

# Whither Legal Turkey?

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*With the ascent to power of the AKP and its political victory against the secular elite and as the country is about to draft its first civilian constitution, the party's leadership faces a daunting challenge to transform the country into a real democracy for minorities as well as majorities. The legacy of the party's leadership will not be determined by its win against a system rigged against them, but how they transform an authoritarian and arbitrary legal system into extended rights for, amongst others, the country's ethnic Kurds, women, and political rivals. This requires more than a new constitution and will be the real test of whether Turkey can serve as a model for the region or not.*

## A Sick Man No More

Turkey was once referred to as the 'Sick Man of Europe', plagued by financial turmoil, erratic growth, and territorial contraction. Today, it is among the twenty largest countries in the world both economically as well as population-wise, and remains one of few Muslim democracies. While Europe has been undergoing a financial crisis, Turkey has been growing at an unprecedented rate, leading the *Economist* to label it as 'The China of Europe'.<sup>1</sup>

Among the Arab countries, Turkey is also increasingly seen as a viable model of combining Islam and democracy, and many have lauded the government for its assertion of civilian control over state institutions. A recent triumphant tour of Egypt and Libya by Turkey's Prime Minister blurred the distinction between official state visit and celebrity tour.

Yet Turkey's leaders need all the political capital they can acquire, as steep challenges

remain domestically. Whether Turkey can be a model for the rest of the Muslim world will be determined by whether its leadership can solve the remaining political and social injustices. Currently, these are exasperated by an outdated and authoritarian legal system and arbitrary enforcement of existing laws.

## From White to Black

During the last two decades, Turkey has experienced something very rare. Historically, power emanated primarily from the country's security establishment - the judiciary and the military - educated in the country's elite schools and trained in a Kemalist creed where religious and non-Turkish identities had no place in the public sphere (that is, unless they were secular and Turkish). In the media, this group is often referred to as the 'White Turks'.<sup>2</sup>

The constitution set up in 1982, following a military coup two years earlier, put security and stability ahead of individual rights and cemented institutions with limited

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<sup>1</sup> "Is Turkey turning its back on the West?" The *Economist*, October 21<sup>st</sup> 2010.

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<sup>2</sup> "White Turks, Black Turks and grey debate," *Hürriyet Daily News*, November 22, 2010.

accountability to the public. The need to preserve the state's security interests allowed for heavily regulated political participation among those deemed threatening to the state, be it Islamists, leftists, or those seeking increased Kurdish autonomy.

Weak coalition governments changed with the season, the debate captured by leaders powerful enough to hinder political rivals from affecting real policy while powerless or unwilling to do so themselves. Human rights abuses, especially in Eastern Turkey provided ample fuel for critics of Turkey's prospects for EU membership.

Today, the 'White Turks' are nearly gone – a democratically elected majority government, made up largely of pious Muslims from the periphery of Turkey, is in power. The President, Abdullah Gül, is from Kayseri, the birthplace of the 'Anatolian tigers', a group of successful and piously Muslim entrepreneurs. Prime Minister Recep Tayyip Erdoğan stems from (what was) one of the poorer neighborhoods in Istanbul and spent time in jail for reciting what the judiciary deemed to be an inflammatory poem. Both men have wives wearing the headscarf, which for the secular elite is what a red rag is to a bull.

After a decade-long conflict between the moderately Islamist Justice and Development Party (AKP) and the secular elite, the former seems to have come out on top. Earlier this year the top brass of Turkey's military corps resigned *en masse* following unprecedented arrests of senior military officers related to allegations of plotting a military coup. A constitutional amendment passed last year now allows military personnel, including those involved in the 1980 coup, to be tried in civilian courts and has revamped the appointment procedure of parts of the judiciary. A significant portion of all Turkish officers is currently in jail for conspiring against the AKP government.

With power consolidated behind them, the AKP leadership has their work cut out. While the Turkish model is already being lauded as a

role model for the Arab spring countries, within the country significant challenges and injustices remain. Deep institutional reform is required to accommodate a people more than deserving of an open and free society. Full political and economic rights need to be further extended to women, religious minorities, as well as the country's large Kurdish population. The justice system, especially the Turkish Penal Code needs to be altered to rid it of remnants of the authoritarian system that the AKP government claims to be dismantling. A new constitution is needed in which the state serves the people and not the other way around.<sup>3</sup> Finally, Turkey needs more than new laws; it needs enforcement of, and compliance with, the rule of law in what would be an institutional change not seen since the birth of the republic.

## In the Name of Terrorism...

In a recent survey of anti-terror convictions by the Associated Press in more than 100 countries, Turkey accounted for a *third* of all convictions.<sup>4</sup> The Turkish state has long been at odds with a large Kurdish minority seeking greater autonomy and has been engaged in a war with the Kurdistan's Worker's Party (PKK) since the late 1980s.

The political system is currently rigged against Kurdish political representation, largely because of an extreme rule requiring any party to win at least 10 percent of the national vote to receive any parliamentary seats at all.<sup>5</sup> Kurdish candidates not banned before

<sup>3</sup> There is a substantial literature on the effects of institutions on economic development; see for example Acemoglu et al (2005). For a survey of the role of gender equality and its effects on economic development see Duflo (2005).

<sup>4</sup> "Over one Third of Worldwide Terror Convictions from Turkey," *Bianet*, September 6<sup>th</sup> 2011.

<sup>5</sup> Official figures of the Kurdish population have not been produced since the mid-1960s, but a 2008 report made for the National Security Council estimated that circa 15 percent of the Turkish population are Kurds. "Türkiye'deki Kürtlerin sayısı!?", *Milliyet*, June 6<sup>th</sup> 2008.

elections regularly are afterwards and many end up in jail.

Despite the AKP's attempt at a Kurdish Opening, and the sizeable Kurdish representation within the party, results have come up below expectations and large-scale protests remain commonplace in the region. Due to the Turkish Penal Code allowing anti-terror laws to govern the legal cases of protesters, this creates a source of regular condemnation from human rights organizations.

For example, not only can protesters sympathetic to Kurdish rights be prosecuted for spreading propaganda for a terrorist organization (Article 7/2, Anti-Terror Law), but also many are deemed to be "committing crimes on behalf of the PKK without being a member of that organization" (Article 220/6, Turkish Penal Codes).<sup>6</sup> Consequently, demonstrators for Kurdish rights can be prosecuted as if they were actually fighting the government as armed members of the PKK (Article 314/2, TPC). When added to charges from the Law on Demonstrations and Public Assemblies, this could mean sentences of up to thirty years in jail. Child protesters usually receive much shorter sentences, often between four to five years.

Laws like these have profound effects on press freedom. According to a report by the Organisation for Security and Co-operation in Europe, Turkey has the dubious honor of being the world leader in imprisoned journalists.<sup>7</sup> The report estimated somewhere between 700 and 1,000 ongoing proceedings that could lead to imprisonment of journalists. The length of sentences are occasionally astronomical; Vedat Kurşun and Emine Demir of the *Azadiya Welat* newspaper were sentenced to 166 and 138 years respectively in prison, while Bayram Namaz and Ibrahim Çiçek of the *Atilim* newspaper each face up to 3,000 years in

prison. Some journalists, such as Halit Güdenoğlu of *Halit Yürüyüş* magazine, currently face 150 court cases.

At the same time, after 10 years of failing to reach convictions of leading members of the notorious Turkish Hizbullah, an Islamist militant group (unrelated to its Lebanese namesake), several of its leading members were released from custody earlier this year. The organization is thought to be responsible for the deaths of hundreds of people during the mid-1990s during the worst years of the conflict between the PKK and the Turkish state. Evidence suggesting covert state backing for the group's fight and tactics against the PKK has not led to any serious consequences.<sup>8</sup> The suspects were released in compliance with a new law restricting the amount of time suspects can be held while waiting for the final verdict in their cases to 10 years.

As if this was not ironic enough, the ten years of detainment without trial is now being used against the secular elite; officers, academics, journalists, former police chiefs, public prosecutors, and theologians alike. In two of the most controversial legal cases in Turkish history, around 500 individuals have been detained. Prosecutors in the Ergenekon investigation accuse detainees with membership of what is described as a clandestine terrorist organization seeking to destabilize the country's Islamist-leaning government. In the *Sledgehammer* investigation, high-ranking members of the military stand accused of plotting a coup in 2003. Explained by the government as instrumental to the dismantling of the so-called "deep state", the cases are increasingly criticized for the flawed, if not fabricated, evidence put forward by the prosecutors.<sup>9</sup>

As noted by many observers, the detainees seem to have nothing in common except their opposition to the AKP government, as well as

<sup>6</sup> Human Rights Watch Report, November 1st 2010,

<sup>7</sup> "OSCE Report Finds Turkey Is Holding 57 Journalists in Prison," International Press Institute Release, April 4<sup>th</sup> 2011

<sup>8</sup> "What is Turkey's Hizbullah? – A Human Rights Watch Background"

<sup>9</sup> Jenkins, Gareth, "Between Fact and Fantasy: Turkey's Ergenekon Investigation", August 2009,

a social movement referred to as the Gülen movement.<sup>10</sup> The actions of the prosecution approached that of a farce when earlier this year police raided the prospective publisher of a book about the the Gülen movement, written by detained journalist Ahmed Sik, and proceeded to delete every digital copy of the manuscript. The 12th Court for Serious Crimes described the draft as an “illegal organizational document” and ruled anyone refusing to hand in a possessed copy would be accused of “aiding a criminal organization.”<sup>11</sup> Weeks later, seven theologians were arrested, and computers and documents were confiscated. The sole similarity between the theologians seems to have been their questioning of Gülen’s credentials as a theologian.

The independence of the judiciary is also under pressure. In 2007, a regional public prosecutor, İlhan Cihaner, had started investigating links between Islamist organizations and the fixing of state contracts. After refusing to drop his investigations in late 2009 after pressure from the government, Cihaner was removed from his position and on February 17 2010 he was arrested and charged with membership of Ergenekon.<sup>12</sup>

## The Elephant in the Room: Women’s Rights

Several of Turkey’s laws are also simply not enforced. Examples of this are laws regulating women’s rights. Despite a “Law 4320 on the Protection of the Family”, women’s de facto situation remains highly vulnerable – “enforcement officers, judges, and prosecutors neglect their duties, often due to lack of

<sup>10</sup> The Gülen movement, named after its spiritual leader Fethullah Gülen, is known for its wide network of businesses and educational activities. It is also widely believed to have significant influence among the Turkish National Police and the judiciary.

<sup>11</sup> Berlinski, Claire, “Prisoner of Conspiracy”

<sup>12</sup> Jenkins, Gareth, “Ergenekon, Sledgehammer, and the Politics of Turkish Justice: Conspiracies and Coincidences”

expertise or will to deal with cases of violence against women and girls”.<sup>13</sup>

A recent survey by Hacettepe University reported that around 42 percent of all women older than 15 in Turkey—approximately eleven million women in total—have experienced physical or sexual violence at the hands of a husband or partner at some point in their lives.<sup>14</sup>

Women who want to report abuse are turned away, and in some cases have been murdered despite having obtained protection orders. The law requires women’s shelters in every settlement above 50,000 inhabitants yet more than a hundred are still missing.

In the 2010 Gender Gap Report from the World Economic Forum, Turkey scored a rank of 126 out of 134 countries surveyed, behind its neighbors Iran, Syria, and Egypt.<sup>15</sup> There are two main components that drove this abysmal performance in gender equality. The first is labor force participation; according to World Bank female labor force participation was a meager 24 percent in 2009 (on par with Saudi Arabia, Syria, and Egypt and below the rate found in Iran).

The second component is upper secondary education (high school), since this is where the combination of voluntary participation and the headscarf ban keeps many conservative families from sending their daughters to school. Almost a hundred years after Atatürk imposed a reform making primary education mandatory for women, gender inequality in education and labor remains one of the more serious impediments to Turkey’s future economic development.

The ban on the headscarf, especially in universities, a remnant of an increasingly archaic ideology, stands out as the unequivocal symbol of gender inequality. However, improving women’s rights and economic opportunities is about more than the headscarf

<sup>13</sup> Human Rights Watch Report, May 4 2011,

<sup>14</sup> “National Research on Domestic Violence against Women in Turkey 2008,” January 2009,

<sup>15</sup> The Gender Gap Report 2010, World Economic Forum

- for example, making upper secondary education mandatory would be another less politically charged road ahead. But in order to further women's participation in public institutions such as the labor force, education, and politics, political leaders need a pragmatic approach in outmaneuvering a deeper resistance to female emancipation.

## Turkey Needs More Than A New Constitution...

One of the AKP's campaign promises of the recent June elections was the drafting of a new constitution. The political capital gained by the AKP in its fight with the military as well as its role as a model in the Muslim world, provides a unique opportunity to, for the first time, set up a civilian constitution that does away with many of the autocratic elements of the 1982 constitution.

A formal document with principals such as asserting the primacy of individual rights over the state is much needed. But without deeper reforms that seep into the justice system and the security establishment, this will simply become another superficial reform without real implications.

As long as the Turkish Penal Code and the anti-terror laws can be used in an arbitrary manner to pursue political opponents; be it Islamists, secular elites, or Kurds; constitutional reform will fail to bring about real change. Until real independence from political pressure is granted to judges and journalists alike, Turkey will not know freedom of expression. And without real change in female participation in markets and institutions, Turkey will not know gender equality. An age-old saying in Turkish goes "Happy is he who can call himself a Turk." If only it was that easy.

## Further Reading

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