İŞLETME EKONOMİ VE YÖNETİM ARAŞTIRMALARI DERGİSİ
THE JOURNAL OF BUSINESS, ECONOMICS AND MANAGEMENT RESEARCH
Yıl: 2023 | Sayı: 1 / 132 - 156

Derleme | Review

Gönderilme Tarihi: 16 Ağustos 2022; Revize Edilmiş Hali: 14 Aralık 2022; Kabul Tarihi: 23 Aralık 2022

LAW REFORM IN PUBLIC ADMINISTRATION WITHIN THE FRAMEWORK OF THE RULE OF LAW AND INTERNATIONAL LAW: THE CASE OF TURKEY

Ahmet EFE[1]

Sinan YAZICI[2]

ABSTRACT

The rule of Law is one of the critical concepts that guarantee the existence of a state. This concept becomes even more critical, especially in the mechanisms of the state that are directly related to the public, such as public administrations. Although the idea of the rule of Law is ontologically vital for the countries, it is essential to correctly determine the elements that constitute the Rule of Law in public administration and the internal and external factors. In addition, the relationship between public administration reforms and justice reforms, the effects of the Rule of Law, or how to increase and better integrate the rule of law dimensions in public administration reforms may constantly come up.

In this research, the effect of supranational institutions such as the United Nations and the European Union, which are external factors, on establishing the Rule of Law in public administrations is examined through the example of Turkey. The study claims that supranational institutions such as the UN and the EU have essential effects on establishing law. After the beginning of the 2000s, when the EU membership process started to be especially effective, reports on Turkey produced by both the UN and EU institutions were discussed. Problems, the relations between them, and the reforms made in Turkey are examined, and the adequacy of the reforms made in Turkey in ensuring the Rule of Law is discussed. Even though events such as terrorist incidents and coup attempts have caused severe disruptions in practices in Turkey, it has been concluded that the public administration and legal reforms made significant contributions to the Rule of Law.

Keywords: public administration, the Rule of Law, International Law, international conventions

HUKUKUN ÜSTÜNLÜĞÜ VE ULUSLARARASI HUKUK ÇERÇEVESİNDE KAMU YÖNETİMİNDE HUKUK REFORMU: TÜRKİYE ÖRNEĞİ

Öz

Hukukun üstünlüğü, bir devletin varlığını güvence altına alan kritik kavramlardan biridir. Özellikle kamu idareleri gibi devletin doğrudan halkla ilgili olan mekanizmalarında bu kavram daha da kritik hale gelmektedir. Hukukun üstünlüğü fikri ülkeler için ontolojik olarak hayati olmakla birlikte, kamu yönetiminde Hukukun Üstünlüğünü oluşturan unsurlar ile iç ve dış faktörlerin doğru tespit edilmesi esastır. Ayrıca, kamu yönetimi reformları ile adalet reformları arasındaki ilişki, hukukun üstünlüğünün etkileri veya kamu yönetimi reformlarında hukukun üstünlüğü boyutlarının nasıl artırılacağı ve daha iyi entegre edileceği sürekli olarak gündeme gelmektedir.

Bu araştırmada dış etkenlerden olan Birleşmiş Milletler ve Avrupa Birliği gibi ulus üstü kurumların kamu idarelerinde hukukun üstünlüğünün tesis edilmesindeki etkileri Türkiye örneği üzerinden incelenmektedir. Çalışma, BM ve AB gibi ulus üstü kurumların hukukun tesis edilmesinde önemli etkileri olduğunu savındadır. Özellikle AB üyelik sürecinin etkili olmaya başladığı 2000'li yılların başından sonra hem BM hem de AB kurumları tarafından hazırlanan Türkiye raporları incelenerek Türkiye'de yaşanan sorunlar, aralarındaki ilişkiler ve yapılan reformlar incelenmekte, Türkiye'de yapılan reformların Hukuk Devleti'nin sağlanmasındaki yeterliliği tartışılmaktadır. Terör olayları, darbe girişimleri gibi olaylar Türkiye'deki

[1] Dr., Denetçi, Uluslararası Kızılhaç ve Kızılay Federasyonu, icsiacag@gmail.com, 0000-0002-2691-7517
[2] Doç. Dr. Bayburt Üniversitesi, sinanyazici@bayburt.edu.tr,0000-0001-9121-4677

uygulamalarda ciddi aksamalara yol açmış olsa da kamu yönetimi ve hukuk reformlarının hukukun üstünlüğüne önemli katkılar sağladığı sonucuna varılmıştır.

Anahtar Kelimeler: kamu yönetimi, hukukun üstünlüğü, uluslararası hukuk, uluslararası sözleşmeler

INTRODUCTION

In our globalizing world, countries interact with each other and with international and supranational institutions such as the UN and EU at political, economic, and social levels. These interactions cause governments to reform legal, political, and administrative fields. This process functions as a mechanism for limiting states and framing them with Law, leading to greater acceptance of concepts such as the Rule of Law and human rights. These developments are bringing countries and public administration structures closer to each other. The rule of Law is expressed as the state where the Law is dominant. Although the concept of the rule of Law has historically been accepted to exist in the pre-capitalist period (Özlem, 2000 and Fukuyama, 2011), it is theoretically based on the social contract theory (Göze, 2009), which has its foundations in political thought with capitalism. It can be stated that it was discarded. This theory states that the individual has natural rights such as freedom, property, and resistance to oppression in the pre-state period. The state was created with the common will of individuals to protect these natural rights.

When the social contract theory and liberalism, which is the fundamental ideology of classical liberal political philosophy with Locke, are examined, it is understood that it has two different aspects that are incompatible (Aktan, 1995). One of them is legal-political liberalism, and the other is economic liberalism. In the first aspect of liberalism, the individual is the leading actor in the contract that establishes the state. The individual's natural rights that he has not voluntarily transferred, and the state he created intending to protect them, is seen as an instrumental mechanism that protects the rights and interests of the individual. In an environment where competition occurs, the individual whose labor is utilized to the maximum extent in production activity and who is made a market element in consumption activity is instrumental in this position. It has been pushed into two different and opposite positions in this respect.

It is possible to conclude that the contradictions of liberalism over the individual's natural rights are based on the crises experienced by the Capitalist Modern World System, which is the state's main competition area (Wallerstein, 2004). It is possible to state that the state, an area of public interest (Hegel, 1991), has entered into competition with other states to ensure its continuity and has undergone technical and social transformations to overcome them.

The developments obtained as a result of the struggles of the trade unions that emerged as a reaction to the unfavorable working conditions of the workers in the industry during the industrialization period in the 19th century brought social and economic rights to people. Thus, the idea of not intervening in the economic life of the classical liberal state, with the effect of the 1929 Crisis and the Second World War, resulted in the state's intervention in economic life in favor of individuals until the 1970s. In this

context, the State of Law and the social state were complementary elements. The idea of the social state led to its place as an essential concept in political science literature.

However, the Oil Crisis in the 1970s turned into a crisis of the Capitalist System. The participation of countries that experienced tremendous economic and political disasters in the Second World War and the USA and the USSR and the South Korea, and other Far East countries in the global competition impacted the crisis of capitalism (Yazıcı, 2018). In this period, when neo-liberal economic policies such as the restriction of the influence of the state on economic life, the reduction of social state practices, and the return of the state to its regulatory position in the liberal period, the role of states was redefined, especially in socio-economic areas (Guzelsari, 2004).

Considering the demands for public administration reform, which emerged with the necessity of the crisis experienced by capitalism, it is emphasized that an efficient, effective, practical, and accountable management approach should be adopted in the management of the public sector, as in the private sector, following the principles of the market (Moe, 1984; Olson et al., 1998). ; Harr and Godfrey, 1991; Milgrom and Roberts, 1992; Pusey, 1991). In other words, it aims to reform the public administration field within the framework of the idea that the public sector needs institutional renewal (Barzelay and Armajani, 1992; Osborne and Gaebler, 1993; Jones and Thompson, 1999). The reforms also included upper bounds in public spending, tax breaks, sales of public assets, private procurement of many services previously provided by the government, improvement of performance measurement, budgeting based on output and results, and business type accounting (Guthrie et al., 1999). In this context, reforms were envisaged by a smaller, less intrusive, and more decentralized state mechanism.

Towards UN Security, Human Rights, and Human Rights The UN Freedom Report seeks to help translate these doctrines into policy, reaffirming the importance of human rights, development, and security as the three main goals of the UN. It is seen that supranational and international institutions establish the Rule of Law in their political, legal, and administrative structures. In parallel, supranational institutions such as the European Union (EU) and OECD also assist in making legal and constitutional amendments for policy-making within the framework of the Rule of Law. Adopting the principles in these primary documents and fulfilling their institutional requirements is crucial.

In Turkey, since 1987, studies have been carried out in the direction of the 1982 Constitution, the re-establishment of the Rule of Law, and the development of human rights. With a new constitutional amendment in 2004, Turkey accepted the priority of international human rights instruments over statutes to harmonize the national legal system with international norms. Subsequently, constitutional amendments were made to prepare the institutional and legal requirements for the progress towards the Presidential system[3]. The amendments amended to some extent the provisions of the Turkish Constitution that conflict with the European Convention on Human Rights (ECHR). These changes

[3]Temizel H., " *Public Administration Reforms and Basic Features of Reforms* ", http://dergipark.gov.tr/download/article-file/289111

made it difficult to remove extreme restrictions on fundamental rights such as freedom of expression, association, and close political parties. The death penalty was banned and guaranteed the principle of proportionality. It is seen that necessary legal arrangements have been made in the administrative field and these and similar changes in the legal field. Some of these are the Draft Public Administration Basic Law, which is based on change and development in public administration and prepared for this purpose, and e-government applications such as BIMER and CIMER, where citizens' complaints about public services and officials are evaluated.

While such reforms are taking place in Turkey, a paragraph will be added to the struggles it has experienced. In this study, the effect of supranational institutions such as the United Nations and the European Union on establishing the Rule of Law in public administrations is examined through the example of Turkey. In the early 2000s, when the EU membership process was particularly effective, the reports produced both in the UN and in the EU regarding Turkey are the subject of examining the relationality between Turkey's reforms.

The aim of the study required a combination of literature study, traditional legal-dogmatic analysis, and field research. The first step involves collecting and analyzing relevant literature, policy documents, and reports on the Rules of Public Administration and Law Reform to derive experience, current policies, best practices, and visions of future challenges and needs. In parallel, traditional legal analysis of international Law (and, to a lesser extent, national Law), jurisprudence, and doctrine on what constitutes the Rule of Law in public administration and what issues should be regulated has been made. The second step was to examine the reports published by major international and regional organizations on public administration and the rule of Law in peace-building circles, including the UN (Secretariat, DPKO, UNDP, OHCHR), EU, CoE, OSCE / ODIHR.

In this framework, in the first part of the study focuses on conceptual and theoretical framework. The second part is focused on relationship between legal reforms and public administration. In the thirth part, the impact of the rule of law problems on individuals and vulnerable groups is analyzed. In the fourth part, the definition of the rule of Law in public administration is made. In the fifth and last part, discussions and developments in national law transformation are discussed. In the conclusion part, the summary and general evaluation of the study are given. As a result of the study, it was concluded that supranational institutions such as the UN and the EU had essential effects on the establishment of the Rule of Law, and it was also understood that despite some shortcomings, Law and public administration reforms in Turkey made significant contributions to the Rule of Law.

1. CONCEPTUAL AND THEORETICAL FRAMEWORK

Understanding the rule of Law emerged after understanding the property state and the police state. In a conceptual sense, the institutional emergence of the "*state of law*", which was first put forward in Germany at the end of the 18th century and the beginning of the 19th century, was realized with the French Revolution. It is based on Law and the general principles of Law, which finds the reason for its

existence in ensuring the peace and happiness of people, whose purpose is to secure and develop human rights and freedoms, removes all restrictions on the rights of the governed, limits authority in favor of people's freedom in a democratic, equal and just orders. The state of Law, which we can define as "*the system ensures that the state uses its powers within the framework of the Law and, while doing this, respecting human rights in all conditions and situations*." The rule of Law corresponds to the security needs of individuals concretely, with the legal principles and institutions it brings.

According to the second article of our Constitution, the Republic of Turkey is a state of Law. The Constitutional Court also declared the state of Law in one of its decisions, "It is a state that respects and protects human rights, establishes a fair legal order and considers itself responsible for maintaining it, and all its actions and transactions are subject to judicial review." defined as.

The concept of the Rule of Law, which is adopted as a principle in many constitutions today, has been accepted as an inseparable element of democracy. Accordingly, individuals; have fundamental rights and freedoms that are indispensable and cannot be violated or violated by any person or institution. As individuals, the state will be subject to the Law in all its activities and will be obliged to protect the rights and freedoms of individuals based on its power, let alone abolish or limit them. The state is being subject to the Law means that it is in a similar situation with the individual before the law. This shows that the individual will also be protected against the state when necessary.

The concept of the Rule of Law (Rule of Law, Rechtsstaat) is a criterion that is frequently used both in jurisprudence and in court decisions. Although the concept used is verbally the same, it may mean different things. What kind of rule we adopt depends on what we understand by Law in general (Marmor, 2010). The legal theory we accept also determines our understanding of the rule of Law. Efforts to understand the Rule of Law should be understood are closely related to the teachings of legal theories (Gül, 2010). Although constitutions and laws refer to the Rule of Law, they do not provide decisive and descriptive content. Efforts to add content to the rule of Law are fulfilled by doctrine. The rule of Law is generally subject to a dual distinction in doctrine. This distinction can be in the form of "state of the law in formal sense-state of law in a material sense" (Uygur, 2013), as well as "state of procedural law-state of substantive law" (Özcan, 2008; Rose, 2004); It can also be in the form of "instrumental state of law-state of substantive law" (Radin, 1989). Since the distinction between the formal (procedural) state of Law and the substantive state of Law is the most common and accepted, the institutional requirements of the state of Law, such as the independence of the courts, are generally evaluated within the state of Law in a formal (procedural) sense (Aktaş, 2020).

The principles/rules that support the Rule of Law, whether formally or materially, are not "first-order principles" but "second-order principles"(Summers, 1998). Hart includes such principles in classifying "secondary rules" (Bayles, 1992). This means that these principles/rules of the secondary order are related to the first-order principles/rules that directly regulate our behavior. Secondary rules do not directly regulate our behavior; Although they also give private individuals authority, they mostly appeal to official authorities, such as the legislature and the judiciary, who exercise power. Second-order

rules/principles are the rules that regulate the content of the first-order rules (primary rules) by the official authorities, how they will change them and how the proceedings should be made in case of violation of these first-order rules. Hart divides these second-order principles into three groups as secondary rules. The first group consists of rules of recognition. The recognition rule determines the validity conditions of the criteria according to which primary rules should be made (Ceylan, 2014). In terms of the state of Law in the material sense, the recognition rule determines the content of the first order (primary rules) legal rules. For example, an unenforceable constitutional provision on gender discrimination addresses the legislator as the first-order principle/rule (secondary rule). The second group creates rules of change. In a formal or procedural sense, the theory of the Rule of Law puts forward some qualities that the rules must have or some procedures that the legislative, executive and judicial powers (courts) must follow as a condition. For example, while the necessity of making the proceedings according to the predetermined procedural rules is a procedure, the general nature of the laws is a formal quality. It is one of the procedural principles of the Rule of Law, understanding that disputes must be settled in predetermined courts or that the courts must follow predetermined procedures (procedures). As it is seen, understanding the rule of Law in a formal/procedural sense aims to limit the power by envisaging legal or procedural principles for the three powers (forces) that use sovereignty.

As can be seen, the Rule of Law is an ideal conceptualized in different ways within the framework of various purposes. Legal theories that reflect different perspectives on the concept of Law may have different ideals of the state of Law. In this sense, we can talk about the concepts of weak and the strict rule of Law. However, as understood from the study, there is no complete agreement on which formal principles and values will constitute the content of the concept of the Rule of Law. This should be taken as a natural condition because ideals such as the rule of Law differ according to the legal and political theories adopted (Aktaş, 2020). “justice” is a concept that states and nations have emphasized for centuries. Let us try to shed some light on this concept. Justice is giving the righteous their due. It is the duty of the state to protect and give the rights of the righteous. The most important right is the right to life and freedom. It is Justice that makes the state a state. Justice, which starts with punishing the guilty and ignores the rights of the innocent, is Proportional Justice, that is, relative Justice. On the other hand, Justice is a process that starts with protecting the rights of the innocent and ends with the punishment of the guilty. This is called Adalet-i mahza, absolute/full justice. According to this understanding of Justice, even if the understanding of the individual is for all people, it can never be sacrificed. According to this understanding of Justice, an innocent individual can be sacrificed for the benefit of society.

So now a question: If there were nine innocent murderers in a household, could that house be set to fire and explode? If there were nine murderers in that house, could that house be burned and blown up? If the answer is yes, defending the view that when there is a hostage inside a bank robbery, that bank should be blown up without saving the hostage. Demanding Justice is the most natural right of every human being, even his constitutional right, even his duty. Many have paid the price for fulfilling this

duty in history. Then we can say that if people have to demand Justice, it is also the duty and duty of the lawyers to teach the proper Justice. In other words, Lawyers have a significant role in the establishment and provision of Justice. The lawyer should always be aware of this and seek the ground and time for himself to explain the proper Justice.

constitutional state

Why is the establishment and delivery of Justice so important? Because: The State of Law can only be mentioned where Justice is provided and established.

The place of the right to a Fair Trial is essential in providing Justice. The 36th article of TR Constitution states that "Everyone has the right to claim and defend as a plaintiff or a defendant before the judicial authorities by using legitimate means and be a *fair trial*." has received. In order to talk about a fair trial, three authorities equipped with equal arms are needed. These:

- Trial authority consisting of courts and judges
- Prosecution office organized entirely outside the judicial authority (Prosecutor's Office)

The defense office is composed of lawyers who are entirely independent of the judiciary, prosecution authorities, and political power.

some essential rules that we may have to be a state of Law

The UN Convention Against Corruption (UNCAC) was adopted by the General Assembly with resolution 58/4 in 2003 and entered into force in December 2005. UNCAC is the first legally binding document against corruption. It provides a comprehensive set of standards, measures and rules that all States Parties to the Convention should apply to strengthen their legal and regulatory regimes to combat corruption and establish the rule of law. The United Nations provides assistance to member states in implementing UNCAC and strengthening their capacity to prevent, detect and investigate corruption, and implement programs to promote transparency, integrity and accountability in criminal justice and rule of law institutions. Figure 1 shows the key documents and standards established by the UN.

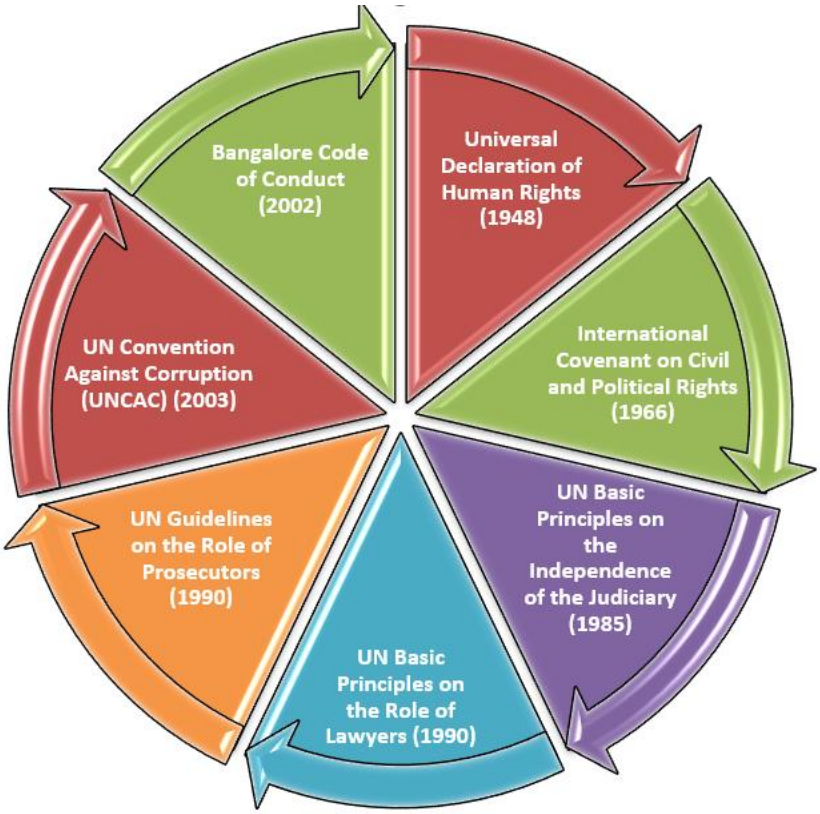

Figure 1. Basic international standard documents established by the UN for the rule of law

Source: Compiled from information on www.un.org.

There are some important rules that we can say are indispensable to be just and to be the State of Law derived from international conventions. To put it in outline:

– The right to defense is sacred. No one can be sentenced without his defense.

- No one can give orders to the judge. It is also a crime to intimidate the judge.

– There is no crime or punishment without Law. So this means that only the Law says what a crime, not the administrators or even the judges is.

– If there is no caste, there is no crime. A crime cannot be committed without the intent to commit a crime. In other words, the person who buys a friend's book, mistaking it for his own, does not commit theft because there is no intent to steal.

– Crime and punishment are personal. It cannot be accepted that a person's mother, father or relative has committed a crime because of the crime committed by a person (although this principle seems very simple, many mistakes have always been made in this regard).

– It is forbidden to collect evidence by illegal methods and to use this evidence as a basis for conviction. Torture is also prohibited, whatever the reason.

– No one can be punished or even condemned for their political opinions. In other words, the government (state) looks at the hand (act) and cannot look at the heart (that is, the thoughts and ideas in the inner world of the person).

Justice and the State of Law cannot be mentioned unless at least these minimum principles are followed.

2. PUBLIC MANAGEMENT REFORMS

The figure shows that public administration reforms can be built on five main issues. One or more of these may be subject to a public administration reform. In the 2018 EU progress report, the Turkish public administration reform was evaluated under these headings.

Figure 2. Key areas of public management reforms in Turkiye

2.1. Policy development and coordination

EU progress reports [4], Legislation, and policy-making do not follow an inclusive and evidence-based policy development process. The statutory requirement to produce medium-term cost estimates and financial impact assessments for draft policies and Legislation continues to be disregarded. Draft policies and laws are not subject to public opinion despite legal requirements. Regulatory impact assessments are formal work and are neither sent to Parliament nor published (EU, 2018).

2.2 Public financial management

According to the EU progress report, Turkey has no comprehensive public financial management reform program. Overall, fiscal discipline was maintained despite the absence of an independent fiscal council. Budget transparency needs to be further improved at various levels. The transparency of public investment programs and government assets is weak. Civil society participation in the budget process is limited. Legislation to introduce revolving funds into the budget process is progressing slowly (TUSEV, 2018).

[4]For details of the report, see: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf (E.T. 10.08.2018)

2.3 Responsibility of the administration

According to the EU progress report, internal and external oversight arrangements regarding the Citizens' right to good administration need to be better implemented. The role of oversight institutions such as the Ombudsman has been limited in the absence of formal powers (see governance). Due to the lack of data collection, it is difficult to assess the rate at which surveillance agencies' recommendations are implemented (EU, 2018).

2.4 Citizens' access to publicly available information right

It is regulated by right to information law, which does not require proactive disclosure of information and provides broad exemptions on protecting state secrets, trade secrets and personal data. The Access to Information Review Board is responsible for considering appeals against denials of access to publicly available information (EU, 2018).

2.5 Strategic framework for public administration reform

According to the EU progress report, Turkey does not have an inclusive public administration reform strategy. The fiscal sustainability of general public administration reform is not guaranteed, as key planning documents do not specify the expected costs of reform measures. An administrative body with a legal mandate needs to be established to coordinate, design, implement and monitor public administration reform (EU, 2018).

3. LEGAL REFORMS

The legal framework required under law reform includes general guarantees of respect for human and fundamental rights. However, According to the EU progress report, these have been weakened by a series of emergency decrees in Turkey and need to be implemented effectively (EU, 2018).

International human rights organizations and Western governments have put significant pressure on Turkey to significantly reform its justice sector to fully protect freedom of expression and reduce the number of convictions resulting from the much-criticized anti-terrorism Law. The country's government has decided to take several steps to overhaul the criminal justice system, mainly for its reasons, and take this criticism into account.

Turkey signed the First Judicial Reform Package in October after months of discussion and negotiations with the relevant parties. It includes changes in Article 39 that are likely to have potential consequences on the nature of the defense treaties and the justice system, covering issues from counter-terrorism law to prosecution. The government highlights the positive changes it has brought to freedom of expression and movement, but a few background issues deserve closer attention.

4. LAW REFORM AND PUBLIC ADMINISTRATION

Sometimes Justice Reform and Law Reform are used interchangeably. The Law Reform Rule is better understood as upholding certain principles and values such as proportionality, legality, procedural transparency, predictability, and equal application. The Law in Conflict and Post-Conflict Societies and the Transitional Justice Act asserts that the rule of Law is a principle of governance in which public, private and legal persons, including the state itself, are accountable to public laws (EU, 2018). It has been declared consistent with international human rights norms and standards, equally applied, and independently adjudicated[5]. In this sense, the Rule of Law can be understood as a perspective that intersects with the relevance of several sector-specific reform projects.

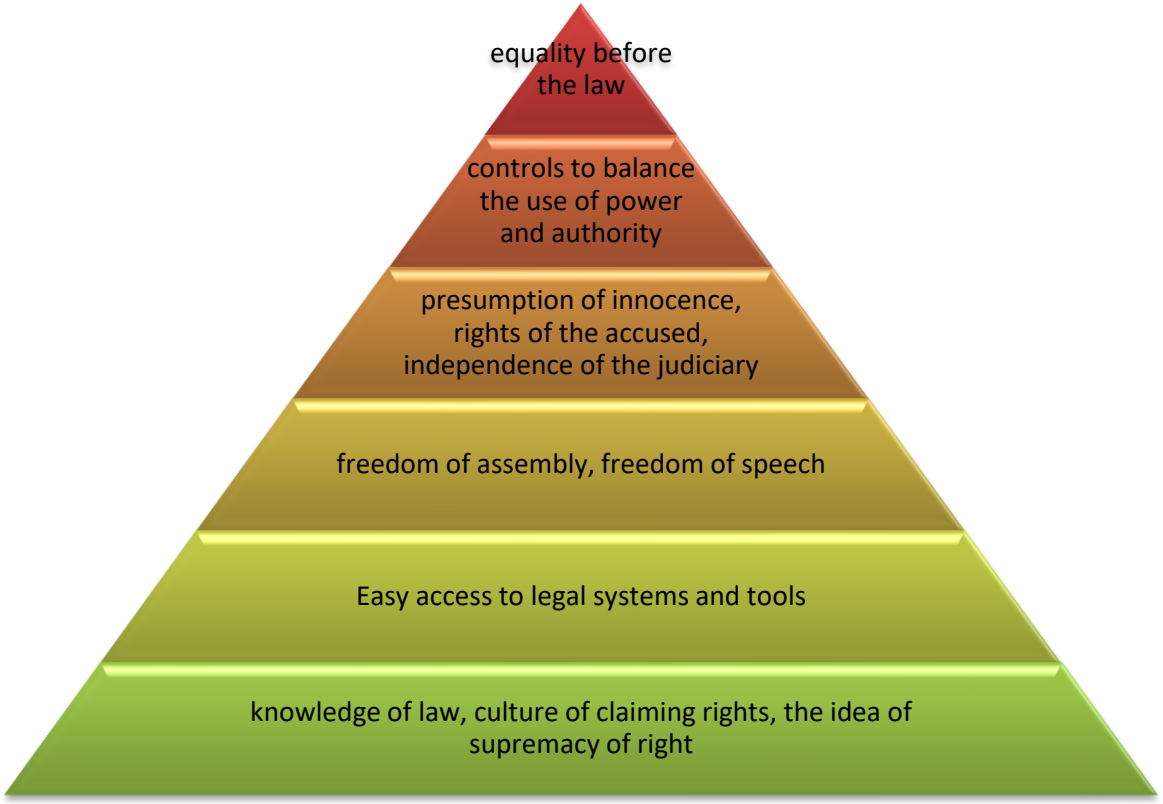

Figure 1. Demonstration of Basic Law Rules

Source: Created by Researchers with inference from various sources.

Sometimes Law and Public Administration Reform projects are grouped under the heading of governance. Because governance, transparency, participation, consultation, and accountability are fundamental principles that require reform in the fields of Law and public administration. In recent years, some critical or qualitative dimensions have been added to the rule of Law, such as the essence of human rights and the protection of vulnerable groups. Governance evolved into good governance and

[5]The 1994 UNDP Human Development Report is recognized as a landmark publication in human security. The best way to tackle the problem of global insecurity is to achieve "freedom from what you want" and "freedom from fear."

then good enough governance so that the minorities and the disadvantaged also influence the management processes [6].

The Basic Principles of Law can be listed as follows:

- The laws are Supreme over everything and everyone. No one is above the Law.
- Equality before the Law and equal protection of the Law.
- Everything should be done according to the Law and not according to whims and personal understanding.
- No one should suffer, except for a violation of the Law.
- The absence of arbitrary power, the establishment of the rule of Law.
- Adequate protection against abuse of power.
- Optional authority should be exercised within reasonable limits set by Law.
- Independent and impartial judiciary.
- Fair and accessible procedure.
- Fast court

Our research assumes that the problems mentioned above are partially in the Turkish legal system. Because many problems are mentioned under judicial reform, there is a constant agenda to solve them. Comprehensive reforms have been made in these areas since 2002, and the third five-year Judicial Reform Strategy Document, which is still being implemented, was announced on May 30, 2019. The publication of this document, prepared by the Ministry of Justice in the Official Gazette, draws attention to the political will behind the reform. It shows that judicial reform is a state policy. Many legal and administrative regulations have been implemented in the last year and a half, and the 2nd Judicial reform package is still being implemented. Even though the reforms made in Turkey caused some deficiencies due to events such as terrorist incidents and coup attempts, the research questions were determined as follows, considering that they contributed significantly to the Rule of Law:

- *How do international institutions evaluate the reflection of the rule of Law on public administration?*
- *What kind of inferences can be made from this perspective for Turkey?*

5. THE IMPACT OF GOVERNMENT PROBLEMS ON INDIVIDUALS AND VULNERABLE GROUPS

The Doctrine of Human Security for Europe seeks to explore the real needs of individuals in conflict zones rather than using a traditional institutional or geopolitical perspective. This doctrine proposes that Europe develops a new human security capability that includes the military, police, and civilians working together to enforce the Law rather than fighting and fighting. He argues that threats

[6]Çetin S., " *Evaluation of the Public Administration Reform Process in Turkey: Its Failures and Functioning Aspects* ", Ç.Ü. Journal of Social Sciences Institute, Volume 19, Issue 3, 2010, Pages 23-38 23 http://dergipark.gov.tr/download/article-file/50617

such as weapons of mass destruction, pandemics, or terrorism can only be responded to if we remove the distrust of people worldwide. Many people worldwide are premised on the assumption that they lead unbearably insecure lives. In large parts of Africa, the Balkans, Central Asia, and the Middle East, men and women live daily in fear of violent attacks, kidnapping, rape, extortion, theft, or smuggling. A large military apparatus does not create security; regular military forces, as in Iraq and Syria, can make things worse (Marlies, 2006).

The degree of security, in part, includes the administration's identification documents, health care, welfare and business licenses, etc. It is determined by how well it manages to manage. Socio-cultural, economic, and political separations and conflicts in societies where people do not trust, mistrust each other, and make false accusations lead to the deterioration of legal systems and institutional infrastructures over time. For this reason, trust and peace in society are of critical importance in the construction of a democratic society.

Despite some differences, similar legal problems occur in structures widely accepted as public administration. The most concise part about public administration can be summarized as follows [7]:

- The politicization of the administration
- Lack of easy access to Justice,
- Discrimination by civil servants and other public officials,
- Irresponsibility,
- Low level of rights among citizens.

These shortcomings concern many critical issues in the restructuring agenda, such as land and property rights, minority protection, anti-corruption, and general service delivery. Below is a conceptual analysis of the typical problems they may encounter when interacting with public administration agencies in underdeveloped or developing states. These appear as factors that implement the rule of Law impossible and, in this sense, disrupt the public administration:

5.1. Arbitrary and uncertain Law

Research claims that new economic, political, and social problems that develop, especially in 2022, cause arbitrariness and uncertainties in establishing and executing Law. It is understood that Turkey's asylum regime continues to create uncertainty, unpredictability, and improvisation on the one hand. On the other hand, it offers a striking continuity in addressing the rights and protections of refugees with a national security perspective rather than securing migration/asylum management (Sarı and Dinçer, 2017).

Confusion over applicable Law is a severe problem in many developing societies. The problem is often compounded by a lack of established traditions, practices, and principles [8].

[7]Bergling, P. Rule of Law on the International Agenda: International Support for Legal and Judicial Reform in International Administration, Transition and Development Cooperation, Antwerpen and Oxford: Intersentia Publishers, 2006.

[8]Bingham, Tom, The Rule of Law (London: Penguin Books, 2010), page 8

5.2 Discrimination

To date, the Turkish welfare state has been based on the ideal of the fundamental role of women as mothers and wives in society. This is reflected in Turkish society's low female labor force participation rate and other structural inequalities between men and women. (Dedeoglu, 2012). The results of research conducted on university students, students' clothing styles; religious attitudes; political affiliations; their gender; their ethnicity; hometown or nationality; their age; and that both lecturers and their peers discriminate against them because of their IQ levels on campus (Gökçe, 2013).

In some cases, the system may even invite discrimination [9]. A report prepared by the UN emphasizes that women's human rights have been seriously weakened by the "harmful traditional practices" found in traditional Law and that the Ministry of Interior of the relevant country has not taken action to end these practices [10].

5.3 Lack of access to Justice

Different studies on access to Justice and trust in the judiciary show that distrust on Justice has increased, and trust is deficient in Turkey. It is stated that the lack of trust is caused by many reasons (Orselli & Sipahi, 2017). In another empirical study, it has been revealed that although the Turkish judicial system tends to centralize and professionalize in the name of identification with the European influence, it lacks serious translation opportunities, especially regarding foreigners and refugees, and has procedural deficiencies and inadequacies in functions that are overloaded as a bureaucracy problem in front of access to a fair trial (Şunata and Erduran, 2021). For this reason, it is of great importance to ensure the right to Justice without delaying it beyond the limits of patience and access to Justice. The delay in Justice creates a situation that shakes the trust in Justice and the rule of Law. It can also reveal establishing Justice through underground justice mechanisms and mafia relations.

5.4 Traditional systems and public administration

Most developing societies have dual legal and administrative systems, a formal and traditional system in parallel. Moreover, developments in Whole Government Approaches (WGA) [11]and Sectoral Approaches (SWAP) speak of a new rule of law strategy that is more inclusive and aims to solve several problems simultaneously.[12]

6. DEFINING THE RULE OF LAW IN PUBLIC ADMINISTRATION

The UN, the Council of Europe, and other organizations have initiated or adopted a variety of international legal instruments integrating recognized legal values. These instruments will guide and guide the creation and implementation of national laws. It would be reasonable to assume that this

[9]UN, Human Development Report, United Nations Development Programme, 1994.
[10]UN, Rule of Law Tools for Post-Conflict States: Monitoring Legal Systems, Office of the High Commissioner for Human Rights, 2006.
[11]For detailed information, see: https://www.ncchpp.ca/docs/IUHPE%20Vancouver%20June%202007.pdf
[12]For detailed information, see: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3159.pdf

general obligation extends beyond the specific rights contained in contracts to encompass a set of general legal safeguards following international and regional instruments, case law, practice, and doctrine [13].

Recognizing that it may be possible to derive a universal definition of the rule of Law for public administration from international Law, the 1995 UN report Legal and Regulatory Framework for Public Administration proposes that certain fundamental principles of administrative Law be codified in a given UN [14]. This rule of Law for public administration proposed in the report highlights five critical orientations:

1. *Constitutionality and legality in public administration:* The organization of the administration should be regulated in Law, and concrete remedies should be available to combat illegal actions by administrative authorities.

2. *Citizens and public administration*: There should be clear administrative procedures based on the rule of law principles and guarantees (participating in the procedure, being heard, appealing, accessing information, etc.).

3. *Personnel management*: Recruitment of public officials, merit, career structure, discipline, etc., there should be laws governing it.

4. *Service or ancillary service provision*: The relationship between the public and private sectors should be clearly defined in the Law; There should be rules governing fair competition, transparency, and dispute resolution.

5. *Law and governance*: Appropriate governance order (Law, soft Law, contracts, etc.) should be decided upon for intergovernmental relations and relations with non-state institutions.

Consistent with these orientations, the UN report lays down the following specific principles or rights for the individual and the corresponding duties of administration [15]:

- The right to participate in widely defined administrative proceedings.
- The right to a fair trial before any decision affects one's rights.
- The right to be subject to the conditions and exceptions provided by Law to official documents.
- The right to judicial review of administrative decisions.
- Responsibility of the public administration in case of damage caused by its activities.
- Obligation to the administration to provide relevant information to citizens.

The most recent approach of the Council of Europe is based on Recommendation CM/Rec (2007) 7 of the Committee of Ministers on Good Administration. This tool provides a model code for good governance, mainly based on R (80) 2 and Resolution (77) 31 of the Committee of Ministers and

[13]Wennerström, E. "The Rule of Law and the European Union", Uppsala: Iustus förlag, 2007.
[14]UN, Human Development Report, United Nations Development Programme, 1995.
[15]UN, Human Development Report, United Nations Development Programme, 1995.

the European Code of Good Administrative Conduct [16]. The recommendation sets out the "principles of good administration". E.g.;

- To act following equality, impartiality, proportionality, legal certainty, and transparency.
- Exercise their powers only if facts and applicable Law give them the right to do so and only for the purpose for which they have been given;
- Public authorities to act following national and international Law,

The term "public authorities" includes public law bodies, including state, local and autonomous authorities, and the public authority responsible for providing the public service or the private law legal entity exercising the public authority responsible for the provision of the public interest. As the performance of public duties by private matters is becoming more and more common, it is vital to ensure that this development does not occur at the expense of the rights and entitlements of individuals.

It would probably be impossible to foresee a time limit for any subject or activity. However, in the case of administrative silence, a mechanism that allows individuals to raise the issue to higher levels would strengthen the requirement. In addition, public authorities will allow private persons to participate in the preparation and implementation of administrative decisions affecting their rights or interests and respect the right to privacy, especially when processing personal data.

The EU has developed a set of tools to guide member states and candidate countries in establishing the Rule of Law in various sectors. The EU considers it essential that the values embodied in the instruments also benefit individuals and groups outside the Union, including in post-crisis settings [17]. It is seen that the rule of Law in public administration in Turkey is determined within the scope of fundamental rights and freedoms and other regulations in the Constitution, and it is becoming more compatible with the above-mentioned international standards over time.

7. DISCUSSIONS AND DEVELOPMENTS IN NATIONAL LAW TRANSFORMATION

This approach supports a national framework of substantive and procedural rules that ensure the Rule of Law in public administration and, in particular, vis-à-vis the individual. If it works as it should, the framework will help legally protect individual rights, increase the legitimacy of administration and government, and build confidence in the value of the Rule of Law in general [18]. There is a hierarchy of norms—first, the general principles, introductory provisions, instructions for implementation, etc. With the EU process, national Law in Turkey has acquired a comprehensively modern systematic from penal

[16]EC, COM (2003) 615, Commission to European Parliament and the European Economic and Social Committee, final on Governance and Development, 20 October 2003, Brussels.
EU Cotonou Association Agreement, agreement between the EU and African, Caribbean and Pacific (ACP) States, 2000.
[17]EU **,** Handbook on Promoting Good Governance in Development and Cooperation, European Commission, European Commission, EuropeAid Cooperation Office, Good Governance Thematic Network, Brussels 2004.
[18]UN, Human Rights in the Administration of Justice: A Human Rights Handbook for Judges, Prosecutors and Lawyers, Office of the High Commissioner for Human Rights, 2003.

code to Law of obligations and civil Law. With the occasional regulations, various provisions in the laws are rearranged in line with doctrine, needs, and demands.

7.1 Human rights

The reform strategy, which aims to lay the foundation for full respect for fundamental rights and freedoms, has three pillars:

1. Making legislative changes, if necessary,
2. Adherence to fundamental international human rights conventions, and
3. Taking the relevant measures for the full implementation of the reforms.

In this process, the national legal framework has been improved since 2001 in order to strengthen the democratic rights and fundamental freedoms of our citizens, taking into account the following provisions with numerous legislative and constitutional amendments:

- The jurisprudence of the European Court of Human Rights (ECHR)
- European Convention on Human Rights (ECHR) and
- European Union (EU) acquis communautaire.
- Organization for Security and Cooperation in Europe (OSCE) documents and
- Council of Europe (CoE) and United Nations (UN) human rights conventions,

In this context, victims can be returned to the victims within the framework of the relevant norms and provide provisions and compensations.

7.2 Constitutionalism and constitutional reform

The current 1982 Constitution in Turkey has been subjected to continuous reform. The update is made by the qualified majority in the Parliament in line with the public vote, taking into account the compliance with the conditions of the time and international obligations.

7.3 Universal values, legitimacy and local ownership

Regarding how international (UN) norms relate to domestic concepts of Law and Justice, the UN Secretary-General states that United Nations norms and standards are developed and adopted by all countries of the world and that the legal systems of all member states are based on Common Law, Civil Law, Islamic Law or other legal traditions[19]. Universal values are guaranteed in Turkey by the Constitution and various international conventions to which it is a party.

7.4 Administrative Law and procedure

Courts of Law, administrative authorities, and other persons performing administrative duties should treat persons equally and impartially. Another circumstance requiring the dismissal/removal of an officer should be considered when he or she is the legal representative of someone who has an interest in the matter or who may expect extraordinary advantage or harm from the outcome. Officials should

[19]The UN ratified the International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, which came into force on 23 March 1976.

consider matters such as neutrality, for example, with an official party or with good friends or foes, or the fact that the official depends on an interest represented in the matter. Any official who knows of any conflict of interest or suspicious situation that could disqualify him should be obliged to disclose his action [20]. Administrative procedures are heavily structured in Turkey by the Constitution, Law, and tertiary Legislation. In addition to the independent judiciary, the Public Ethics board, the Ombudsman, and the inspection boards are the main complaints and control bodies regarding unnecessary procedures.

7.5 Right of appeal

Decisions that adversely affect a party should include information on how to appeal. Although the general rule is that all decisions must be challenged, it is often reasonable to give a conditional right of appeal to specific fundamental facts[21]. In this sense, it is essential in Turkey that the appeal mechanism can be made to the courts of appeal, the Court of Cassation, and the Council of State, both in administrative and judicial jurisdictions.

7.6 Institutional reforms: judicial remedies and oversight

Institution building or maturation is a complex task that demands many resources and should be primarily an internal responsibility[22]. Inspection and internal audit mechanisms in all ministries and public institutions and organizations and the Court of Accounts and the State Audit Board can be said to have sufficient competence in this regard. There are official reporting and follow-up mechanisms to identify institutional weaknesses, risks, and deficiencies in audits and complete them by the highest authorities. However, various judicial reform packages have always been on the agenda to eliminate inefficiencies in judicial processes and ensure more effective Justice.

Turkey experienced the coup attempt of July 15, 2016, for a long time in history and struggled to overcome the effects of the coup attempt. With the impact of these threats targeting national security, it first declared a state of emergency in recent years and then highlighted its national security preferences. In this context, disruptions have been experienced in legal processes. In the next period, the balance between security and freedoms will be re-evaluated without compromising national security, and steps should be taken to strengthen the rule of Law and freedoms.

Several judicial improvements were made with Law No. 7188 of October 17, 2019, the First Judicial Package. [23]The aim was to simplify the judicial system and facilitate access to the judiciary. In this context, a series of legal arrangements have been made that restrict detention, prevent access to illegal news instead of the entire website, protect victims of crime, and expand rights and freedoms. In addition, two new institutions were adopted in criminal proceedings, namely "quick trial procedure" and "simple trial procedure". With the Second Judicial Package adopted on April 14, 2020, significant

[20]UN, Renovation and Reconstruction of Post-Conflict Public Administration Machinery Peacebuilding, United Nations Public Administration Network, ST / SG / AC.6 / 1995 / L.10, 1995.
[21]Wennerström, E. "The Rule of Law and the European Union", Uppsala: Iustus förlag, 2007.
[22]The UN ratified the International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, which came into force on 23 March 1976.
[23]For the relevant Law text and details, see: https://www.resmigazete.gov.tr/eskiler/2019/10/20191024-25.htm

reforms were implemented in the organizational system. This Law was evaluated as an "amnesty law" and discussed which criminals would be released. However, apart from a few interim provisions, it had three important innovations that could be defined as "reform in the executive system": "re-determination of the probation regime," "to bring the good conduct condition to an effective control mechanism," and "to broaden the scope of alternative penal execution procedures".

Finally, studies were carried out in different fields with the 3rd Judicial Package dated July 28, 2020. E.g., Important arrangements have been made to remove the procedural obstacles to exercising the right to claim and ensuring the effective, fast, and functional implementation of the judicial rules. Apart from these legal regulations, it is known that many reforms have been made by the Ministry of Justice and the High Council of Judges and Prosecutors.

According to official statements on this subject, adopting the human rights action plan will be the first step. Before that, the first action plan was published in the Official Gazette on March 1, 2014, [24]under the name "Action Plan for the Prevention of Violations of the European Convention on Human Rights". The Ministry of Justice claimed that the new plan would not be limited to the European Convention on Human Rights in its official statement. He emphasized that there will be a general human rights action plan that includes new developments in human rights and is prepared with a participatory approach. It is understood that this plan is intended to be a guide for all state institutions in the development and protection of rights and freedoms.

Another expectation in this regard is related to long-term detention discussions. This is one of the issues the Ministry of Justice emphasized by stating that a pending trial is a must. However, it has been observed in the public and media that the issue of prolonged detention is mishandled in some instances and some individuals. Therefore, the issue of detention should be handled independently of individuals, and it should be ensured that, in practice, detention is applied only as an exceptional measure. Legal academics and lawyers state that the Legislation on this issue is sufficient, that there is no need for legal regulation, and that the main problems arise from different approaches and attitudes in practice. Concrete steps can be expected in the coming years for the standard behaviors and attitudes to change in terms of the Rule of Law.

7.7 Administrative courts

The most important thing is that the court, specialized court, or court of general jurisdiction has a sufficient degree of independence, the skills necessary to decide the case objectively, and the capacity to determine the matter within a reasonable time. There are strong reasons to suggest that the court should have a similar authority or jurisdiction to the administrative authority. In other words, the decision should be changed, at least because of the decision, in line with the decision that the court finds most appropriate in the particular case.

[24]For a detailed action plan that imposes important responsibilities on many institutions, see: https://www.resmigazete.gov.tr/eskiler/2014/03/20140301-2-1.pdf

7.8 Ombudsmen

In Turkey, the Ombudsman Institution is a Constitutional Institution included in Article 74 of our Constitution. According to Article 5 of Law No. 6328, "The *Institution, upon a complaint about the functioning of the administration, shall; It has been* tasked *with examining, researching and making suggestions to the administration in terms of compliance with Law and equity, within the understanding of Justice based on human rights.*

The Ombudsman Institution has been operating since 2013 as an audit mechanism affiliated with the Grand National Assembly of Turkey, acting as the people's advocate and guiding the administration with the decisions it takes, with the understanding of ensuring the rule of Law, the establishment of sound management principles and the understanding of responsibility towards the public and based on equity.

www.ombudsman.gov.tr , the Ombudsman Institution, takes into account the principle of "Let people live so that the State can live" with the belief that "The best of people are those who benefit people most";

- To increase the service quality of the administration,
- Establishment of sound management principles,
- To ensure the Rule of Law,
- Development of human rights,
- Spreading the culture of seeking rights,
- To create a transparent, accountable, people-oriented administration.

7.9 Implementation of decisions

One of the most common is administrative fines; a court or higher administrative authority decides that if the person concerned does not comply with the decision, they will be fined. The authority may also enforce the decision and hold it responsible for bearing the costs. Another method is to call the help of the police or a specific enforcement service. Additional possibilities exist in criminal courts, such as bringing in disputes, imposing sanctions and fines, and ultimately punishing individuals for refusing to comply. Public institutions and organizations in Turkey must comply with the decisions of the judicial authorities. It is possible to take legal action and file a criminal complaint against those who do not comply.

7.10 Daily practices and mass reach mechanisms

Access to courts and other official forums should be easy. In some cases, establishing international or local collective mechanisms and actions dealing with important and strategic categories of similar cases can be overcome or mitigated. These approaches are attracting the attention of the UN and other aid providers. In Turkey, access to many legal platforms can be provided via mobile phones, with reconciliation commissions, e-government applications, and the UYAP mechanism. This is important in making the masses heard and accessing legal mechanisms.

CONCLUSION

This study examines the effect of international and supranational institutions such as the UN and the EU on establishing the Rule of Law in countries' public administrations through the example of Turkey. In this context, it is defined that the reports produced by institutions such as the EU and the UN have had a significant impact on the content and timing of the judicial and legal reform packages. The coups, turmoil, and revolt attempts in the political history of Turkey and the terrorist centers supported by foreign powers have undoubtedly caused. They are causing transitions between the Law and the police state in the country. In addition, Turkey has witnessed very fundamental constitutional and legal changes in the last two decades. Several aspects of the constitutional and legal changes have been realized by the IMF conditions, EU cohesion, or reform packages enacted in the name of democratization. In addition to changing laws and regulations, many institutional changes aim to achieve a more efficient, transparent, democratic, and accessible judicial system. However, all waves of reform were carried out in a spiral of authoritarianism and ultimately in a gripping state of emergency. Otherwise, it was impossible to quickly realize the changes that could be made with a broad social consensus. The most important reason is that bureaucratic oligarchy or public administrations are slow.

There have been many changes and transformations in terms of the Rule of Law, effective public administration, constitutional state, and democracy. For this reason, many regulations were enacted in packages, one after the other with the authorization laws. In this study, what kind of perspective is needed in line with the general principles determined within the framework of international Law and international conventions is analyzed.

Fundamental rights reimagined personal freedoms, and ECHR-based rights to security and privacy guaranteed the right to a fair trial. The Constitutional amendment in 2004 abolished the status of international Law in Domestic Law by repealing the provisions of the State Security Courts and international agreements in the field of international rights and freedoms of international Law and in case of conflict between international agreements. These constitutional amendments are still insufficient. In connection with these constitutional reforms, a wide variety of harmonization reform packages have been adopted by the Assembly since 2001. The most critical years in which fundamental rights and freedoms were changed were 2001 (4709), 2004 (5170), and 2010 (5982).

Public administration reforms can be invoked as a product of new right policies and new public administration that seeks to apply the private sector approach to the public sector. Public administration reforms result from political, social, and economic developments. Such reforms have been influenced by modernization and globalization, so countries have had to reinvent their governments since the 1980s. Although different countries have undergone this process through different reform implementations, it is possible to say that some developed countries have bottom-up approaches that are more participatory and more democratic transformations than countries such as Turkey.

Although there is not a big difference between the public administration reforms implemented by the countries, it can be said that the reforms generally aim to establish a more participatory,

accountable, and transparent public administration. As a result of these analyzes, the following inferences can be made:

1. Turkey's ability to fulfill its membership obligations and successful implementation of the acquis will depend on its administrative capacity. Turkey is moderately prepared for public administration reform. Consistency with EU public policies requires further progress in delivering services to citizens and businesses (Soos, 2016). However, the political and administrative tasks remain challenging for a broader public administration reform to establish merit, loyalty, self-sacrifice, and team spirit.

2. Regarding local government in Turkey, despite the amendment of the Metropolitan Municipalities Law, which expands the scope of municipalities' powers, district and provincial councils need to be reformed again within the framework of governance principles such as representation ability, merit, and transparency.

3. Establishing broad partnerships between political, economic, cultural, and civil actors, with regional and local authorities, and with all public or private institutions, mukhtars, chambers of commerce, foundations, etc.), in closer cooperation with citizens, in all aspects of daily life (Soos, 2016). These interactions will increase the added value of multi-level governance by strengthening horizontal partnerships on the ground.

4. It is understood that Turkey's national strategies and medium-term programs, in line with its more decentralized and differentiated approach to regional development, identify priority areas related to economic, social, and regional developments.

REFERENCES

Aktaş, S. (2020). Hukuk Devleti Idealine Felsefi Bir Bakiş . Yıldırım Beyazıt Hukuk Dergisi, (1), 1-32. DOI: 10.33432/ybuhukuk.590676

Barzelay , M., and BJ Armajani. 1992. Breaking Through Bureaucracy: A New Vision For Managing In Government, Berkeley: University of California Press.

Bayles, M. D. (1992). Elements of Law. In *Hart's Legal Philosophy* (pp. 43-67). Springer, Dordrecht.

Bergling , P. (2006) Rule of Law on the International Agenda: International Support for Legal and Judicial Reform in International Administration, Transition and Development Cooperation, Antwerpen and Oxford: Intersentia Publishers, *2006* .

Bingham , Tom, (2010) The Rule of Law , London: Penguin Books page 8.

Braithwite V.(1998). "Institutionalizing Distrust, Promoting Trust" in J. Trust Trust and Governance (ed.: Braithwite, V. And Levi, M.). New York: Sage, 1998.

Ceylan, Ş. Ş. (2014). Gelecek Nesillerin Haklarina Gewirth Formülü: Bireyden Topluma Doğru. *Journal of Istanbul University Law Faculty*, *72*(1), 293-310.

Çetin S.(2010). Evaluation of the Public Administration Reform Process in Turkey: Disruptive and Functioning Aspects, Ç.Ü. Journal of Social Sciences Institute, Volume 19, Issue 3, 2010, Pages 23-38 23 http://dergipark.gov.tr/download/article-file/50617

Chevallier , J. (*2010). The State of Law* , trans. Gürcan, EC (Ankara: Image).

Döner , A. , Dabanlıoğlu Alanur, N. (2017). The Situation of the USA Before the International Criminal Court and the Article 98 Treaties. Erzincan Binali Yıldırım University Faculty of Law Journal XXI (*2017*): 1-45

EC , COM (2003) 615, From the Commission to the European Parliament and the European Economic and Social Committee, final on Governance and Development, October 20 *2003* , Brussels.

EU , Handbook on Promoting Good Governance in Development and Cooperation, (2004). European Commission, European Commission, EuropeAid Cooperation Office, Good Governance Thematic Network, Brussels *2004* .

EU Cotonou Association Agreement (2000), agreement between the EU and the African, Caribbean and Pacific (ACP) States.

EU, (2018) COMMISSION STAFF WORKING DOCUMENT Turkey 2018 Report, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf

Evans , PB, and TS Wurster (*1997)* . Strategy and the New Economics of Information. Harvard Business Review, September-October: 71-82.

Fukuyama, F. (2011). The Origins of Political Order: From Prehuman Times to the French Revolution. New York: Farrar, Straus and Giroux.

Gökçe Asiye Toker (*2013),* University students' perception of discrimination on campus in Turkey, Journal of Higher Education Policy and Management, 35:1, 72-84, DOI: 10.1080/1360080X.2013.748478

Gül, Cengiz (2010) İktidarın Sınırlandırılması ve Hukuk Devleti, Birinci Baskı, Ankara, Adalet Yayınevi, s. 208 vd.

Güzelsarı, S. (2004). *Kamu Yönetimi Gelişimi ve Güncel Sorunları* (Ed. Uğur Ömürgönülşen ve M. Kemal Öktem) içinde *Kamu Yönetimi Disiplininde Yeni Kamu İşletmeciliği ve Yönetişim Yaklaşımları* (1-25), Ankara: İmaj Yayınları.

Guthrie, J. and Steane, P. (2001). Learning From International Public Management Reform, vol. 11A, Oxford, JAI – Elsevier Science: 143-160.

Hammergren , L.(2002). Diagnosing Judicial Performance: Towards a Tool for Assistance with Judicial Reform Programs, Paper Prepared for Transparency International's 9th International Anti-Corruption Conference, Washington, DC.: World Bank, *2002*.

Hegel, G. W. F. (1991). Hukuk Felsefesinin Prensipleri, Çev: Cenap Karakaya, İstanbul, Sosyal Yay.

Harr , DJ, and JT Godfrey, (*1991)* . Private Sector Financial Performance Measures and Their Applicability to Government Operations, Montvale, NJ: National Association of Accountants.

Jones , LR, and F. Thompson, (*1999)* . Public Management: Institutional Renewal for the 21st century. Stamford, CT: JAI-Elsevier Press.

Kaufmann , D., Kraay, A. and Mastruzzi (2005). M. Governance Issues IV: Indicators of Governance 1996–2004, World Bank Policy Studies, *2005*.

Kokusari , I. (2019). The Application of Pilot Decisions in the Decisions of the Constitutional Court and the European Court of Human Rights. Erzincan Binali Yıldırım University Journal of the Faculty of Law XXIII, *2019,* 181-243

Marlies , G. (*2006).* The EU Response to the Tsunami and the Need for a human Security Approach, *European Foreign Affairs Review 11* : 353–378, 2006.© *2006* Kluwer Law International,

Marmor, Andrei (2010) "The Ideal of the Rule of Law", A Companion to Philosophy of Law and Legal Theory, Patterson, Dennis, (Editor), Second Edition, Wiley-Blacwell, s. 667.

Milgrom , P., and J. *Roberts* (*1992).* Economics, Organization, and Management, Englewood Cliffs, NJ: Prentice Hall.

Moe , *T. M.* (*1984)* . "The New Economics of Organization," American Journal of Political Science, 28/4: 739 - 777.

Olson , O., J. Guthrie and C. Humphrey *(1998)* . Global Warning – Debating International Developments in New Public Financial Management, Bergen, Norway: Cappelen Akademisk Forlag.

Orselli E. and Sipahi E. *B.(2017)* , Trust in judiciary: A particular survey on Turkey, Global Journal of Sociology: Current Issues, https://www.ceeol.com/search/article-detail?id=968569

Osborne , D., and T. *Gaebler* (*1993)* . Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector, New York: Penguin.

Özcan, Mehmet Tevfik (2008) Modern Toplum ve Hukuk Devleti, 1. Baskı, İstanbul, XII Levha Yayını, s. 200;

Pusey , M., (*1991).* Economics Rationalism in Canberra: A Nation-Building State Changes its Mind, London: Cambridge University Press.

Radin, Margaret Jane (1989) "Reconsidering the Rule of Law", 69, Boston University Law Review, Vol 69, No:4, s. 783.

Rose, Jonathan (2004) "The Rule of Law in the Western World: An Overview", Journal Of Social Philosophy, Vol. 35, No. 4, s. 459.

Sarı E. and Dinçer Cemile *G. (2017).* Toward a New Asylum Regime in Turkey?, movements. Journal for Critical Migration and Border Regime Studies, V3, N2, http://movements-journal.org/issues/05.turkey/05.sari,dincer--new-asylum-regime-turkey.html

Soos E. (2016) Challenges Of Public Administration In Turkey, Scientific Cooperations 2nd International Conference On Social Sciences, 2-3 APRIL 2016, ISTANBUL-TURKEY

Summers, R. S. (1998). Principles of the Rule of Law. *Notre Dame L. Rev.*, *74*, 1691.

Sunata Ulaş & Erduran *Selenay (2021).* Practicing Law in Administrative Detention for Syrian Refugees in Turkey, Journal of Immigrant & Refugee Studies, DOI: 10.1080/15562948.2021.1926611

Taylor , V. (2002). Corruption and Legal Professions in Asia, In Corruption in Asia (ed.: Lindsey, T. and Dick, H.), Federation Press, *2002* .

Temizel H., (2010) *Public Administration Reforms and Basic Features of Reforms, 2010,* http://dergipark.gov.tr/download/article-file/289111

The UN , (1966)the International Covenant on Economic, Social and Cultural Rights (ICESCR), entered into force on December 16 1966 and entered into force on January 3 *1976* .

The UN (1976) ratified the International Covenant on Civil and Political Rights (ICCPR), December 16 1966, which came into force on March 23 1976.

The UN (1948)Universal Declaration of Human Rights (UDHR), adopted and promulgated by General Assembly Resolution 217 A (III) of December 10 *1948* .

TUSEV (2018) Highlights on Civil Society in European Commission 2018 Turkey Report, https://tusev.org.tr/en/civil-society-law-reform/other/highlights-on-civil-society-in-european-commission-2018-turkey-report

UN , Access to Fair Practice Note, United Nations Development *Programme* , 2004.

UN , Human Development Report, United Nations Development *Programme* , 1995.

UN , Human Rights in the Administration of Justice: A Human Rights Handbook for Judges, Prosecutors and Lawyers, Office of the High Commissioner for Human Rights, *2003* .

UN , Renovation and Reconstruction of Post-Conflict Public Administration Machinery Peacebuilding, United Nations Public Administration Network, ST / SG / AC.6 / 1995 / L.10, *1995* .

UN , Rule of Law Tools for Post-Conflict States: Monitoring Legal Systems, Office of the High Commissioner for Human Rights, *2006* .

UN , Treaties and Statements The United Nations Charter was signed on June 26 1945 and entered into force on October 24 *1945.*

UN , United Nations Peacekeeping Operations, United Nations General Assembly/Security Council, A/55/305, S/2000/809, *2000* .

UN Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Crime, held in Milan from August 26 to September 6 *1985 , adopted by General Assembly resolutions 40/32 of August 29 1985* and 40/146 on December 13 1985.

US Security Council, Rule of Law and Provisional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General. (S/2004/616), August 23, *2004* [http://www.unrol.org/files/2004%20report.pdf].

Uygur, Gülriz (2013) Hukuk Devletinde Hukukun Önünde Olmanın Anlamı, Prof. Dr. Erdal ONAR'a Armağan Cilt. II, Ankara, Ankara Üniversitesi Yayınları, s. 1156; Gül, s. 200.

Wallerstein, I. (2004). World Systems Analysis. London: Duke University Press.

Wennerström , E. (2007.)The Rule of Law and the European Union, Uppsala: Iustu *s förlag , 2007* .

Yazıcı, S. (2018). İnovasyon, Rekabet ve Devlet. *Electronic Turkish Studies, 13*(13).

Hakem Değerlendirmesi: Dış bağımsız.

Çıkar Çatışması: Yazar çıkar çatışması bildirmemiştir.

Finansal Destek: Yazar bu çalışma için finansal destek almadığını beyan etmiştir.

Teşekkür: -

Peer-review: Externally peer-reviewed.

Conflict of Interest: The author has no conflict of interest to declare.

Grant Support: The author declared that this study has received no financial support.

Acknowledgement: -