Dynamics of Judicial Reforms in Turkey: Interplay Between EU and Domestic Factors

Türkiye'deki Adli Reformların Dinamikleri: AB ve Yerel Faktörlerin Karşılıklı Etkileşimi

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Abstract

This paper aims to present an overview of judicial reforms in Turkey and underline some external and internal dynamics that have caused these reforms. Until now, comprehensive accounts of reform were mainly concentrated on political and human rights advancements. This article will focus in detail on judicial reforms undertaken since the recognition of Turkey as an official candidate to EU. Most of these reforms correspond also to the first two terms of current ruling party (AKP) which cover years 2002-2011. The paper tries to underline EU and domestic dynamics of legislative policies on judiciary in Turkey by utilizing Putnam's "two-level games" approach and how they account for changes in legislative attitude of Turkish government.

Keywords: *Turkey, Judicial Reforms, Criminal Justice, Reform Packages, EU Accession*

Öz

Bu makalenin amacı Türkiye'deki Adli Reformların genel görünümünü sunarak bu reformlara neden olan iç ve dış etkenleri vurgulamaktır. Günümüze kadar reformlarla ilgili çalışmaların büyük bölümü temel olarak politik gelişmeler ve insan haklarındaki ilerlemelere yoğunlaşmıştır. Bu makalede ise Türkiye'nin AB'ye resmi adaylık statüsü kazanmasından itibaren gerçekleşen adli reformlar detaylı olarak incelenmektedir. Ayrıca bu reformların birçoğu da şuan ki iktidar partisi olan Adalet ve Kalkınma Partisi'nin ilk iki dönemi olan 2002-2011 yılları arasına tekabül etmektedir. Makalede Putnam'ın "İki Seviyeli Oyun" modeli kullanılarak yasama ilkelerini oluşturan AB ve yerel dinamiklerinin Türk hukukundaki önemi vurgulanmış, Türk hükümetinin yasama alışkanlıklarını nasıl bir değişikliğe sebep olduğu izah edilmeye çalışılmıştır.

Anahtar Kelimeler: *Türkiye, Adli Reformlar, Ceza Yargılaması, Reform Paketleri, AB Üyeliği*

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INTRODUCTION

The year 2015 has been a difficult year for Turkey. On the domestic front, Turkey had to endure two general elections and heightened political polarization, both of which raised the question of whether Turkey was losing its decade-long political and economic stability. On the international front, deteriorations of relations with Russia and Iraq, and ramifications of Syrian civil war in the forms of terrorists attacks by the Islamic State (IS) and of refugees posed significant foreign policy challenges, and raised the question of whether Turkey is being isolated in its neighborhood. One bright spot, however, came in on December 14, as the European Union (EU) officially opened a new section – Chapter 17 on economic and monetary policy - in Turkey's long-stalled membership process. Prime Minister Ahmet Davutoğlu hailed, "the reforms are ongoing and will continue at full speed."[1] Many pundits argued that this has been an incentive to Turkey to stop, at least slow down, constant stream of refugees to Europe. Regardless of its transactional nature, EU has been an important anchor for reforms in Turkey's democratization history. This has been the case especially in the first decade of the 2000s when Turkey had instituted sweeping political and judicial reforms. This paper tries to analyze, the nexus of foreign and domestic dynamics of legislative policies in Turkey with particular reference to EU accession process and how they account for changes in Turkey's judicial setting between 2002 and 2011.

Turkey's democracy has a long and checkered history. Cycles of democratization, and of authoritarianism followed each other in a never-ending succession. In Turkey's history, there is no extended period that one can call it a "truly democratic." In fact, it is pertinent to call democracy in Turkey a "work in progress." It is fair, however, to say that Turkey did not fail to give up on the premise of democracy and democratization. As one can evidently argue, Turkey's foremost and maybe the only outside anchor for democratization is the European Union, and its prospect for inclusion afforded Turkey significant democratic reforms. The European anchor has been especially important for the Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) government in its initial years. At the outset of its fragile rule, AKP tried to balance tutelary system in Turkey by banking on EU reforms.[2] As students of Turkish politics would acknowledge, the role of military in civilian politics especially since the 1960s is undisputable. Given the fact that all mainstream parties were swept away from political scenery in November 2002 elections, AKP's

[1] "Turkey is reforming 'at full speed' for EU accession," Agence France-Press, accessed December 22, 2015. http://www.globalpost.com/article/6705748/2015/12/15/turkey-reforming-full-speed-eu-accession

[2] See, Senem Aydın and Fuat Keyman, 'European Integration and Transformation of Turkish Democracy', *Centre for European Policy Studies EU-Turkey Working Papers*, No.2, (August 2004); Fuat Keyman and Ziya Öniş, "Helsinki, Copenhagen and Beyond: Challenges to the New Europe and the Turkish State", in *Turkey and European Integration: Accession Prospects and Issues*, Mehmet Uğur and Nergis Canefe (London: Routledge, 2004).

ascendance to power did not warrant it its political mandate to rule the country uninterrupted due to its Islamist past. The guardians of the Kemalist regime comprised of civilian and military bureaucracy left little room to maneuver except finding external allies to gain strength against domestic entrenchment. For AKP leadership the prospect for EU membership and ensuing democratization efforts would give leverage both at the domestic and international levels. While AKP government would get international recognition as a pro-EU party, and may reap its benefits in domestic politics to pursue EU-sanctioned reforms so that it can have a protective layer of legitimacy against the Kemalist elite. Meanwhile, a coalition of domestic constituencies ranging from conservatives, liberals, Kurds to Islamists formed the launching pad for AKP towards the EU reforms. Basically, EU reform agenda afforded successive AKP governments to navigate in Turkey's domestic affairs with some assurance. Under normal conditions, democratic governments operate and make decisions in international affairs with the assurance of mandate gained from domestic political processes. In the case of AKP in its two terms, the reform process emanating from EU agenda gave it some degree of protection against Kemalist establishment so that the government could institute reforms in politics, judiciary and other relevant areas.[3]

1. TWO-LEVEL GAME: THE NEXUS OF DOMESTIC AND FOREIGN POLICIES

From more of a theoretical perspective, the link between domestic affairs and international politics has been a significant area of research for international relations scholars. Rosenau highlighted the significance of studying internal factors on foreign policy, and of analyzing impacts of external factors on internal politics together.[4] His typology of "linkage framework" was one of the first attempts to bridge the gap between domestic and international politics. Later, Putnam's seminal work on "two-level games" shed light on how foreign policy makers decide and act in formal international negotiations, juggling between domestic constituency and international actors.[5] His work refuted the argument that states have singular or unitary interests as the structural realists argued that states are not functionally differentiated. According to Putnam's metaphor, on the first level, leaders in the negotiations try to defend their countries' positions against each other. On the second level, civil society and interest groups pressure the government to make changes pertinent to their political concerns, while politicians at the domestic level seek to assemble a coalition

[3] See a detailed account of this process, Senem Aydın and Ali Çarkoğlu, "EU Conditionality and Democratic Rule of Law in Turkey," *Center on Democracy, Development, and the Rule of Law Working Paper* (Stanford University, 2006), accessed on December 12, 2015. http://cddrl.fsi.stanford.edu/publications/eu_conditionality_and_democratic_rule_of_law_in_turkey

[4] James Rosenau, *Linkage Politics: Essays on the Covergence of National and International Systems* (New york: Free Press, 1969).

[5] Robert Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games," *International Organization*, Volume 42, Issue 03 (Summer 1988): 427-460.

of various societal groups to further their political agenda. Hence, "statesmen are strategically positioned between two 'tables', one representing domestic politics and the other international negotiation. Diplomatic tactics and strategies are constrained simultaneously by what other states will accept and what domestic constituencies will ratify."[6] Moravcsik contends the fact that the approach of "two-level games" is, in fact, synchronized "double-edged" calculation game:

a) Domestic politics can be utilized to influence the international bargaining process

b) International negotiations can be used merely to achieve domestic goals.[7]

In the case of neither major international actors nor domestic factors did not want to engage cooperatively on a particular process, then the possibility of bargaining is slim to none. Hence, willingness of both sides on negotiations is the key to the two-level games approach. In fact, when both domestic and international actors are willing to interact on negotiation table, it means both sides see some gains up for grabs on their behalf.

In Putnam's theory, the most important constraining factor for a decision maker is the size of the win-set, which depends on several domestic factors like "the distribution of domestic coalitions, the nature of representative institutions, and the domestic strategies employed by statesmen."[8] Therefore, establishing a unified coalition within the domestic constituency and linking the interests of this constituency effectively to country's interests in the negotiating table is critical to the success of decision makers. In return, decision makers can get political leverage and enhanced legitimacy to be utilized in domestic politics.

As laid out above, AKP sought the EU accession process and resultant legislative reforms due to the limited contour of maneuver in domestic politics. Since its past Islamist identity arouse suspicions among Kemalist elite, AKP leaders needed to find both domestic and international partners so as to shore up their fragile legitimacy at home. EU membership process happened to be a perfect anchor for AKP not only shield itself from Kemalists but also attract the support of previously untapped constituencies like conservatives, center right and liberals. While EU conditionality gave AKP leverage to institute major legislative reforms, it also strengthen AKP's voter base by bringing conservatives and liberals so that AKP could be able cling to power for a long period of time.

[6] Andrew Moravcsik, "Introduction: Integrating International and Domestic Theories of International Bargaining," in *Double-Edged Diplomacy: International Bargaining and Domestic Politics* , eds. Peter Evans, Harold Jacobson and Robert Putnam (Berkeley: University of California Press, 1993) : 4.

[7] Moravcsik, "Introduction", 17.

[8] Moravcsik, "Introduction", 24.

2. EU FACTOR IN DOMESTIC REFORMS

Reforms of the justice sector generally and criminal justice system in particular in Turkey have been considered as part of general democratization reforms of the country. These developments have usually been linked to Turkey's EU accession process.[9] At the same time, Turkey is among founding signatories of the European Convention of Human Rights (ECHR). It ratified the Convention in 1954 and accepted the jurisdiction of the European Court of Human Rights (ECtHR) in 1993. The ECtHR has since played crucial role in democratization process in Turkey.[10] The contribution of the ECtHR is twofold: the ECtHR, through its jurisprudence, has provided a "blueprint for normative change" in the country while the ECtHR membership of Turkey is also an essential condition for EU membership.[11] However, as F. Türkmen and E. Özbudun argue, the ECtHR rulings have not always produced desired impact within Turkish judiciary, the latter often adopting rulings that went against ECtHR decisions. This situation caused Turkey to occupy the top of the list of countries violating the ECtHR provisions since the establishment of the European Court of Human Rights. Moreover, most of reform packages were adopted following the acquirement of official EU candidate country status by Turkey in 1999. This situation pushes most of analysts to consider the EU dynamics as an even more important factor in democratization process in Turkey than participation in European regime of human rights.

Thus, the announcement of Turkey as an official candidate country to EU membership in 1999 in Helsinki boosted legal and judicial reforms in Turkey. A succession of modifications of existing norms and adoption of new legislation followed this development.[12] This process can thus be seen as a result of entanglement between EU factor and domestic policies and fits well within framework developed by Putnam, Moravcsik and others as described above.

[9] For a detailed account and discussion of democratization reforms in Turkey within the context of EU accession process, see: Ergün Özbudun, "Democratization reforms in Turkey, 1993-2004", *Turkish Studies*, 8:2 (2007): 179-196; William Hale, "Human Rights and Turkey's EU Accession Process: Internal and External Dynamics, 2005-2010", *South European Society and Politics*, 16:2(2011): 323-333; Ersin Kalaycioglu, "The Turkish-EU Odyssey and Political Regime Change in Turkey", *South European Society and Politics*, 16:2 (2011): 265-278; Ziya Öniş, "Sharing Power: Turkey's Democratization Challenge in the Age of the AKP Hegemony", *Insight Turkey* (Spring 2013): 103-122. For a perspective of an international lawyer on legal reforms, see: Özgür Aşık, "Legal reforms in Turkey: Ambitious and Controversial", *Turkish Policy*, Volume 11-1 (2012): 145-153.

[10] Turkey recognized the right to individual applications in 1987 and the binding jurisdiction of the European Court of Human Rights in 1990.

[11] Fusun Türkmen and Ergün Özbudun, "The impact of the ECHR rulings on Turkey's Democratization: an Evaluation" (Paper presented at the 21st IPSA World Congress, 8-12 July 2012, Madrid).

[12] See: EU General Directorate of Ministry of Justice, "The impact and contribution of the adoption of EU acquis on the domestice law of Turkey as an EU candidate country" (26 December 2008); Kalaycioglu, "The Turkish-EU Odyssey".

a) Constitutional revisions and the justice system

Three major constitutional revisions took place as a result of this process. These revisions concerned almost one third of constitutional provisions. If two of these revisions were enacted through laws[13], third and last constitutional revision was subjected to the popular will in a national referendum which took place on 12 September 2010.[14]

49 articles of Constitution were modified in a period following the official membership process until the official opening of accession negotiations in 2005. These changes introduced firmer commitments to the rule of law and international and European human rights norms as well as reduced the influence of military on civil bodies and government in Turkey. [15]

The referendum of 12 September 2010 was crucial in consolidating the rule of law, the protection of fundamental rights and liberties as well as in strengthening the independence of judiciary.[16] It paved way for positive discrimination in favor of women, children, the disabled and elderly. It constitutionalized a right to protection of personal data. Most fundamentally, the results of referendum were reflected in the strengthening of independent judiciary. Firstly, it restructured the Higher Council of Judges and Prosecutors (HSYK). Until 2010, the HSYK consisted of Ministry of Justice, the Undersecretary of the Ministry of Justice and five members, all appointed by the President of the Republic from among candidates nominated by highest civil and administrative jurisdictions. This situation left more influence to the State establishment as compared to other Western democracies.[17] In order to match European standards of independent judiciary, the constitutional revision of 2010 redesigned the HSYK's structure. It increased the number of HSYK members and changed methods of nomination. Nowadays, it consists of 22 members instead of former 7 and these include both judge and non-judge members as we can see in the following table[18]:

[13] Those two constitutional amendments were adopted in the law no-4709 of 3 October 2001 and the law no-5170 of 7 May 2007.

[14] Ministry of European Union, "The Chapter of Judiciary and Fundamental Rights in the process of EU negotiations" (February 2013).

[15] EU General Directorate of Ministry of Justice, op.cit., p.3.

[16] For an incisive analysis of 2010 Referendum and its context, see: Ersin Kalaycioglu, "Kulturkampf in Turkey: The Constitutional Referendum of 12 September 2010", *South European Society and Politics*, Vol. 17, no-1 (March 2012): 1-22.

[17] Serap Yazici, "Turkey's Constitutional Amendments: Between the status quo and limited democratic reforms", *Insight Turkey*, Vol. 12, no-2 (2010): 1-10.

[18] Website of the HSYK, www.hsyk.gov.tr accessed on 14 September 2014.

Table 1. The distribution of HSYK members

Origin of membership	***Number of members***
Minister of Justice	1
Undersecretary of the Ministry of Justice	1
Members of first-degree civil jurisdictions (judges and prosecutors)	7
Members of first-degree administrative jurisdictions (judges and prosecutors)	3
Members of the General Board of the Court of Cassation	3
Members of the General Board of the Council of State	2
Members of the General Board of the Academy of Justice	1
Representatives of law professors and lawyers, chosen by the President of the Republic	4
Total	**22**

Each jurisdiction will organize elections where peers vote for their candidates to be elected to HSYK. Judges and prosecutors have thus their say on the composition of the HSYK through judicial elections. HSYK was also accorded independent institutional resources as separate secretariat, budget and building. These steps were met positively by the Venice Commission which stated that they should be seen as a 'substantive and definite step in the right direction'.[19]

Second major institutional novelty of the 2010 referendum was changes to the composition and functioning of the Constitutional Court of Turkey. After the reforms, the Court consists of 17 regular members, appointed for 12-year term, instead of former 11 regular and 4 substitute members. If members to the Court were exclusively appointed by the President in the former setting, this power is now shared between the President and the Parliament (TBMM). However, the fact that the Parliament can only chose 3 members out of 17 while the President continues to appoint, directly and indirectly, 14 others may undermine the democratic legitimacy it should have conferred on the Court.[20] New competences were also accorded to the Court as a result of this referendum. The Court can now try the Chief of General Staff of Turkish Army and the Commanders of Army Forces in the High Court for violations of law committed in their function. One of the most impressive achievements of the referendum, from the perspective of international and EU standards of human rights protection was the introduction of a right to individual constitutional complaint.

[19] Türkmen and Özbudun, "The Impact of ECHR rulines", 17.

[20] Yazici, "Turkey's Constitutional Amendments".

Above-mentioned constitutional amendments were consolidated with the adoption of several legislative packages that introduced the *acquis communautaire* to the Turkish legislation. In the period of 2002-2004, 8 packages aiming to adapt Turkish legislation to EU acquis were implemented.[21] These measures addressed, among others, questions of death penalty, definition of terrorism, freedom of expression, broadcasting and education in languages other than Turkish in private courses, protection of children's rights, rights of prisoners, or civil-military relations.

Legal reforms were not contained by constitutional and legislative amendments. Several fundamental laws designing the functioning of State and society were fundamentally revised in this process. In particular, a new Turkish Civil Law was adopted in 2001 reflecting new social and economic realities of an official EU candidate country, which replaced an old one which had been in force since 1926. New laws were also adopted in the fields of both criminal law and criminal procedure: Turkish Criminal Code and Code of Criminal Procedure were introduced in 2004. The Law on the Execution of Penalties and Security Measures also introduced in 2004 featured articles on conditional release and probation. In fact, probation as an independent means of enforcement was introduced by this law for the first time.[22]

In the account of the Ministry of Justice of Turkey, all these reforms and new legislation resulted in bringing Turkey closer to international and European standards from the perspective of human rights and fight against torture, in creation of many new specialized jurisdictions, like family courts, courts of intellectual and industrial property, in the abolition of death penalty, in the introduction of new institutions and procedures into the criminal justice system such as cross-examination, mediation or probation.[23]

3. REFORM OF JUSTICE SYSTEM: A NEW MILESTONE IN REFORM AGENDA

Agenda of judicial reforms in Turkey are drafted in two main documents: Strategy of Judicial Reforms and the Strategic Plan of the Ministry of Justice. First of these documents is drafted within the framework of EU accession. The second one is in fact an institutional road map of the Ministry of Justice.[24]

[21] EU General Directorate of Ministry of Justice, op.cit.

[22] Faruk Turhan and Abdürrahim Altikat, "Yeni bir ceza usulü olarak denetimli serbestilik ve bu usulden yararlanma şartları(Probation as a new method of criminal procedure and conditions of benefiting from it*)", S.D.Ü. Hukuk Fakültesi Dergisi,* 2:2 (2012): 1-38.

[23] EU General Directorate of Ministry of Justice, "The impact and contribution of the adoption of EU acquis on the domestice law of Turkey as an EU candidate country", op.cit.

[24] Ministry of Justice, "Yargıda reformun neresindeyiz (Where are we in the process of judicial reforms)?", accessed 15 February 2016 http://sgb.adalet.gov.tr/ekler/yayin/yreform.pdf

a) The strategy of judicial reforms

This document was drafted within the framework of EU accession negotiations in 2009. Turkey Accession Partnership of 2007 identified 32 chapters subject to accession negotiations. Chapter 23 is devoted to "Judiciary and fundamental rights". The agenda of judicial reforms are in fact listed among political priorities which were identified in the Accession Partnership document.[25] Strengthening an independent judiciary is also essential for establishing the rule of law, which is part of the Copenhagen criteria for EU membership.[26]

Following screening process to determine the conformity of Turkish legislation with the *acquis communautaire*, the EU officials recommended the Turkish side to present a strategy of judicial reforms to strengthen the impartiality, independence and effectiveness of the judiciary. The Justice Ministry of Turkey proceeded to draft the strategy and submitted a final draft of "the Strategy of judicial reforms" in 2009. [27]

The strategy was designed to cover all aspects of the justice system and it identified 10 strategic objectives of judicial reforms:

- Strengthening the independence of judiciary
- Developing the impartiality of judiciary
- Increasing the efficiency and effectiveness of the judiciary
- Increasing the professional capacity in the judiciary
- Ameliorating the management system of the judiciary
- Simplifying access to justice
- Elaborating dispute prevention methods and developing alternative methods of dispute resolution
- Ameliorating criminal justice system
- Continuing legislative reforms in conformity with the needs of the country and the requirements of the EU accession process.[28]

Part 9 of the Strategy identified following objectives to improve the criminal justice system:

[25] EU-Turkey Accession Partnership Document

[26] EU-Turkey Negotiation Framework, 3 October 2005.

[27] Ministry of Justice, "The Strategy of Judicial Reforms" (2009), p. 1..

[28] Ministry of Justice, "The Strategy".

- Continuation of work toward achieving international standards in institutions of criminal justice system;
- Closing of small and inadequate prisons;
- Generalizing the implementation of probation;
- Generalizing alternative sanctions to short-term prison terms;
- Increasing and developing professional dormitories in prisons[29];
- Improving the capacity of training centers for the staff of the Ministry;
- Transferring the external security services of prisons to the Ministry of Justice
- Building PR departments in prisons.[30]

In 2012, the Ministry of Justice noted that % 70 of goals included in the Strategy were achieved and they were updating its objectives. Among the most important objectives added in 2012 was that of "preventing violations of human rights due to judicial decisions and legislation and that of strengthening human rights standards".[31]

b) The Strategic Plan[32]

The Strategic Plan of the Ministry of Justice developed an institutional roadmap for the years 2010-2014. The Plan starts with a SWOT analysis of the institution. Among its strengths, the Ministry cites its active and important role in EU accession process as well as its dynamic criminal justice system which was open to new developments.[33] Opportunities section of the analysis sheds light on important developments that enabled to initiate the process of judicial reforms. Among important factors that encouraged the Ministry to proceed with reforms are public opinion's support for judicial reforms; the process of constitutional change; positive effects of ECtHR decisions on Turkish judicial system; and increasing cooperation with international and supranational organizations.[34]

[29] Professional dormitories are meant to rehabilitate prisoners through sustaining and improving their professional and artistic skills. See: Ministry of Justice, "The Strategy", p. 43.

[30] Ministry of Justice, "The Strategy", 43-44.

[31] TESEV, "Yargı Paketleri: Hak ve Özgürlükler Açısından Bir Değerlendirme Geniş Kapsamlı Rapor (Judicial packages: An Evaluation from the Perspective of Rights and Liberties, Comprehensive Report)" (2013), p.8.

[32] The Strategic Plan of the Ministry of Justice (2010-2014), 160 p.

[33] The Strategic Plan of the Ministry of Justice, 33.

[34] The Strategic Plan of the Ministry of Justice, 34.

The Ministry identifies several strategic objectives to be realized by 2014. Some of the most important objectives overlap with those of the Strategy of judicial reforms:

- Contributing to strengthen the independence and impartiality of the justice;

- To adopt international standards of the criminal justice system and, especially, those concerning probation;

- To increase international cooperation and conformity with the EU *acquis*.[35]

Modernizing justice system through new legislation

The Turkish government has since adopted several new legislations reforming the judicial system in along the lines defined in the above-mentioned strategic documents. These legislative proposals came to be known as "judicial (reform) packages" in the public opinion and the media. According to TESEV, these legislative proposals are considered as packages, because they "change a number of other laws that are actually quite different from one another, and because such packages generally seek to enact changes to the structure of judicial bodies, their operation, and the actual legal rules that are used in such processes"[36] As an illustration, the 4th Judicial reform package amended following laws: Law on Military High Court; Law on Administrative procedure; Law on Struggle against Terrorism; Turkish Criminal Law; Law on Criminal Procedure. Until now, four judicial packages were adopted, as shown below in the table.

First judicial reform package

The law no-6217, known as the first judicial package was adopted by the Parliament on 31st March 2011. The law aimed at modifying several laws to accelerate judicial services.[37] It brought modifications to 17 laws such as Law on Military Service, Law on Military Discipline, Law on Passport, or Turkish Criminal Law.

Second judicial reform package

The Presidential Decree no-KHK/650, or the second judicial package, was published on 26th August 2011.[38] This decree brought changes in the structure and missions of the Ministry of Justice. Notably, a new Human Rights De-

[35] The Strategic Plan of the Ministry of Justice, 42.

[36] TESEV, "Yargı paketleri", 8.

[37] Law no-6217, Official Gazette, no-27905, 14 April 2011.

[38] Decree no-KHK/650, Official Gazette, np-28037, 26 August 2011.

partment was created under the General Directorate of International Law and External Relations of the Ministry.[39]

Table 2: Judicial packages.

Reform packages	Legislation	Date
First judicial package	"Law No. 6217 on the Amendment of Several Laws for the Purpose of Accelerating the Provision of Judicial Services	31 March 2011
Second judicial package	Decree (KHK) No. 44 on the Amendment of Several Laws and Decrees (KHKs) by Amending the Decree (KHK) on the Organization and Duties of the Justice Ministry	26 August 2011
Third judicial package	Law no-6352 on the Amendment of Several Laws to Improve the Effectiveness of Judicial Services and the Postponement of Trials and Sentencing in Crimes Committed in the Press	5 July 2012
Fourth judicial package	Law no-6459 on the Amendment of Several Laws with respect to Human Rights and Freedom of Expression	30 April 2013

Third judicial reform package

The third package, the law no-6352[40], introduced modifications in three main bodies of the justice system: civil execution; administrative judiciary and criminal legislation.[41]Among important changes are the introduction of civil execution officers, limitation of goods subject to seizure, creation of document bureaus at administrative courts, obligation to use National E-Justice System

[39] Ibid. Art. 1.

[40] Law no-6352, Official Gazette, no-28344, 5 July 2012.

[41]Özgür Duman, "Information note on new modifications introduced by law no-6352", accessed July 4, 2014 http://www.ozcan-ozcan.av.tr/makale/54/3-yargi-paketi-6352-s-yasa-bilgi-notu.html

(UYAP) in administrative and tax courts as well as in State Council[42], redefinition of the crime of corruption, possibility to postpone sentences for simple crimes of terror, and postponing sentences for crimes committed through press and media.[43]

Fourth judicial reform package

The law no-6459 Amendment of Several Laws with respect to Human Rights and Freedom of Expression modified some aspects of both administrative and criminal justice. Its main objective was to change procedural aspects of administrative and criminal justice which were causing violations of human rights and freedom of expression. The modifications brought by this law were especially seeking to render Turkish justice standards more compatible with ECHR standards.[44]

We should note that the "judicial reform packages" don't include all reformist legislation. Among most important legislation that are not included in these packages are law no-6110 and law no-6411. Law no-6110 brought structural changes of the justice system. State Council, Supreme Court and Council of Criminal Forensic are among justice bodies that were restructured following the Law no-6110.

Parliamentarians were motivated by three main considerations in adopting the law no-6411: improving relations between the inmates and the outer world; giving would-be former prisoners a transition time to integrate the social life; and, giving defendants means to better defend themselves by enabling them to testify in a language other than Turkish.[45]

Following the entry into force of the Law no-6411, defendants can submit their defense in a language other than Turkish even if they know Turkish but they can better express themselves in another language. The Law also changed the length and procedural conditions for the postponement of execution of prison sentences. Inmates were given opportunity to meet with their family in prison facilities without close surveillance for a period of up to 24 hours. Those inmates who are serving in open prisons facilities or have acquired this right have now up to four leaves per year.[46]

[42] On Turkish E-Justice System, see: Ali Riza Çam, "Turkish IT project UYAP" (presented at European e-Justice Conference "e-Justice without Barriers" - 17-18 February 2009) accessed July 4, 2014 http://www.ccbe.eu/fileadmin/user_upload/document/E-Justice_Portal/17-18_02_2009/Abstracts/13_Abstract_-_Turkish_IT_project_UYAP-_Ali_Rza_Cam.pdf

[43] Çam, "Turkish IT Project UYAP".

[44] Mehmet Arican, "4. Yargı paketi ne getiriyor(What will 4th Judicial package bring about)?, Ankara Strateji (25 February, 2013).

[45] TBMM, The Project and relevant reports of Law no-6411, p. 6.

[46] Bayram Özcan, "4. Yargı paketi,18 aya kadar hapis cezasına kısmi,örtülü, sınırlı bir af geldi,infaz yasası değişti (4th Judicial package, limited amnesty to sentences under 18 months, law on criminal

One measure among the provisions of Law no-6411 created much enthusiasm and discussions in the country. It postponed the condition of serving at least 6-month of prison sentence prior to be able to benefit early release or probation. According to new text of the Law no-5275 as amended by the Law no-6411, convicts who have been convicted to prison sentences of up to 18 months can immediately benefit from probation or early release without being forced to serve some time in the prison. The former requirement for inmates to serve the last 6-months period of their prison sentence in open prison before being able to go on probation was postponed until the end of 2015. This modification to the functioning of probation institution initiated so much enthusiasm among interested segments that the Law no-6411 came to be known erroneously as the Law on Probation.[47]

4. APPRAISAL OF THE EU IMPACT

All the above-mentioned changes and reforms were realized within the context of modernizing Turkey pursuing EU accession objective. After more than forty years of waiting, the recognition of Turkey as an official candidate country to the EU and the launch of official accession negotiations in 2005 initiated a period of enthusiastic reforms. The account of these reforms and developments constituted the basis for a huge literature on political reforms and democratization of Turkey with an accent of EU impact on these improvements. As William Hale puts it:

> "*There is little doubt that the need to conform to the Copenhagen criteria had a powerful effect on boosting the effort for reform. […] As a contrary example, nearly all Turkey's near neighbors in the Middle East, the Caucasus and Central Asia, which lacked the incentive offered by prospective EU membership, made virtually no effort to democratise during this period*".[48]

In the latter part of this period of reforms, we could observe an increasing focus on reforming justice system. The questions of justice reforms occupy an important place within EU accession process. It is in fact a cross-cutting issue with serious implications for political, societal and legal system of the country. Hence the EU consecrated a whole Chapter 23 on "Judiciary and Human Rights" among negotiation chapters as laid out in Accession Protocol. Annual country reports have also underlined the achievements in this field realized

execution changes)", accessed September 15, 2014 http://www.ozcan-ozcan.av.tr

[47] As noted above, the probation was introduced by the Law on Execution of Penalties and Security Measures in 2004. The modalities of realization of probation measres are determined by the Law on Probation Services, adopted in 2005. For discussion of the relevance of the Law no-6411 for probation, see also: E. Şen, "New procedures of execution of penalties brought about by Law no-6411" (2 February 2013) accessed September 15, 2014 www.haber7.com ; "Probation to be submitted to the Constitutional Court", *Ankara Strateji (*10 September 2013) accessed September 15, 2014 www.ankarastateji.org

[48] Hale, "Human Rights and Turkey's EU Accession Process", p. 331.

so far by Turkey. The Turkey Progress Report 2011 thus stated that "There has been progress in the reform of the judiciary, notably with efforts to implement the 2010 constitutional amendments".[49] The Turkey Progress Report 2013 issued by the European Commission has thus underlined many positive developments that were enabled by recent judicial reform packages. Noting that there was a progress in judiciary, the Commission highlighted positive achievements brought about by 3rd and 4th judicial reform packages.[50]

CONCLUSION

However recent legislative moves seem to undermine what have been accomplished until 2010 by the executive. These recent changes are seen to create stronger executive and to curb the independence of judiciary, especially. Among measures deemed controversial, we can cite provisions granting to Minister of Justice greater control over HSYK, top judicial body, thus weakening judicial independence.[51] In particular, changes curbing the independence of HSYK go against reform provisions adopted by the government itself in 2010.[52] These measures, in par with other controversial measures, now overturned, on banning Twitter or YouTube services, are contrary to AKP's own legislative policies over previous years.[53] More recently, a bill was approved which reduces the powers of two higher courts (the Court of Appeals and the Council of State) while giving more arbitrary powers to the police.[54]

Main cause of these mixed developments is seen as the weakening of EU factor and burst into center stage of purely domestic politics related issues.[55] Indeed, we can observe an overlay of domestic politics dynamics in almost any current debate in Turkey. Several domestic factors contribute to shaping of internal political dynamics. In late May 2013, Gezi Park protests and subsequent heavy-handed, violent government crackdown on demonstrators changed political atmosphere dramatically, and called into question on AKP's reform outlook. Another major issue is that the country has entered a long electoral cycle stretching over the years 2014 and 2015. Local and presidential elections were organized in March 2014 and August 2014, respectively and two general elections in 2015.

Most importantly, a series of events related to corruption charges and the AKP

[49] Turkey Progress Report 2011, p. 70.

[50] Turkey 2013 Progress Report, p. 63.

[51] Turkey Progress Report 2014, p. 43.

[52] Ergün Özbudun, "AKP at the crossroads: Erdoğan's majoritarian drift", *South European Society and Politics*, 19:2 (2014): 164.

[53] Drian Jones, "Turkey's plan to reform judiciary draws rebuke", *Voice of America* , February 17, 2014, accessed December 11, 2014 http://www.voanews.com/content/turkeys-plan-to-reform-judiciary-draws-rebuke/1853223.html

[54] Ceylan Yeginsu, "Turkish Police to get more search Powers", *New York Times*, December 3, 2014.

[55] Alan Cowell, "Turkey turns its back on the EU", *New York Times*, 3 April, 2014.

government's reaction to them have been central to the domestic politics and they have been determining the government's legislative policies since late 2013. According to many analysts, the new legislative measures adopted since December 2013 aim to reinforce the government's position to tackle with political corruption charges and to curb the judicial independence in order to reach these aims.[56] As reflected in Turkey Progress Report 2014 published by the EU Commission, new legislative measures on HSYK and Internet were adopted as a response to December 2013 corruption probe 'in haste and without consultations'.[57]

A complementary explanation of abrupt changes in Turkish government's judicial reforms relies on a chronological logic. According to majority of Turkey observers, most of positive developments happen to coincide with the first two terms of current ruling party while with the start of the third term, the actual ruling party undersigned many worrying developments.[58] Following this account, the AKP government led reformist policies in its first two terms stretching roughly from 2002 to 2011. However, the third term of the ruling party witnessed controversial moves aiming to consolidate the AKP's hold over State institutions and civil society. As Ergün Özbudun states in his recent article "while a modest improvement was recorded in the first two terms of the AKP government, a reverse trend seems to have started during its third term".[59]

The above-mentioned developments show that enclosure of governmental policies to exclusively domestic dynamics may lead to many unintended consequences. Isolation in international arena is only one of them. More fundamentally, democracy, human rights and justice considerations cannot be sustained by domestic factors alone. In the long term, the negligence of international (and, regional) frameworks and standards may have negative consequences on legal and political position of given countries. Recent developments in Turkey illustrate this point rather obviously. In this situation, the most urgent and fundamental task for all relevant actors, domestic and international, will be to reinvigorate external dynamics of reforms in Turkey in order to maintain democratic and judicial achievements of the last decade.

[56] On 2013 Corruption scandal and its effects on Turkish politics, see. Kıvanç Ulusoy, "Turkey's fight against corruption: Critical assessment", *Global Turkey in Europe Paper* no-19, Istituto Affari Internazionali (November 2014) accessed December 11, 2014, http://www.iai.it/pdf/GTE/GTE_C_19.pdf ; Mustafa Gürbüz, "The Long Winter: Turkish Politics after Corruption Scandal", *Rethink Paper* no-15 (May 2014).

[57] Turkey Progress Report 2014, 9.

[58] For examples of articles praising early performance of the AKP government and expressing worries over its more recent policies, see: Mustafa Akyol, "Can a New Premier Save Turkey?", *New York Times*, August 24, 2014; Mustafa Akyol, "New threats to democracy in Turkey", *New York Times*, August 18, 2014; Marc Pierini, "How far backward is Turkey sliding?", *Carnegie Europe*, (March 3 2014) accessed December 11, 2014 http://carnegieeurope.eu/publications/?fa=54732&reloadFlag=1#

[59] Özbudun, "AKP at the crossroads", 161.

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