

Turkey's Constitutional Dilemma and EU Ambitions

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Nearly three years ago, when Turkey's moderately Islamic Justice and Development Party (AKP) won early elections in a landslide and firmly consolidated its hold on power, the country appeared ready for a new and more democratic constitution – one that would finally replace the 1982 document written under military rule. Yet, what emerged shortly after the elections was not a new constitution but a major political crisis. Unable to establish a parliamentary consensus, Prime Minister Erdogan opted for a minor constitutional reform package, which nearly cost the closure of the AKP and ended his political career. Giving major ammunition to his secularist critics, the AKP passed (with the support of the Nationalist Action Party) a law that lifted the ban on Islamic headscarves in Turkish universities. This constitutional amendment led

to the Chief Prosecutor's indictment demanding the closure of the AKP on the grounds that it exhibited an Islamist agenda.

After months of political paralysis, the AKP and Erdogan survived by a whisker. In May 2008, the Constitutional Court narrowly decided not to ban the party. Yet, the AKP was still found guilty of nurturing an Islamist agenda. All hopes for constitutional change vanished and a bitter power struggle between pro and anti-AKP camps began. The country became increasingly polarized particularly in the framework of the "Ergenekon case" – an investigation that has led to the arrest of dozens of retired and active duty military officers, as well numerous secularist activists, on charges of plotting multiple coups with the alleged aim of preserving Turkey's secular institutions.

Today, Turkey is once again in the midst of a major constitutional debate. As usual, the political and electoral stakes are high. The AKP and proponents of constitutional changes argue that the newly proposed reforms would promote democracy and bolster Ankara's bid for membership in the European Union. Not surprisingly, the secularist opposition maintains quite a different view. They see these reforms as steps that would seriously undermine the independence of the judiciary while further reducing the autonomy of the military. Their

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position is quite predictable since they are primarily concerned about Islamization and the authoritarian tendencies of the government. This position is particularly embraced by the Republican Peoples Party (CHP), the main opposition force in the Turkish Parliament. The CHP considers the Ergenekon case a pro-AKP judicial plot to silence all the secularist critics of the government in order to establish an Islamist and authoritarian state. As a result, the main opposition appears more interested in scoring political points against the AKP than supporting the proposed reforms.

In essence, what the governing party is proposing has three major dimensions. First, the reforms would overhaul the judiciary by opening up the judicial appointment process and expanding its membership. Second, the reforms would allow military officers to be tried in civilian rather than military courts. And, finally and most importantly, given the cemetery of political parties in Turkey, the new laws would make it harder for the Constitutional Court to ban political parties. The Turkish Parliament is currently voting on these constitutional changes. But the AKP government lacks an outright two-thirds majority in Parliament and although the pro-Kurdish Peace and Democracy Party (BDP) and others are negotiating possible support, it is unlikely that the reform package will have enough votes. A referendum will then remain the only feasible option. Given past difficulties, Prime Minister Erdogan is likely to opt for a referendum to be held in the summer, possibly followed by national elections.

Interestingly, Turkey's liberal intellectuals who have so far supported the AKP are divided over the reforms. In the first camp are those who argue that instead of such partial attempts, the whole constitution needs to be replaced. Erdogan's authoritarian style of leadership, mercurial political personality, populist foreign policy, erratic outbursts against journalists, and the tax penalty imposed on the Dogan group – the country's largest media conglomerate –

led many former AKP supporters within the liberal camp to believe that the Prime Minister is currently more interested in political self-preservation than genuine democratization.

A second group of liberal democrats, on the other hand, appears fully behind the constitutional reform package. They too would naturally have preferred more radical change through a new constitution. But unlike the first group of liberal intellectuals, they are mindful of past failures and know a new constitution is simply not feasible in the current political conditions of Turkey. In the absence of a more democratic and constructive opposition party, they still see the AKP as the only agent of "change" in Turkey. In short, they consider small steps towards democratization better than no steps at all.

Despite these differences, both camps agree that the AKP should have tried much harder to get everybody under the same tent after their landslide electoral victory in July 2007. A major opportunity was missed when AKP won 47 percent of the votes but failed to create consensus for a new constitution. Clearly, the party squandered a rare political opportunity.

It is hard not to sympathize with the second camp that pragmatically prefers some reforms to none whatsoever. Yet, it is equally hard to understand why the government is unwilling to go a few steps further to convince the skeptics who believe the AKP and Erdogan are only interested in consolidating their hold on power. For instance, the AKP could have easily opted for further amendments to lower the steep 10 percent threshold that political parties must meet to claim seats in Parliament. Needless to say, this 10 percent threshold keeps smaller political parties, including those that represent ethnic groups like the Kurds, out of Parliament and provides a clear indication of the limits of Turkey's democratic system.

At the end of the day, politics is the art of the feasible. The AKP may not be a genuinely

liberal and democratic party, and there is definitely instrumental and opportunistic maneuvering in its current embrace of 'democratization'. Given the status quo oriented establishment and the authoritarian tendencies cutting across the opposition, however, Prime Minister Erdogan's party is still the only agent of "change" among Turkey's political parties. Sadly, Turkey lacks a better alternative. The current situation is another stark reminder that Turkey's liberal democrats have no real option for pro-EU democratization other than working with the AKP.

Europe's Reaction to AKP's Constitutional Reform Package

Reactions in Europe to the new reform package have been cautious and disengaged, particularly when compared to past attempts when issues such as the headscarf aroused fears of 'Islamization' among the European public. The European media tends to be only selectively and superficially interested in what happens in Turkey.

It seems Ankara's best friends remain the EU institutions and other European bureaucracies, which have already supported past reforms. For instance, the Commissioner for Enlargement, the Czech Stephan Füle, was quick to declare that this initiative "goes in the right direction". The same opinion was expressed by European Parliament rapporteur on Turkey, the Dutch Ria Oomen-Ruijten, who nevertheless stressed the need for the AKP to seek a broader consensus in the Parliament and in the country. The "Venice Commission", an advisory body of the Council of Europe composed of independent law experts, has so far welcomed even the more contentious amendments of the package dealing with the reform of the judiciary. The president of the Venice Commission characterized the Turkish high judiciary as a "monopoly" last January.

The EU and other organizations monitoring Turkey's "democratization" performance have long been urging Turkish policy makers to reform the country's constitutional charter as a pre-condition for real progress in other areas. The last European Commission Progress Report, released in October, 2009, reiterated this objective listing among the priorities a new "legislation on political parties" (especially as regards the closure of parties), "limiting the jurisdiction of military courts", stronger guarantees of the "independence, impartiality and effectiveness of the judiciary" (including new criteria for the selection of judges and prosecutors in the High Council), and the institution of the Ombudsman to further strengthen the protection of human rights: all issues that the proposed amendments address directly and decidedly.¹

Outside Brussels and EU intuitions there seems to be a greater deal of caution, if not coolness, vis-a-vis the AKP's constitutional initiative. Part of the reason, has to do with the many missing elements of the reform package and fears that this might be just another "missed opportunity" for Turkey. Most critics point out that the 10% threshold for representation in the parliament is a serious obstacle to the emergence of authentic pluralism in the Turkish political system. European progressives concentrate their criticism on social issues, noting that the proposed amendments do not go far enough to recognize the right to strike, and that much more could have been included in the package concerning the protection of minorities' and women's rights. It is worth noting, however, that although ties were established in the past between the AKP and the European People's Party, lately the self-described conservative AKP seems to have gained notably more trust and support among the European left.

¹ See "Turkey 2009 Progress Report" at http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf

Simplistically and often misleadingly, European conservatives analyze developments in Turkey through the prism of an “Islamist versus secularist” divide. Echoing the Turkish main opposition parties, they tend to dismiss AKP-led democratization efforts as window dressing that masks a hidden Islamic agenda to tighten the party’s grip on the Turkish state by weakening secularist opponents within the judiciary and the security establishment. Therefore, AKP’s constitutional proposals have not been analyzed in any great detail or compared to similar provisions in other European constitutional charters. Furthermore, few European conservatives have bothered to explain the absence of viable counter-proposals coming from the secularist Turkish opposition. In that sense, European conservatives and the Turkish domestic opposition appear less willing to discuss issues related to democratization. Instead they seem focused on questioning the legitimacy and political intentions of the AKP.

In sum, fears and suspicions still seem to play a prominent role in European visions of Turkey. The gap between the formal agenda of Turkey-EU relations (domestic reforms and the technicalities of the accession process) and the “real agenda” (the politics of it) has only widened in recent times. The issue of constitutional reforms was, for instance, absent from the agenda in bilateral meetings that Prime Minister Recep Tayyip Erdoğan held with German Chancellor Angela Merkel in March and with French President Nicolas Sarkozy in early April. Both Germany and France are reluctant to even consider the idea of Turkey as a future full member of the European Union. Instead, they support the vision of a “privileged partnership” that would allow cooperation to continue between European countries and Turkey on a wide range of issues, but bring to an abrupt end Turkey’s decades-long journey toward EU membership, which would cause great disappointment in the Turkish elite and public. Such Franco-German coolness towards Ankara, may explain why Turkey’s democratic

evolution is less of a political concern for Berlin or Paris, compared to issues such as Turkish and Muslim integration in Europe, which are easy prey for scare tactics. Erdogan’s problematic Iran policy only helps their cause.

Part of the blame for this European reluctance goes to the AKP itself. The party invested little in public diplomacy in European capitals and often created the impression that its interest in Europe was temporary and tactical. The fact that after accession negotiations began in 2005 the AKP was reluctant to pursue its earlier reformist agenda gave ammunition to such views. The absence of progress in Cyprus talks and in normalization with Armenia further complicated Turkey’s relations with the EU. Finally, Turkey’s current stance on Iran, which seems to depart significantly from the Western one in its skepticism about the adoption of new economic sanctions, also created the impression that Ankara is not interested in coordinating its talking points with transatlantic partners. Erdogan rarely misses an opportunity to voice his strongly-held opinions about Iran and Israel. In the last few months, he has used most of his international speeches to condemn Israel’s policies as a threat to stability and peace and to argue that Iran’s nuclear program should be given the benefit of the doubt.

Taken together, these dynamics do not bode well for the future of Turkey-EU relations and the genuine democratization in Turkey. Under more normal circumstances, Ankara could have used its drive for EU membership as the best way to push forward with domestic democratization as well. It would have been only normal that Turkey’s constitutional dilemmas and EU ambitions were dealt with together. After all, this is what the accession process should be about: the attainment by the candidate country of European-wide standards of democracy offering its citizens the highest possible levels of political freedom and economic prosperity. Unfortunately, Europeans currently seem too distracted or prejudiced to

comprehend the complex dynamics of Turkish politics and discern who supports change and who does not. EU institutions are increasingly left alone in monitoring developments in Turkey. EU leaders pay less attention to the real political challenges in Turkey-EU relations than to other issues which seem aimed at weakening Turkey's credentials for future EU membership.

The mirror image is an increasingly self-centered Turkey where the EU no longer enjoys broad support among the public and figures much less prominently in the political and foreign policy agenda. The amendments proposed by the AKP would make Turkey's constitution more similar to European ones, but the Turkish parties are engaged in a battle that is hardly about the EU. And in the absence of the EU as an anchor and motivator for reforms, Turkey's difficult democratization is increasingly intertwined with the vicious power struggle between the pro and anti-AKP camp. Sadly, the EU appears to have lost its "soft power" in Turkey.

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