 determines that only parties that reach at least ten percent of the national vote can be represented in the National Assembly. This has drawn criticism in terms of representativeness. The ten percent figure is deemed to be too high. The need to reduce the threshold to five or seven percent is often expressed because the higher threshold benefits larger parties and can lead to a significant representation deficiency. Independent candidates may run for a parliamentary seat (they need to obtain ten percent of the vote in the province from which they are running to obtain a parliamentary seat).

Parties must also be organized in at least half of the Turkish provinces and one-third of the districts of these provinces to qualify to run in elections. This factor, combined with the ten percent national threshold renders the system generally not conducive to the rise of new political formations or the representation of regionally concentrated parties in Parliament.

To constitute the government as a single-party government, a political party must win more than half the seats in the Assembly (276 seats). Coalition governments have proven less effective because of the difficulty of reaching consensus and furthering a unified agenda, as evidenced by the "lost decade" of the 1990s in which there was no election that resulted in a single-party government. There were ten separate governments formed throughout that decade.

On the other hand, single-party governments can result in a "tyranny of the majority" because of the extent of power the ruling party and especially the prime minister (normally the chairman of the party) holds. There is no reason to attempt to reach a consensus with opposition parties and opposition from within the same party is highly unlikely.²⁰

The Political Party Law of 1983 is seen to be an important obstacle to democratization of Turkey's political sphere. The law calls for a strict hierarchical structure in that, for example, the head of the Party decides who is to be put on the electoral list and in which order. Thus it is very unlikely that contrary voices against the leader would be voiced within the party.

The party leader and the leader's close circle mostly determine the candidates. MPs thus do not feel they need to represent their constituency as much as they need to please the party's leader in order to make it onto the candidate list at the next elections. Objections have been raised that this method prevents the development of democracy within the parties. To diminish the "Leader Domination"²¹ and increase inner-party democracy, a debate about making the preliminary election system mandatory has been on the agenda however no such steps have resulted.²²

Based on the Political Party Law, 18 parties were banned since 1983. Many regrouped under a different name to be able to continue to participate in politics. Although in January 2003 the grounds for closure of a political party were narrowed, a party can still be shut down if its program is deemed 'unconstitutional' – this wording can be interpreted in different ways and gives leeway for a party to be closed on claims that it challenges secularism or encourages separatism.

In addition, the OSCE has noted that the election process "could be further enhanced by adopting provisions for regulating campaign financing and by providing the possibility for appeals to decisions of the Supreme Board of Elections".²³

In the November 2002 elections only two of the 18 parties running passed the ten percent threshold; these were the AKP and the CHP. Together they held around 53 percent of the popular vote and as a result almost half of the voters were not represented in the Parliament. The AKP was thus able to obtain almost two-thirds of the Parliamentary seats.

The 2002 elections "demonstrated the vibrancy of Turkey's democracy. A large number of parties campaigned actively throughout the country offering the electorate a broad and varied choice. The sweeping victory of opposition parties showed the power of the Turkish electorate to institute governmental change".²⁴ A shortcoming of the electoral law that has been noted by the OSCE in 2002 is "the absence of any judicial appeals against the decisions of the Supreme Board of Elections, and the absence of procedures for voting abroad".²⁵

Throughout 2006, there were seven parties represented in parliament (due to MPs changing parties after the 2002 elections). As of December 2006, the Justice and Development Party (AKP) held 354 seats, while The Republican People's Party (CHP) held 152 seats. The Motherland Party (ANAP) held 21 seats, the True Path Party (DYP) four seats, and the People's Ascent Party (HYP), the Social Democratic People's Party (SHP) and the Youth Party (GP) each held one seat. In addition, there were nine seats occupied by independent candidates.

Parliamentary elections were held again on July 22, 2007 with 83 percent voter turnout. The elections were originally scheduled for November 2007, but early elections were called due to the crisis in electing the President.

A total of 14 parties and 699 independent candidates ran in the elections. The AKP received 46.6 percent of the votes and 341 of the 550 parliamentary seats. Two other parties also passed the ten percent threshold required for representation in Parliament. With 20.9 percent, the CHP obtained 112 seats. After the elections, 13 of these MPs split to rejoin the ranks of the Democratic Left Party (DSP). The nationalist MHP got 14.2 percent of the votes and 70 seats. A total of 27 independent candidates were elected. Twenty of these were from the Democratic Society Party (DTP), thus enabling the DTP to form the fourth parliamentary group. On September 5, the new government was officially endorsed by Parliament. Representation was significantly improved with these elections because three parties made it into Parliament and independent candidates ensured stronger representation of the Kurdish vote.

The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE) both assessed the election process to be "characterized by pluralism and a high level of public confidence underscored by the transparent, professional and efficient performance of the election administration."²⁶

Since election alliances are not legally possible, one party needs to be dissolved and 'absorbed' into another in order to pool votes. Alternatively, the members of a party can leave their own party and join the ranks of another. In the 2007 elections, DSP MPs joined CHP and the DSP did not run as a party in the elections – theoretically increasing the support for the CHP. The DYP and the ANAP made an effort to unite into a single center-right party, but their failure to reach an agreement was a blow to the credibility of both parties.

Politically the main loser of the elections was the CHP. Though the party increased their share of votes by 1.4 percent over the last elections, the fact that the DSP had joined the ranks of the CHP specifically for the elections and, thereby assuming some of the votes were from traditional DSP voters, it is likely that the CHP actually lost support. Despite the CHP's claim to represent the main principles of the Republic and positioning themselves as the only safeguard against the rise of political Islam, this was considered a political defeat. Though there were calls for the resignation of the CHP leader, Deniz Baykal, he was able to ignore those demands due to the overall political party system in force.

The AKP succeeded in increasing its votes across the whole of the country, including areas traditionally controlled by the CHP (such as the Aegean) and districts in the eastern part of the country that ordinarily would vote for DTP (or its predecessor Kurdish parties) Some attributed this support to a public reaction against the military's effort to prevent this outcome and the opposition's somewhat questionable tactics to prevent Gül's presidency.

Another representation deficiency involves women although a significant leap in their representation took place with the recent elections. In the previous parliament, 4.4 percent of MPs were women; currently this figure is 9.1 percent. The fact that a headscarf cannot be worn by MPs in Parliament is claimed by some to be an impediment

to the representation of conservative women. However, ultimately the participation and direct representation of women is not only a deficiency of conservative parties; none of the mainstream parties over the years have broken the cycle of under-representation of women as candidates.

One area where progress was made in 2006 was towards the representation of young people. Over the half the population is less than 30 years of age. Approximately 12 percent (6,253,000) of the population is between 25 and 29 years old.²⁷ Thus it is a significant development that on October 11, 2006, the age of running for parliament was reduced to 25. This new rule will only be applicable in the next parliamentary elections. It was not applicable for the July 2007 elections because one year had not passed since it was adopted.

Presidential elections

According to the Turkish system (until changes made in 2007) presidential elections are held every seven years. The president is elected by the Parliament with a two-thirds majority and can only serve for one term²⁸. The post of the president involves some very critical powers – such as approval of the Chief of the General Staff, appointment of seven members and the President of the Council of Higher Education and the top figures of the judiciary. In particular with regard to the judiciary, the president appoints the members of the Constitutional Court, one-fourth of the members of the Council of State (Danıştay), the Deputy Chief Public Prosecutor and the Chief Public Prosecutor of the High Court of Appeals (Yargıtay), the members of the Court of Military Appeals, the members of the Higher Council of Judges and Prosecutors and the members of the High Military Administrative Court. Thus the President is perceived as a significant element in providing checks and balances, especially when a single-party government is in power.

Ahmet Necdet Sezer was elected in 2000 as the tenth President of Turkey. Sezer's name was put forward after the political parties could not reach an agreement after two rounds of voting in parliament. Sezer's election was seen as a consensus among various political powers. He was then President of the Constitutional Court and would take a decisive stand for the main principles of the republic. Sezer's term ended in May 2007.

Though holding the parliamentary majority has always been sufficient to elect a president, the AKP was faced with arguments that it was illegitimate that they put forth a candidate from their ranks for the 2007 Presidential election. The reason for the contentious position was largely because at the time the AKP represented 34 percent of the vote, yet held a disproportionately higher number of seats in parliament due to technicalities in the electoral system. The president, seen as the main pillar of secularism, should, according to this approach represent a broader segment of society and is "everyone's president". Had a candidate been proposed whose wife did not wear a headscarf or who did not himself have a history of being involved in political Islam, the opposition would not have been as alarmed. The AKP's candidate announced a day before the Presidential election was Deputy Prime Minister and Foreign Minister Abdullah Gül.

On April 27 the first round of voting was held in the Parliament. A debate about whether a two-thirds quorum was needed for the vote for the President to be validated had been raised. The opposition parties chose not to attend the voting session. On the same day, the Turkish General Staff (TGS) issued a strongly worded warning about secularism being under threat. This statement was seen as military interference in the electoral process.

Abdullah Gül failed to obtain the required majority in the first and second rounds of voting.

The Constitutional Court, in a decision criticized as being politically motivated, ruled by a majority of seven to four that a quorum of two-thirds (367 deputies) was necessary for the first and second rounds of the presidential elections in Parliament to be valid. The voting process was thus invalid. This decision was seen as being partial because such a ruling had not been made in similar situations in the past. Gül withdrew his candidacy.

Subsequently, the parliamentary elections were moved back from November 2007 to July 2007 and with its strengthened mandate, the AKP was able to elect Gül as President on August 28, 2007 with 339 votes (448 MPs had joined the session to vote).

A Constitutional amendment was approved in a referendum on October 21 to prevent questions of legitimacy and potential deadlock in the future by changing the system of presidential election. The next president will be elected by popular vote for a renewable term of five years. Additionally, the term of a government is reduced from five to four years and the quorum for all parliamentary decisions is set as one-third.

Civil Society

The political culture of Turkey has a statist nature. Due to ideological clashes, especially in the 1970s, skepticism about civil society heightened and this outlook was reflected in the restrictive 1982 Constitution. Nevertheless many NGOs functioned with relative ease over the years.

Especially since the mid-1990s, Turkey has witnessed a significant increase in the number and strength of NGOs. The EU integration process has had a significant impact on multiple fronts, including funding opportunities, capacity/skills, and the reduction of legislative restrictions, as well as increased influence on in decision-making spheres.

Today there are approximately 80,000 registered associations, several hundred unions and chambers of commerce and over 4200 foundations.²⁹

In order to comply with the Copenhagen Criteria, Turkey has made a substantial amount of progress since 2002 with regard to the legal environment in which Turkish civil society functions. The European Commission mentioned the shortcomings in the Associations Law, the Foundations Law, the Civic Code, the Turkish Penal Code and the Law of Assembly and Demonstrations in its Progress Reports for Turkey from 1999 onwards.

A new Law on Associations has been in force since November 2004; a new law on Foundations was approved by the Turkish Parliament in November 2006, but was vetoed by then-President Sezer and has not been brought back to the floor since (a new Foundations law was passed in early 2008 after this report was prepared).

The process of drawing up the new Law on Associations was a relatively inclusive one, led by the Department of Associations, which was formed in 2003 under the Ministry of Interior.

The new laws bring a number of improvements to the legislation regarding NGO's. The Law of Associations contains the following features:

- Associations are no longer required to obtain prior authorization for foreign funding, partnerships or activities.
- Associations are no longer required to inform local government officials of the day/time/location of general assembly meetings and no longer required to invite a government official/commissary to general assembly meetings.
- Audit officials must give 24-hours' prior notice and just cause for random audits.
- NGOs are permitted to open representative offices for federations and confederations internationally.
- Security forces are no longer allowed on premises of associations without a court order.
- Specific provisions and restrictions for student associations have been entirely removed.
- Children under the age of 15 can form associations.
- Internal audit standards (within the association) have been increased to ensure accountability of members and management.
- NGOs will be able to form temporary platforms/initiatives to pursue common objectives.
- Government funding for up to 50 percent of NGO projects will be possible.
- NGOs will be allowed to buy and sell necessary immovable assets.³⁰

The implementation of the new law is monitored by branch offices of the Department of Associations set up in the provinces. However, how effective the monitoring will be is not clear.³¹

The EU Progress Report states that despite these developments, "the requirement to notify the authorities in case of receipt of finances from abroad results in difficulties and cumbersome procedures for NGOs"³². Furthermore, it is still cumbersome for foreign associations to establish offices in Turkey.

The Law on Foundations was vetoed by President Sezer and did not come into force but would have brought the following positive changes:

- Moving from prior approval toward prior notification;
- Increasing the rights of the executive board in operational and economic decisions of the foundation;
- Expanding tax benefits of certain forms of donations to foundations;
- Easing the ability of foundations to cooperate with foreign counterparts, and allowing foreigners to establish foundations and to be board members of Turkish foundations.³³

President Sezer returned nine provisions of the draft to parliament; his objections primarily related to articles covering minority foundations. The President claimed that there were contradictions with the constitution. In the meantime, the European Court for Human Rights (ECHR) ruled in favor of a minority foundation.³⁴

Legislation not directly referring to civil society also has an important role in the freedom of NGOs. One such example is Article 301 of the Turkish Penal Code (elaborated in more detail in the Freedom of Press section).

According to the 2006 Progress Report of the European Commission, "the recent reform environment has led to positive developments. Civil Society organizations have become relatively more vocal and better organized, especially since the adoption of the new Law on Associations"³⁵.

Through projects, the EU has contributed to increased NGO capacity in Turkey especially in the development of projects, fundraising, and public relations.³⁶ A flipside to increased EU project funding is that NGOs tend to mobilize themselves according to available funds rather than according to needs of society; furthermore, competition between NGOs for grants has at times reached destructive levels. The increasing links between Turkish NGOs and European counterparts, though, has had important benefits.

The notion of corporate social responsibility is becoming more popular in the country and benefiting civil society.³⁷

Taxes are a continuing financial burden for NGOs. If a foundation or association receives 'public benefit' status (by decision of the Council of Ministers), they can be exempt from paying tax. How to qualify for public benefit status is not clearly spelled out and may be a political decision.

Governments have a tendency to favor like-minded civil society groups while giving lip service to the notion that NGOs across the board should be included in policy affairs. Moreover, that NGOs should be able to function freely irrespective of their political positions is not internalized in the political culture.

The current government also involves NGOs selectively. A small circle around the prime minister is largely able to decide which NGOs will be genuinely included in the decision-making processes. The process of involving NGOs in formulating policy has been encouraged by the methods advocated by the EU. In many cases, though, NGOs complain that the process is not working as envisioned. There are exceptions to this claim, as well, one example being NGOs being included in the efforts to combat violence against women (which is largely a result of insistent and effective work by women's NGOs).

Women: Through effective campaigns, NGO's which work on women's rights have been able to have a say in the measures taken against domestic violence in recent years. The new Penal Code enacted in 2004 lifted the discrimination enshrined in law. The process of drafting and discussing this law was quite participatory and the responsive approach of the members of parliament was a positive indication in terms of democratization.

The women's NGOs also played an important part in the process leading up to an August 2006 prime minister directive outlining steps to be taken to overcome the implementation problems of the 1998 Family Protection Law.

Though significant progress has been made in the legislative sphere towards the rights of women in Turkey since 2001, the patriarchal culture prevails. Moreover, without persistent pressure from the NGOs, much tends to remain on paper; the monitoring of implementation of laws but the state is insufficient.

The empowerment of women in an economic sense is lagging behind. Effective, comprehensive policies to remedy this situation have not yet been devised.³⁸

Labor rights: Freedom of Association for workers and employers is guaranteed although shortcomings still exist. Turkey does not fully comply with international standards according to ETUC (the European Trade Union Confederation) and ILO (International Labor Organization). Turkey maintains its reservations regarding the articles in the European Social Charter that deal with the right to organize and the right to bargain collectively.

Religious freedoms: The rights of the non-Muslim minorities in Turkey is defined by the Lausanne Treaty (1923) signed between the Allied of World War 1 and the Turkish Grand National Assembly. There are approximately 150,000 Christians and 25,000 Jews in Turkey (Please see the Background section for additional detail)

As noted by the EU, "freedom of worship continues to be generally guaranteed" in Turkey.³⁹ Limited progress was made in 2007. Pope Benedict's visit in November 2006 brought the issue of religious freedom into the spotlight. An overarching problem is that Turkish authorities often claim that the country's religious minorities do not have problems. In this sense, the circular on "freedom of religion of non-Muslim Turkish citizens" issued by the Ministry of Interior in June 2007 is a step forward, as is the dialogue initiated between government and non-Muslim communities.

There are still some outstanding issues:

Intolerance and crimes against non-Muslims: The killing of three Protestants in Malatya in April 2007 and the killing of a Catholic priest in Trabzon in February 2006 are examples of hate crimes and intolerance against religious minorities.

In November 2006, a criminal trial was brought against two Turkish Christians accused of "insulting Turkishness" (article 301), inciting hatred against religion (article 216), and secretly compiling files on private citizens without their permission (article 135). The court case is ongoing.

Administrative documents: Since November 2006, citizens can decide whether to provide information about religion in official registries. Although on ID cards the section on religion can be left blank, this can also lead to discriminatory practices.

Property rights: Since the 1970s properties possessed by minority religious institutions between 1936 and 1974 were confiscated, mostly without compensation of their real value, as a protection of national interests. The basis for these confiscations was the Charitable Foundation Law of 1967 that stated race- or religion-based foundations would not be recognized as "charitable." Only property owned before 1936 was exempted; and in 1971, the Turkish Supreme Court confirmed that minorities no longer had the right to acquire new properties.

The Foundation Law that wasn't enacted would have required that properties confiscated from religious foundations be returned. However in cases where these properties had been sold to third parties, there were questions as to how implementation of the law would be handled (As noted above, in 2008, a law that offered remedies for a number of these concerns was passed). In December 2006, the ECHR ruled that Turkey violated the rights of a Greek school, Fener Rum Erkek Lisesi, regarding its property and should either return the property or provide financial compensation.

Status and places of worship: Religious minorities' institutions are registered as foundations or associations. The Greek Orthodox Patriarchate is seen as a religious institution without a legal personality and the Patriarch cannot use the title "Ecumenical" according to Turkish law.

Several Protestant churches have gained 'association' status (four gained this status in 2006, and one in 2005), but not as religious communities per se. There are more than 20 legal cases in Turkish courts for the recognition of Protestant places of worship that were blocked for various reasons.⁴⁰ The Diyarbakır Protestant Church and the Jehovah's Witnesses applied to courts to enable the establishment of their associations and both were decided positively.

On a de facto basis, Turkish authorities tolerate the functioning of monasteries without the necessary legal status however legal guarantees are necessary to overcome the sense of vulnerability that prevails.

Religious communities cannot run their own theological training establishment; they must “bring personnel from abroad under ad hoc arrangements”.⁴¹ The Greek Orthodox Patriarchate wants the Greek Orthodox seminary on the island of Heybeliada (Halki) which was closed in 1971 to be reopened. In 1971, the Armenian seminary was also closed.

The Alevi community (followers of a belief system that incorporates aspects of both Shi’a and Sunni Islam and draws on the traditions of other religions found in Anatolia)⁴² is not perceived to be represented by the Directorate of Religious Affairs (Diyanet). The Alevi institutions do not receive funding from the State and face challenges in establishing their places of worship (called Cemevi).

Religion classes in schools do not objectively reflect the religious pluralism that actually exists in Turkey today.

Conservatives contend that it’s a violation of religious freedom to prevent women wearing a headscarf from attending universities, working as civil servants or members of parliament.

Across the political and social spectrum, it is widespread to perceive rights according to one’s own prism and convictions.⁴³ The culture of pluralism and tolerance for differences is weak.

Independent Media

The first broadcasting channel in Turkey was the Turkish Radio and Television Cooperation (TRT), established in 1964. Until 1990 private broadcasting was prohibited by law, which guaranteed TRT a safe monopoly for 26 years. The first private channel, STAR 1, started its broadcasting via satellite from Germany on May 1, 1990. Illegal commercial television broadcasting emerged in Turkey, operating without license, until the ban was lifted in August 1993 by an amendment to article 133 of the Constitution.⁴⁴ Presently, in addition to TRT, there are some 24 national, 16 regional and 215 local television broadcasters. The first radio broadcasting began in 1927. Currently there are more than 1000 radio stations broadcasting: 36 are national, 108 regional and 944 are local radio stations⁴⁵. The first newspaper of the Turkish republic was Cumhuriyet named by Mustafa Kemal Atatürk himself in 1924. Today, there are approximately 40 national, 23 regional and more than 2000 local newspapers.⁴⁶

Freedom of Expression:

There are four main legal sources concerning freedom of expression: The Constitution, the Turkish Penal Code, the Press Law and the Anti-Terror Law. Articles 28 through 32 of the Constitution pertain to the general legal framework. Article 28 guarantees the freedom of the press but likewise restricts it: Publications endangering the integrity or security of the state, concerning state secrets or publications with the intention to encourage rebellion or other offenses are prohibited.⁴⁷

The Turkish Penal Code contains the list of offenses that are prohibited by law and the sentences associated with these offenses. This also includes sentences foreseen for offenses committed through the media (such as encouraging suicide, violating the private sphere, etc.)

On June 1, 2005 the new Turkish Penal Code came into force. The new penal code constituted an improvement compared to the previous Penal Code. The media described the penal code reform as a “revolution” and praised its “European standard”. However, only a few months later, the problematic aspects were realized. A particularly worrisome article from the perspective of the media was Article 301, as described below:

- “A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punished by imprisonment ranging between six months and three years.
- A person who publicly denigrates the Government of the Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be punished by imprisonment ranging between six months and two years.
- In cases where denigration of Turkishness is committed by a Turkish citizen in another country, the punishment shall be increased by one-third.
- Expressions of thought intended to criticize shall not constitute a crime”.⁴⁸

The EU has repeatedly requested amendment or abolishment of this article and though the government has promised to do so, no action has been taken to date. Reporters Without Borders stated that between June 2005 and January 2007 at least 65 people, including many journalists and writers, have been prosecuted under article 301 of the new criminal code.⁴⁹

Other articles of the new Penal Code which are not drawn up narrowly enough, such as 215 (on praising a crime or criminal), 216 (on inciting enmity within the society or humiliating the society), 217 (on provoking the society to not abide by the law), 288 (on influencing a trial) and 299 (on insulting the president), articles pertaining to protection of public order (213-222) have also led to prosecutions for expressing non-violent opinions.⁵⁰ Criminalization of the denigration of the Turkish flag or anything carrying its replica and the national anthem (Article 300), the alienation of the people from the army (Article 318), acts against the fundamental national interest

(305) and obscenity (Article 226) also provide problematic grounds for the restriction of freedom of expression according to Amnesty International.⁵¹

The Turkish Penal Code is the 'basic law' whereas the Anti-Terror law is 'specific' to cases within its defined scope (which independent observers note is too wide-ranging). Moreover, the new Anti-Terror Law (the TMK) passed on June 29, 2006⁵², can be seen as complementary to the Penal Code and restricts news media in new ways.

The new law was seen as a step backwards in terms of freedom of the media. Article 4 of the law contains "crimes committed with the intention of terror" and refers to 47 offenses listed in diverse articles of the Penal Code. "Denigrating elements of state sovereignty" and "making the Turkish people less enthusiastic about military service" are also described as crimes.⁵³ Compared to the former version, the list of offenses has been expanded. Moreover the law prohibits publishing declarations of terrorist movements and increases the security forces' authority while narrowing the rights of arrested journalists. The Press Council stated that the Anti-Terror Law would lead to self-censorship and that journalists would feel they could not report properly about terrorism or terrorist movements for fear of being arrested.⁵⁴

The government has claimed the problem is the implementation by judges and not in the laws themselves. The Ministry of Justice has issued circulars to standardize implementation, however with limited success.

The Press Law determines freedom of the printed press. The present law (passed on June 26, 2004)⁵⁵ is an improvement to its former version that was over 50 years old. The old press law was adopted in 1950 and had been amended numerous times. One of the most important improvements in the new law is that prison sentences were replaced with fines. However the law spurred an intense debate prior to implementation, with claims that it narrowed the maneuvering space of journalists too much. In particular, Articles 18 and 19 were criticized: Article 18 (Failure to Publish Reply and Correction) states that if an editor does not follow a judge's instruction to publish a reply or correction he/she can be charged with a fine ranging from 10,000 to 150,000 YTL (ranging from approximately 7,100 to 106,700 U.S. dollars). Article 19 (Compromising the Judicial Process) states that the media cannot comment on an ongoing lawsuit. The fine for publishing anything about the concerned prosecutor, judge, court or case documents ranges between 2,000 and 50,000 YTL (ranging from approximately 1,420 to 35,550 U.S. dollars).

Another issue is the contradictory articles in these various laws. For example, the Press Law holds that in case of violations, the authors are solely responsible. But, the Penal Code and the Anti-Terror Law hold that managing editors may also be fined for publishing such articles.⁵⁶

In November 2006, the BIA (Bağımsız İletişim Ağı – Independent Communication Network) Media Observation Desk published a report for July, August and September 2006 and stated that in just those three months, 163 journalists had been tried.⁵⁷ In contrast, during the first three months of 2006, 84 journalists were tried.⁵⁸

According to the 2006 report of the International Helsinki Federation for Human Rights, violations of human rights included the imprisonment of journalists.⁵⁹ The Turkish Human Rights Association claimed in a statement on September 22, 2006 that, within only three months after the new anti-terror legislation came into force, 85 people were taken into custody.⁶⁰

According to Reporters Without Borders, throughout 2007, "many Kurdish media outlets were shut down, sometimes more than once, mainly for supposed "terrorist propaganda" and most often the newspapers *Gündem* and *Güncel*.⁶¹

Some of the most publicized cases of 2006 and 2007 were the following:

Armenian-Turkish journalist, Hrant Dink, was convicted in October 2005 under Article 301 of the Turkish Penal Code for "insulting Turkey's national identity." The charges were based on what he wrote about the Turkish government's refusal to take responsibility for the massacre of Armenians. He was sentenced to a six-month (suspended) prison term. Though many people have been tried under this law, he was the only one convicted, although his prison service was suspended. Dink was assassinated in January 2007. The trial against the perpetrator as well as 18 people suspected of being involved is ongoing.

The court case against Nobel Prize-winning novelist Orhan Pamuk, was dropped in January 2006, with the court claiming incompetence (lack of authorization of the court). He had been accused of "insulting Turkishness" when he told a Swiss-German newspaper in February 2005 that "30,000 Kurds and one million Armenians were killed on Turkish territories."

In September 2006, an Istanbul court acquitted Turkish novelist, Elif Safak, who was on trial for charges of "insulting/denigrating Turkishness" (Article 301 of the Penal Code) citing "non-existence of legal criminal elements" or, lack of evidence, as ground for its decision. Safak had faced charges for comments made by characters in one of her novels on the Armenian genocide. This case was being monitored closely by the EU and was high on the agenda in Turkey.

In November 2006, an Istanbul court acquitted a 92-year-old expert in Sumerian culture. The woman, Muazzez İlmiye Çığ, had been charged with insulting Muslim women and inciting religious hatred. Çığ was prosecuted over a book in which she linked the wearing of headscarves with ancient Sumerian sexual rites.

On May 9, 2004 *Cumhuriyet* national daily newspaper published a caricature by Musa Kart, portraying Prime Minister Erdoğan as a cat entangled in a ball of wool. In March 2005, Erdoğan sued the newspaper based on Article 301 (denigrating the government) and the court ruled to fine the caricaturist. In April 2006, the High Court

of Appeals (Yargıtay) overruled the decision. There were too other cases in the past two years of cartoonists being taken to court by the Prime Minister. Based on cartoons they published in November 2007, judicial proceedings have been initiated against two cartoonists of the daily Cumhuriyet for cartoons published in November 2007 depicting the president.

The "Perihan Mağden case" is a showpiece for the restrictive interpretation of the Turkish Penal Code. In December 2005, the *Aktuel* magazine published a commentary by journalist Perihan Mağden. Mağden commented on the case of Mehmet Tarhan, a young man who refused military service out of reasons of conscience. Mağden stated that refusing military service out of reason of conscience is a human right. Mağden was sued under Article 318 of the Penal Code. She was not only confronted with judiciary consequences, but with accusations of being a PKK partisan.⁶² However, on July 27, 2006, the court decided in favor of Mağden.

Publication of the weekly magazine *Nokta* was stopped at the decision of its owner in April 2007, after publishing investigative articles on the military led to the offices of *Nokta* being searched and documents being copied in a police raid ordered by a military prosecutor. Following the magazine's closure, the editor, Alper Görmüş was charged with insult and libel (under Articles 267 and 125 of the Turkish Penal Code), and journalist Ahmet Şık and defense expert journalist Lale Sariibrahimoğlu were indicted under Article 301 for "insulting the armed forces."⁶³

With the August 2004 reform of the Press Law, new regulations for the Radio and Television Supreme Council (RTUK) came into force. In order to diminish military influence, the right of the National Security Council to nominate one board member was removed. After several amendments, by June 2005 it was decided that the political parties may appoint board members, proportional to the number of seats they hold in parliament.⁶⁴

In 2004, a regulation was passed allowing limited TV and radio broadcasting in languages other than Turkish that are used by Turkish citizens. However, the limitations severely restricted the practical value of this new programming (only 45 minutes a day for TV broadcasts with a maximum of four hours a week; and, 60 minutes a day for radio broadcasts with a maximum of five hours per week). The time restrictions do not apply for music or cinematographic work. There is a requirement for subtitles or simultaneous translation, though, which makes live broadcasting difficult. There are currently four local radio and TV stations broadcasting in Kurdish.

Gün TV, a Kurdish broadcasting channel located in Diyarbakir, filed a complaint in March 2004 about the restrictions to broadcasting in minority languages in articles 4, 5 and 6, concerning time limitations, Turkish subtitles, translation, and strict administrative provisions. On January 31, 2006 the court rejected the case. An appeal was made against the court's decision; the conclusion is still pending.⁶⁵

The Public Turkish Radio and Television Corporation (TRT) broadcasts in five languages other than Turkish, including two Kurdish dialects and Circassian. However, these are limited to 30-35 minutes daily and five times a week.

The funding of TRT is another issue raised in debates concerning freedom of the media. Seventy percent of TRT funding comes from a tax levied on electricity bills and sales tax, twenty percent originates from government grants, and ten percent is received through advertising. The relatively high share from government grants limits TRT independence. The 2005 report, *Television across Europe*, recommended that the Turkish government "reinstates TRT's autonomy to ensure independence from the Government in financial, administrative and editorial matters."⁶⁶

The media landscape:

Media is largely a privately owned industry in Turkey. Large conglomerates with interests in other sectors (such as construction, automotives, energy, tourism, insurance...) own a majority of Turkish media organizations. Because conglomerates with media outlets can also be in competition for public tenders and/or operate using legal loopholes (which is likely given the bureaucratic complexity) they might be prone to try to remain on good terms with the politicians. On the other hand, the politicians are also vulnerable to the media given the power of a few media groups to spin political issues. Thus, symbiotic relationships come about; characterized by self-censorship and "trading positive coverage for political favors".⁶⁷

The major multi-media companies are Doğan Group (the largest), Merkez Group, Çukurova Group, İhlas Group, Doğu Group, and Feza Group. The distribution of print media is dominated by two companies: Yay-sat (owned by Doğan Group) and MDP (owned by Merkez Group).⁶⁸ As Aydın Doğan, the chairman of the most powerful media company, the Doğan Group, stated in 2002, this company alone controls "some 80 percent of distribution and over 40 percent of the media advertising revenues."⁶⁹

A characterization of the nature of reporting in Turkey made by former Turkey correspondent of *Le Monde* is as follows: "The concentration of media outlets in a few hands is a threat to the diversity of political views. This means that the journalists have very little room to maneuver. Lack of diversity also affects the quality of media products. There is little premium on good, accurate reporting. While some columnists are vastly overpaid, ordinary journalists are often paid very badly. Names, data and statistics are often not properly sourced. Newspapers seem to operate under the belief that people want ready-made opinions, rather than develop their own opinions based on the facts. The ratio of columns and opinion articles compared to ordinary news articles seems to be much higher in Turkey than in the western press in general."⁷⁰

Turkish law allows foreign investors limited access to the Turkish media market: Foreign investors may only own up to 25 percent of a TV channel, newspaper, magazine etc. In March 2005, then-President Sezer vetoed a

law that would have lifted the 25 percent limitation and allowed foreign investors to own 100 percent. While the Turkish media evaluated the veto positively, but there were also some dissenting voices that felt more foreign ownership would benefit Turkey's economy and increase Turkish competitiveness in the global media market.⁷¹

The number of newspaper readers in Turkey is considered low, while average time spent watching television is very high; Internet usage is low but rising (over 20 percent).⁷²

Local Democratic Governance

There are 81 administrative provinces in Turkey. Provinces are administratively divided into districts. There are no regional administrative bodies, but regions exist based on geographical boundaries.

Since its inception, the Turkish state has been very centralized. Moreover, because the central administration is not effectively integrated with local entities, service provision and developmental planning can be characterized as being weak. Coordination between state agencies is not always adequate nor is there enough meaningful local input factored into the decision-making process in Ankara. The debate about decentralization of public administration is perceived to be controversial and politically charged.

There are 3,225 municipalities in Turkey (16 are metropolitan municipalities).⁷³ As of March 2004, there were 20 parties that ran in the local elections. The AKP won 1,750 (54.81 percent) of the municipalities, and the CHP took 467 (14.63 percent). Unhampered by the ten percent threshold associated with parliamentary elections, municipal elections represented more accurately the diverse range of political perspectives across Turkey: the Nationalist Action Party (MHP) won 247 (7.74 percent) of the municipalities, the True Path Party (DYP) took 388 (12.15 percent), the Motherland Party (ANAP) captured 100 (3.13 percent),⁷⁴ and independent candidates won 52 municipalities.⁷⁵ Today there are 56 mayors from the Kurdish Democratic Society Party (DTP), having switched back to the DTP-umbrella after elections. The AKP controls 12 of the 16 metropolitan municipalities.⁷⁶

The AKP government came to power pledging to enforce the principle of subsidiarity, more effectively empowering local administrations. The envisioned changes have only been partially realized.

A new municipality law and a metropolitan municipality law were passed in 2003. A new law on 'special provincial administrations' was passed in 2005. The special provincial administrations are field administrations that complement the municipalities' mandates by providing services at the local level (such as health, childcare, elderly care, environmental protection, sports, agriculture, industry, and so on). They also carry out tasks in the regions beyond municipal boundaries, but within their respective provinces. The new laws were meant to be segments of a more comprehensive restructuring of local administration. However, because the Framework Law on Public Administration was deemed unconstitutional in 2003 by then-President Sezer, the devolution of power to local administrations halted.

The Municipality Law made the establishment of city councils compulsory, but a regulation to establish city councils was not adopted until October 2006. In February 2007, employment principles for municipalities were adopted and in June 2007 principles for personnel recruitment for special provincial administrations were adopted.

There are stark divisions in Turkey between the big cities and the underdeveloped regions, not only in terms of economic development, but also politically and culturally. The gap between the east/southeast of Anatolia and the rest of the country is particularly wide. The tribal/feudal system that characterizes the east and southeast of Anatolia still exists in many areas. This interrupts the establishment of the rule of law, effective delivery of state services and policies and tends to disenfranchise the region from participation in national democratic practices. The conflict between the PKK and the Turkish armed forces for more than 15 years was very detrimental to the economic development of southeastern Anatolia. Despite the PKK cease-fire of 1999, there is still massive unemployment in the region. The recent upsurge in PKK terror in 2006 and 2007 has once again shaken investor confidence in the region.

The EU expects Turkey to produce "operational programs" that concretely outline how goals will be met, the budget to be allocated, and the monitoring mechanisms to be utilized. In line with the NUTS (The Nomenclature of Territorial Units) classification system of the EU, 26 regions have been created (NUTS2 level) for statistical and planning purposes (in 2002). The establishment of Regional Development Agencies (RDAs) for each of these regions began in 2006.⁷⁷ This is a positive step towards shifting the way of thinking about regional development, from top-down to bottom-up – however RDAs risk functioning as little more than regional offices of the State Planning Organization. Though civil society and business representatives will be represented on a 100-person board of RDA' of certain provinces, their input is not binding. Moreover, the fact that only members of the civil service may be employed by the RDAs is likely to lead them to reflect a bureaucratic mindset.

In general, the participatory nature of local administrations is not uniform within the country. There are vast differences based on locality and the personalities of the individuals with authority. A system ensuring a participatory character to local administrations or a method to assess participation in decision-making does not exist. Additionally, the culture of meaningful inclusion of civic participation in decision-making mechanisms has not fully developed.

Judicial Framework and Independence

Independence of the judiciary is guaranteed in the law. The Constitutional Court, the High Court of Appeals, the Council of State, the Supreme Military Court of Appeals, the Supreme Military Administrative Court of Appeals and the Court of Jurisdictional Conflicts are regarded as “the Higher Courts” in the Constitution. The existence of a parallel system for the military (Military Court of Appeals and Military Administrative Court) is seen to be problematic by especially European commentators.

There are a number of factors that undermine judiciary independence. Judges and public prosecutors are attached administratively to the Ministry of Justice. The High Council of Judges and Prosecutors does not have its own secretariat, premises or budget and people who work there are attached to the Ministry of Justice. The Minister of Justice and his undersecretary are voting members of the High Council. The High Council is thus not autonomous. Moreover, the staff of the Ministry of Justice, part of the state administration, carries out the ground works for judges’ promotions, appointments, rotations, disciplinary actions, and so on. Political parties are able to staff the judiciary with a view to furthering their own political views or interests.

Additionally, the president, having the right to appoint some members of the higher courts, further reduces the autonomy of the judiciary from the executive, in theory. Because former President Sezer was sensitive to perceived challenges to Republican values and suspicious of the government (the largest chunk of the executive), during his term in office, he provided (at least circumstantially) a type of checks and balances-function.

There is also the need to further empower bar associations (representing the ‘defense dimension’ of justice). The main opposition party CHP argues, for example, that the Ministry of Justice should not have tutelage over Bar Associations and that the Turkish Bar Association should have the right to open a court case in the Constitutional Court.⁷⁸

In October 2006, the Association of Judges and Prosecutors (YARSAV) filed an application to limit the role of the Ministry of Justice in the process of selecting candidates for judges and prosecutors. The Council of State introduced measures to reduce political influence however these were not deemed sufficient...⁷⁹ As of late 2007, YARSAV was under pressure from the government according to their statements, facing a threat of being shut down.

Though important strides have been taken towards a more effective and productive justice system, there is still the need for a National Reform Strategy to consolidate and integrate the changes. New laws for the restructuring of the judiciary have been passed⁸⁰ and the infrastructure problems have been addressed with the construction of new buildings for judiciary services.⁸¹ In addition, the prison system and its infrastructure have been strengthened with the introduction of 16 new prisons and 2 new personnel education centers in the period since 2003. Currently there are 434 prisons and 68,152 inmates in the country. Personnel are still insufficient with 9,124 positions unoccupied.⁸² A new forensic medicine center meeting international standards opened in June 2006.

Courts are overburdened and trials are often not finalized in a reasonable time. Though the numbers of judges and prosecutors increased in 2006 and 2007,⁸³ the overall budget of the judiciary increased, and new courthouses are being built, there is need for more courts, judges and prosecutors to reach European standards of work.⁸⁴

The standardization of the formulation of laws is not complete. Some laws are written in ways that can be interpreted differently by different judges, leading to arbitrary practice. In some cases this has prevented legislative reform from being enacted.

The National Judicial Network Project, involving computerization and e-transformation, “continued to progress and became operational in more courts and prisons;”⁸⁵ at the same time it increased productivity in the judiciary.

According to the 2006 law, Amending the Law on the Establishment and Legal Procedures of Military Courts, military courts will not be able to try civilians in peacetime, except for if they commit military crimes jointly with military personnel.

A few high profile events brought the judiciary into the spotlight in the last few years.

In January 2006, Mehmet Ali Ağca, the perpetrator in the assassination attempt on late Pope John II, completed his term in jail in Italy and was released. When he returned to Turkey, Ağca was immediately sent to prison for the 1979 murder of Abdi İpekçi, a prominent Turkish journalist. He was released by court order with the argument that his years served in prison in Italy counted toward his sentence for the İpekçi murder. However, the High Court of Appeals overruled Ağca’s release after the Justice Minister Cemil Çiçek appealed for the re-evaluation of the decision. Ağca, who had meanwhile gone into hiding, was captured and sent back to prison to serve four more years. The case was widely viewed to have been dealt with incompetently; the media played an important role in bringing the case into public view.

In May 2006, an armed attack on Turkey’s Council of State (Danıştay), left senior judge Mustafa Yücel Özbilgin dead and Judges Mustafa Birden, Ayfer Özdemir, Ayla Gönenç, and Ahmet Çobanoğlu, wounded. The suspected perpetrator, Alparslan Arslan, an attorney, was captured before he could leave the court building. Prosecutors accused Arslan of “attempting to destroy the constitutional order”. The Constitutional Court, the High Court of Appeals and the Council of State issued a joint statement condemning the attack and members of the judiciary visited Atatürk’s mausoleum in protest of the incident. The incident sparked a renewed debate on the secular principles of the country. The suspected perpetrator in the attack, Alparslan Arslan, stood his first trial before a criminal

court in Ankara in August 2006. Speculation as to whether the perpetrator was a pawn of the Islamists, nationalists, or other groups dominated the agenda.

Public Prosecutor Ferhat Sarıkaya from the Van province in eastern Anatolia issued an indictment regarding a bomb attack carried out in November 2005 in the town of Şemdinli. The indictment accused non-commissioned officers (sergeants) Ali Kaya and Özcan İldeniz, and PKK-informant Veysel Ateş of suspected involvement in the attack. Following this, then-Chief of Land Forces, General Yaşar Büyükanıt, made a positive statement about Ali Kaya, after which Sarıkaya indicted Büyükanıt for “seeking to influence the judiciary and forming a criminal gang.” The Şemdinli indictment was sent to the military prosecutor’s office where the General Staff saw no need in opening an investigation of Büyükanıt. Investigators from the Ministry of Justice asked for disciplinary action against public prosecutor Sarıkaya. In April 2006, the High Council of Judges and Prosecutors (HSYK) disbarred Public Prosecutor Ferhat Sarıkaya. In June 2006, the Van Criminal Court sentenced non-commissioned officers Ali Kaya and Özcan İldeniz to 39 years of imprisonment each for “homicide, forming a criminal gang and attempted homicide”. Further investigations were blocked and an official was removed from his post upon expressing willingness to talk about the involvement of high-ranking officials in the bombing.⁸⁶ This sequence of incidents also ignited accusations, by all actors alike, of the capture of the judiciary by certain focalpoints of power.

In addition, some major cases (followed closely by the public) have been dropped due to expiration of the statute of limitations. This has led to increased criticism of the slowness of the legal process.⁸⁷

The Susurluk Case⁸⁸ is one example of the slow unfolding of court decisions regarding high-level cases that have led to decreased public confidence in justice being served. The trial of one of the defendants in the Susurluk case (also known as the ‘missing weapons case’) was dismissed in 2001 due to expiration of the statute of limitations. The sentences of others convicted in this case were reduced for health reasons (İbrahim Şahin), new laws which were retrospectively applied (Korkut Eken and İbrahim Şahin), or postponed due to the unlikelihood that another crime would be committed (Sedat Bucak).

The investigation of the ultra-right extremist group “Ergenekon” began in Summer 2007 – uncovering a gang of shady relationships including individuals in the state, mafia, academia, as well as hitmen. It is suspected that the group has been instrumental in provoking chaos by orchestrating some of the grave crimes that heightened tension between the different camps of the country. The investigation is ongoing.⁸⁹

Confidence in the rule of law has been shaken by presumptions of crony relationships, politization and corruption in the judiciary system.

Corruption

Corruption has been a significant problem in Turkey over the years. The AKP’s election victory was perceived as a reaction to politicians of the 1990s whose involvement in political favors and corruption cases were high on the public agenda.

But, the AKP’s credibility has been challenged by corruption cases within its own ranks and not delivering on the initiatives it began or promised (such as lifting immunity for MPs and ministers) The AKP has been unable to pass an anticorruption law (the draft of which was discussed in the Justice Commission of the Parliament as early as June 2004) or implement the anticorruption measures prepared by the OECD Anti-Corruption Division. Corruption has been a topic on which opinion leaders have widely criticized the government. The 2005 report of the Group of States against Corruption (GRECO), which Turkey joined in 2004, stated that, “The implementation of the strategies is the exclusive responsibility of the Government. In this connection a broader implementation/monitoring mechanism, including input from the civil society would be useful, not least for raising overall awareness of the on-going reforms.”⁹⁰

The economic program established after the 2001 financial crisis by then-Minister of the Economy, Kemal Derviş, was an important step in disengaging politics from the management of the economy.

The AKP has for the most part pursued this program, although some provisions were changed.⁹¹

In terms of pledges, Turkish politicians have been vocal about fighting corruption and have recently signed on to new international commitments in this regard. “The UN Convention on the Fight against Corruption was adopted by Parliament and entered into force in May 2006.”⁹² During the last few years, Turkey has signed the GRECO Convention, the UN Convention against Corruption, as well as the European Convention on the Fight against Corruption.

The EU Progress report of 2006 notes “some progress” in the fight against corruption in Turkey, while the 2007 report states that there was “limited progress.” Both reports indicate that corruption is widespread. In addition, there is no anti-corruption strategy or central body with the mandate to develop and evaluate anti-corruption policies.⁹³

Along the same lines, Transparency International, in its report covering June 2005 to June 2006, states the following “Turkey may be deemed to have sufficient legal tools to fight against corruption, yet it is in need of central and independent authority to combat claims, therefore, it should be asserted that instead of enacting another

legislation, drafting work should be focused on such authority. Several commissions established under different institutions from time to time are not a sufficient measure in the fight against corruption as there are no coordination efforts and uniformity in the main terms and procedural rules in such commissions."⁹⁴

In the 2006 International Bribery Index of Transparency International, Turkey was listed among the countries with the most serious bribery problems (China, Russia and India). Turkey is a signatory to the Anti-bribery Convention created by the OECD; however the country "appears to be making little headway in implementing the provisions of the convention".⁹⁵

Especially in 2006 corruption was high on the public agenda.⁹⁶ Public tenders by municipalities and other bodies of local administration were in the forefront. In some cases the government took swift action, forcing resignations of persons involved (such as in Muş municipality and in the Sinop provincial organization), but in other cases it didn't act.

In some cases, the AKP punished efforts to uncover corruption within its own party. When Hatay parliamentarian Fuat Geçen accused his party of corruption in state tendering, the AKP's Disciplinary Board dismissed him in June 2006.⁹⁷ Afyon parliamentarian Mahmut Koçak was also called before the Disciplinary Board because he claimed there was corruption in the party. Just a few weeks after his colleague Geçen was expelled, Koçak received the same decision from the board.

Due to the law granting immunity to members of parliament, ministers, the Prime Minister, and the President, these cases are not pursued unless the Prime Minister decides to pursue them. Permission is required from the superiors of public officials to open investigations against them. As of February 2006, there were 21 corruption claims filed against AKP MPs that will not be pursued due to immunity. Among the people named in these cases are the Interior Minister, the Foreign Minister, the Finance Minister, The Agriculture Minister, and the AKP General Secretary.⁹⁸

In less than six months, the CHP filed three censure motions against the Minister of Finance, Kemal Unakitan,⁹⁹ "accusing him of abuse of power in a tender and illegally disclosing the assets of others, corrupting the privatization tender for Galataport, violating the rules that governed trade and banking secrets, committing slander, and abusing the authority provided by his public office."¹⁰⁰ The third motion was submitted on March 3, 2006, but all motions were rejected in parliament. In regard to the accusations, Galataport's privatization was cancelled on February 2, 2006 by the Supreme Administrative Court based on allegations that Minister Unakitan conducted private negotiations with the Ofer family regarding the tender.

Corruption allegations seem to be more likely to be cracked down on if there is also a political motivation involved. Though allegations of corruption against the multi-billionaire tycoon Cem Uzan were based on evidence, the timing converged with his political aspirations as head of the Youth Party. The family business, Uzan-Group, was subject to major corruption allegations and in 2003 the members of the Uzan family were found guilty of having siphoned off the equivalent of 6 billion U.S. dollars from Imar Bank.¹⁰¹

In 2004 Mustafa Sarıgül, Şişli mayor from the CHP—known as the most serious rival and critic of the CHP Chairman, Deniz Baykal, was charged with corruption in an attempt by Baykal to eliminate his rival.

The main argument against lifting the immunity of MPs is that they would be constantly bombarded with corruption allegations by the opposition and therefore not be able to carry out their duties as expected.

With regard to public procurement principles, the 2006 Progress Report of the European Commission stated "no progress".¹⁰² "The Public Procurement Law, which was adopted in January 2002 and came into effect in January 2003, still includes discriminatory elements for foreign bidders," and various other laws contradict principles that are called for by the EU, such as the Law Establishing the Regional Development Agencies, which "exempts any acquisition of goods and services of the agencies from the scope of the Public Procurement Law."¹⁰³ With new laws being introduced on a sectoral basis, which are exempt from the Procurement Law (Law No. 4734), the Law's scope has narrowed, leading to a less solid policy. The bureaucracy involved in public procurement is complicated and limits competitiveness. Complaints about procedures submitted to the Public Procurement Board have increased and are not dealt with in a fashion in line with the EU *acquis*. According to the Progress Report, "compared to the previous year, the number of complaints increased by 47 Percent."¹⁰⁴ The implementation of the Public Procurement Law is weak, "the PPA (the Public Procurement Authority) is not in a position to ensure consistent policy in all areas related to public procurement, nor does it effectively steer the implementation of the procurement legislation."¹⁰⁵ The current law is said to be inefficient and a new law has been drafted and adopted by the Public Works, Housing, Transportation and Tourism Commission of the parliament.¹⁰⁶ However the draft currently under consideration is said to be even more problematic because it will exclude a number of cases (such as when tenders are less than a specific financial value) and shorten the period of time for advance announcement of tenders.

The Law on Public Financial Management and Control, amended in December 2005, was enforced from the beginning of 2006. The 2006 EU Progress Report stated that the amendments introduced "both positive and negative" elements; the law "is not implemented properly, in particular as regards internal audit and performance measures."¹⁰⁷ One of the criticisms is that the law doesn't cover some public institutions (such as the newly established Regional Development Agencies).¹⁰⁸

The Public Investigation Law, also known as the 'Ombudsman Law', came into effect in October 2006. The Law established an institution, affiliated with the Office of the Chairman of the Parliament (TBMM Başkanlığı) and

with its own budget, to address complaints about the administration. The institution is charged with reporting on the efficiency of the administration and making recommendations accordingly. The law's constitutionality has been challenged and is awaiting a decision from the Constitutional Court. (Please see the National Governance section for additional detail.)

The AKP government prepared a draft 'Political Ethics Reform Package' in 2006. This draft entails the establishment of a Political Ethics Commission in parliament, monitoring the deputies with a view to transparency. One planned provision is that deputies will no longer be allowed to accept gifts without prior permission of the Commission.¹⁰⁹ The package also includes more control regarding the financing of political parties, amendments to strengthen the battle against corruption, and amendments on the disclosure of assets of politicians.¹¹⁰

The Anti-Corruption Update 2005/2006 stated that there are "valid concerns regarding the operation and efficiency of the Political Ethics Commission."¹¹¹ These concerns are mainly based on the fact that the members of the Commission would themselves be parliamentarians, reflecting the proportional membership in parliament of each political party. In other words, the ruling party would have the majority in the Commission and could favor their colleagues. Another criticized aspect of the planned Commission is that it would work confidentially, thus not providing the needed transparency. The Anti-Corruption Update also mentioned "even though the Parliamentarians are prohibited from dealings with public biddings and privatization, their spouses and children are not, hence, still leaving a door for illegal wrongdoings in such transactions."¹¹²

The Law on the Establishment of the Public Servants' Ethics Board (Kamu Görevlileri Etik Kurulu) was passed in 2004. The EU Progress Report of 2007 states that "the Ethical Board of Civil Servants (Kamu Görevlileri Etik Kurulu) is still dependent on the Prime Minister's Office with no separate budget or personnel of its own."¹¹³ Its duty is to monitor personnel working in Public Service – excluding elected representatives (which are covered by the Political Ethics Commission described above), academics, judiciary or military personnel. The monitoring reaches from controlling presents, which public servants receive, to the control of property. However it is not operating efficiently due to lack of human and financial resources. One concern is that the ethical principles of the Board are not defined by law, but by secondary regulations. This could give free rein for changes in those regulations, which would harm the legitimacy of the Board.¹¹⁴

The Public Service and Administration Framework Assessment of June 2005 stated, "Ethical standards need to be clearly translated into law."¹¹⁵ Furthermore the assessment also mentioned the lack of human resources: "More resources should be allocated to the Public Servants' Ethics Board, and a wider dissemination of its responsibilities should be undertaken."¹¹⁶ The Board consists of 11 investigators appointed by the Council of Ministers for a four-year term and has no executive powers. The EU Progress Report of 2007 stated, "The Ethical Board of Civil Servants [referring to the Public Servants' Ethics Board] is still dependent on the Prime Ministry with no separate budget or personnel of its own."¹¹⁷

The 2005 EU Progress Report on Turkey described a lack of cooperation and coordination between the anti-corruption bodies and the public administration and government.¹¹⁸ The task of "policy definition and coordination with international organizations" rests with the Ministerial Committee for Enhancing Transparency and Improving Good Governance; The Prime Ministry Inspection Board is responsible for providing technical and administrative support to the Committee.¹¹⁹

The 2007 EU Progress Report sums up the situation as follows: "There was no progress on the development of an anti-corruption strategy. The establishment of a central body to develop and evaluate anti-corruption policies and activities remains crucial. Institutions involved in the fight against corruption, such as inspection boards, have not been strengthened. No public body is in charge of collecting data and statistics on corruption."¹²⁰

The financing of political parties is a highly debated issue.¹²¹ In accordance with the reform of ethics in politics, the government prepared a draft law bringing changes to party financing. The draft includes the establishment of an "election account," from which all spending and donations would be handled and a restriction on the spending permitted during election campaigns. Accordingly, MPs and mayors would only be allowed to spend 500 Kuruş (approximately 35 U.S. cents) on each registered elector in his or her electoral district.¹²²

Endnotes

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