

# *Judicial reforms in Turkey*

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Turkey launched a comprehensive reform process aimed at the promotion and protection of human rights. Since 2001, a series of legal reforms have been realized with a view to strengthening democracy, promoting respect for human rights and fundamental freedoms, consolidating rule of law and independence of the judiciary.

The Turkish Parliament passed a comprehensive package of constitutional amendments on 3 October 2001. Prepared in line with the provisions of the European Convention on Human Rights, the constitutional amendments strengthen the exercise of freedom of thought and conscience, the prevention of torture and inhuman treatment, the freedom and the security of the individual, the freedom of association, the right to a fair trial, inviolability of domicile, the freedom of communication and gender equality. The amendments contain provisions also on the strengthening of civilian authority. These amendments represent an important step forward in the fulfillment of Turkey's short and mid-term commitments concerning human rights and fundamental freedoms in the context of the National Program for adoption of the Acquit of the Europe Union.

The Constitutional amendments also abolish the death penalty except in times of war and imminent threat of war, and for crimes of terrorism.

The New Civil Code has been adopted by the Parliament and came into force on 1 January 2002. It embodies provisions which further develop gender equality, the right to association and peaceful assembly, and the rights of the child.

At the beginning of the 1990s, Turkey had derogated from the implementation of Article 5 of the European Convention on Human Rights, which, , regulates detention periods in accordance with Article 15 of the Convention. Pursuant to the recent constitutional amendments, full compliance of Turkish legislation with the ECHR has been achieved. Consequently, the aforementioned derogation was withdrawn on 29 January 2002.

On 6 February 2002, enabling legislation was adopted by the Turkish Parliament, with a view to implementing the constitutional amendments. In this context, by a number of changes in the Turkish Penal Code, the Anti-Terror Law, the Code on Criminal Procedures and the Act on the Establishment and Procedures of State Security Courts, the scope of freedom of thought and expression have been broadened, the pre-trial detention periods have been reduced in line with the Council of Europe standards. The amendments also make it compulsory in all cases that the detainee see his or her lawyer immediately, except in crimes regulated within the context of the Code on State Security Courts, and that the detainee's next of kin or somebody chosen by him or her be immediately notified.

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The Parliament passed the second package of legal amendments on 26 March 2002 in order to harmonize national legislation with the Constitution and the new Civil Code. According to the amendments, compensation for torture and other cruel, inhuman or degrading treatment paid by the relevant State institution in compliance with the judgments of the European Court of Human Rights shall be reimbursed from the responsible officials. With the amendment in Political Parties Act, instead of closure of political parties, the Constitutional Court may deprive political parties of State aid, in part or in full, subject to the gravity of the acts in question. Furthermore, the freedom of association and the right to organize meetings and demonstrations were expanded. Last but not least, the article on publishing banned languages of the Press Act was repealed.



On 15 May 2002, the Parliament adopted a new law, mainly amending the Law No. 3984 on “the Establishment and Broadcasting of Radio Stations and Television Channels”. The new law contains provisions liberalizing transmission and retransmission rules, introducing further transparency to the media ownership, preventing monopolization and ensuring professionalism in the composition of Supreme Council of Radio and Television (RTÜK).

On 3 August 2002, the Parliament adopted a landmark legislation in line with the European human rights standards. With this legislation, death penalty was abolished in the Turkish legal system except in times of war and imminent threat of war. Through amendments to related laws, broadcasting in and learning of different languages and dialects traditionally used by the Turkish citizens will be possible. The amendments also made retrial possible for civil and criminal law cases, in light of the decisions of the European Court of Human Rights. With the new legislation, the foundations of religious minorities in Turkey will be able to possess property. Moreover, Turkish Penal Code, Law on Associations, Law on Meetings and Demonstrations, Press Act, Law on Duties and Competences of the Police, Law on Free Trade Zones and related decree on foundations were also amended.

On 18 September 2002, By-Law on Apprehension, Detention and Interrogation was amended in accordance with the constitutional and other legal changes. It is now stipulated as a rule that the doctor and the person accused or detained shall be alone during the medical examination and the police officer shall not be present during examination without the explicit request of the doctor or the patient. This kind of requests have to be documented. Moreover, the principles on apprehension, detention and interrogation set by the amended laws are reiterated in the Regulation.

The state of emergency was lifted throughout Turkey as of 30 November 2002.

In December 2002, the Parliament adopted a set of amendments to the Constitution. The amendments basically removes the clause that those convicted for ideological activities could not be elected to the Parliament.

On 2 January 2003, the Parliament adopted another harmonization package. The package includes several amendments to various laws ensuring that detention conditions are brought in full alignment with the European norms and fight against torture is rendered more effective. Several articles of the Law on Associations and Turkish Civil Code are amended to extend the scope of freedom of association. Criminal Procedural Law and

other related laws are revised to provide more effective functioning of the judiciary. Press Law is amended in the light of the jurisprudence of the European Court of Human Rights. Law on Political Parties is reviewed to ensure alignment with the previous Constitutional amendments; particularly the articles on disbanding political parties. Law on the Elections of the Members of the Parliament and Law on Elections of Local Administrations, District Headmen and Board of Elders are also reviewed accordingly. The right to petition is regulated pursuant to the European norms. The Law on Foundations is revised with a view to further facilitating the acquisition of real estate by non-Muslim religious foundations. Law on Judicial Records is reviewed to further enhance the protection of children and the reinstatement of the rights of the convict.



On 23 January 2003, the Parliament adopted the fifth harmonization package. This package contains provisions on re-trial for civil and criminal law cases in light of the decisions of the European Court of Human Rights. The Code on Criminal Procedure and the Code on Civil Procedure are amended accordingly to enable re-trial in case of the finalized decisions of the European Court of Human Rights on the date of entry into force of the Law (Law on the fifth harmonization package) and also in case of the applications to be made to the European Court of Human Rights after the entry into force of the said Law. Applications for re-trial will be filed with the First Instance Courts upon the application of the convicted or his/her lawyer.

Furthermore, the fifth package includes some amendments concerning the Law on Associations. These amendments envisage heavy fines instead of three to six months of imprisonment for offenses regarding certain articles of the Law.

On 19 June 2003, the Parliament adopted the sixth harmonization package. With the amendment to the Anti-Terror Law, use of force or violence becomes the prerequisite in the definition of the crime of terror. Article 8 of the said law is repealed to expand freedom of thought and expression. According to the amendments to the Law the Establishment and Broadcasting of Radio Stations and Television Channels, both private and public radio and television stations can make broadcasts in languages and dialects

used traditionally by Turkish citizens in their daily lives. Restrictions and sanctions on broadcasting during election period are tightened. With the amendments to the Law on Cinema, Video and Music Works, restrictions in relation to monitoring are decreased and the decision of the judge along with the decision of the administration becomes necessary as a legal safeguard. The representative of the Secretariat General for the National Security Council is no longer a member of the Board of Supervision. The application period allowed for non-Muslim religious foundations to acquire real estate currently in their possession is prolonged. Related articles of the Law on Construction are rewritten to take into consideration the needs for places of worship by different religions and faiths. The amendment made to the Law on the Census removes the condition that children may not be given names that are not appropriate to the “national culture” and “customs and traditions”. The death penalty except in times of war and imminent threat of war are completely removed in Turkish legislation. The Turkish Penal Code amended to impose heavier sanctions for the honor killings of children and the article which allows for the reduction of sentences in cases known as honor killings is repealed. Provisions of the Code of Criminal Procedure on the rights of the arrested or detained, are also applied to cases under the jurisdiction of the State Security Courts. Provisions that make re-trial possible in the light of the decisions of the European Court of Human Rights or administrative law cases are introduced.

Institutional reforms have been initiated with a view to furthering protection of human rights. In this framework a Human Rights Department affiliated to the Prime Minister has been set up; the Human Rights High Council has been provided with a legal status and a Human Rights Consultative Board as well as Provincial Human Rights Councils have been established. The latter is entrusted with investigating complaints of human rights violations, abuses and mistreatment at local level with the participation of local National Government Organizations.

Human Rights education has been intensified with a view to further enhancing implementation. Compulsory courses on human rights have been included in curricula of police schools and police academies as well as in the training programs for civil service trainees. Bilateral programs with several countries are being implemented for the training of judges and prosecutors while several joint projects with the Council of Europe and EU providing human rights education to security forces, judges, lawyers and human rights trainers are underway.

Comprehensive work is being conducted to bring prisons in Turkey in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners and Council of Europe’s Prison Rules. Within this process, recommendations of the European Committee for the Prevention of Torture regarding the F-type prisons are also taken into consideration.

Turkey continues to take steps towards becoming a party to principal international human rights instruments. On 4 June 2003, the Parliament approved “International Covenant on Civil and Political Rights” and “International Covenant on Economic, Social and Cultural Rights”. The ratification process will be completed soon. With the ratification of these two instruments, Turkey will become party to all of the six principal international human rights treaties (The other four are Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child,

Convention on the Elimination of All Forms of Discrimination Against Women and the International Convention on the Elimination of All forms of Racial Discrimination.)

Following the abolition of the death penalty except in times of war and imminent threat of war, on 26 June 2003, the Parliament ratified Protocol No.6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty.

In conclusion Turkey has made extensive progress toward the deepening of its democracy and the protection of civil and political liberties in past two decades . Although further amendments are necessary to make the constitutional framework more democratic, amendments can not alone fill the existing gaps in the constitutional contract. First amending the constitution too frequently will undermine respect for the constitution and constitutionalism and will undermine the rule of law. Second, particularly where civil liberties and rights are concerned, gaps in the constitutional contract will only become evident as a result of the implementation of constitutional principles and state policies. In



this regard, the judiciary has to play an important role in deepening democracy and protecting and expanding rights. In both consolidated democracies and new democracies courts have played an important role in protecting and expanding rights. Like many other European countries, the Turkish judicial structure is based on the continental European civil law model where the law and politics are seen as separate arenas. In most democratic countries, the past several decades have witnessed the lowering of the wall separating the two arenas. This has been particularly true of the higher courts, where both the judges and politicians have gradually come to realize that courts play political functions and like all other institutions in a democracy

they have to be accountable and responsive to the demos and have to embrace pluralism. In contrast to this general democratic model, Turkey's judicial system, even at its upper levels, is almost completely self-generating and separated from the political arena. Turkish judges and public prosecutors enter the judicial service shortly after finishing their formal legal education and then are promoted through the judicial ranks based on evaluations by the Supreme Council of Judges and Public Prosecutors. Even at the Constitutional Court, where the court has a political role, the majority of the justices are appointed by the indirectly elected President of the Republic based on nominations from among their own members by the plenary sessions of the other high courts. This level of insulation produces a judicial structure that is ideologically homogeneous, politically and socially isolated, is generally distrustful of politicians and political institutions.