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özgürlük araştırmaları derneği freedom research association

RULE OF LAW IN TURKEY

Mustafa Erdoğan

In collaboration with

Friedrich Naumann STIFTUNG FÜR DIE FREIHEIT

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The views presented here are solely the responsibility of the author and do not necessarily represent the official views of Freedom Research Association and Friedrich Naumann Foundation.

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I. INTRODUCTION

Law refers to rules of conduct that are accepted as binding by members of a society and that are enforced by public authorities, using force when necessary. As Lon Fuller argues[1], the purpose of law is to subject human conduct to the governance of rules. In this regard, law is indispensable for social existence and for social life. Social existence is only possible in a peaceful order. However, because people have different opinions regarding the nature of this order, and more specifically regarding the nature of the "good" or "fair" society, there is a need for decisions that will coordinate the shared life of society. Law, together with other social rules, provides this function.

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The definition of law cannot be separated from the requirements of the "rule of law". The value of rule of law stems, first and foremost, from the fact that it forms the very basis of the social-political organization of a civilized society. Although a civilized social existence has other requirements such as freedom, equality and justice, these can only be guaranteed in a regime based on the rule of law. Since its foundation, one of the official goals of the Republic of Turkey has been to "reach the contemporary level of civilization". In the international arena, this goal corresponds, to use the official terminology one more time, to "being an honorable member of the family of civilized nations". Efforts to this end have accelerated following the World War II, with Turkey being a founding member of the United Nations, and at the regional level, one of the founders of the Council of Europe. The same philosophy was behind Turkey's accession to NATO in 1950s, the organization for the common defense of the "civilized world", and application in 1960s for full membership in the European Economic Community (later European Union). For more than ten years now, Turkey has been trying to reform its legal and political system in order to meet the "Copenhagen Criteria", required by the European Union for full membership.

Because "rule of law" is one of the main pillars of a "civilized" social-political organization, Turkey has to abide by the principles and institutional requirements of the rule of law not only to follow through with its pronounced goal, but also to be able to establish a civilized and humanitarian internal order. However, despite many legal and political reforms it made in 2000s mainly to comply with the Copenhagen Criteria, Turkey today is far from the ideal of the rule of law due to the waning and eventual disappearance of the ruling party's enthusiasm

1 Lon L. Fuller, *The Morality of Law* (Yale University Press, rev. ed., 1969), p. 106.

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for reform following the 2010 constitutional referendum and the 2011 general elections. Among the negative repercussions of this development are the loss of confidence in law in society, increase in injustices and political pressures, and violation of rights and freedoms.

This study on the "rule of law" aims to provide a more detailed picture of the situation briefly described above. It is hoped that this study will expose the level of degradation in the authority of "law", in the independence and impartiality of the judiciary, in the notion of an equitable and effective judicial control, and in the protection of basic rights. These findings can serve as a starting point for a potential initiative aiming to correct the flaws, mistakes and problems with the rule of law, and they provide important insights into the nature of the current regime in Turkey.

In this study, the issue of "rule of law" in Turkey will be examined using an approach grounded in the liberal "constitutional-democratic" regime type, on which contemporary Western democracies are based. Constitutional democracy aims to combine the ideals of incorporating popular will in government and limiting arbitrary government, and thus envisages binding the democratic majority by constitutional principles and law. Therefore, rule of law, which aims to prevent arbitrary government and provide everyone with legal security is an indispensable political ideal for this type of democracy. It should also be noted that rule of law is not only the assurance of the rights and freedoms of individuals, it is also a founding element of social peace (or, a peaceful social order).

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II. TURKEY: A SITUATION ASSESSMENT

1. General Political Orientations

The Constitution, in its 2nd article, describes the Republic of Turkey, among other things, as a state governed by rule of law, and contains many principles, rules and institutional arrangements consistent with this description. However, despite this constitutional claim or promise, Turkey has never had complete rule of law. The Constitution certainly has its defects and faults, but it can be argued that the failure to institutionalize rule of law in Turkey stems more from political-administrative practices than constitutional-normative arrangements. This state of affairs has become more pronounced in recent years. This is due, on one hand, to long prevailing intellectual and institutional traditions that are

incompatible with the idea of rule of law, and on the other hand, due to new approaches and tendencies that have emerged in recent years and that are also incompatible with the rule of law. These can be considered as both main causes and indicators of the failure to institutionalize the rule of law. The tendency to disregard law, which has afflicted the AKP government recently, needs to be placed within this framework.

a) The Philosophy of Raison d'État

State tradition in Turkey is based, more or less from Tanzimat onwards, on the philosophy of "Raison d'État". It has already been noted that the philosophy of raison d'État represents a political approach that is directly opposite to rule of law. This is because raison d'État places the state and the authority at the very center of social-political existence, and as a result, prioritizes in public life the survival of the state at any cost, rather than prioritizing law and justice. Therefore, an administration based on this philosophy engages in security-oriented political-administrative practices rather than protecting rights and freedoms. In addition, a state philosophy based on raison d'État provides advance immunity to every action attributed to or taken in the name of the state, as well as to their perpetrators, which undermines legality and transparency in public administration.

There are many indicators that AKP governments adopted this philosophy in many of their discourses and practices from about 2011 onwards. One of the most important reasons behind the rapid drift away from the ideal of rule of law in recent years is the adoption of the philosophy of "raison d'État".

It is beyond argument that socio-economic and cultural infrastructure plays a vital role in the implementation of rule of law or the principle of the supremacy of law. Implementing rule of law would be difficult in the absence of widespread belief in the necessity of obeying the law in the society and among administrators, if a culture of judicial independence has not developed, or in the absence of legal practices and culture based on the supremacy of law. Developing and sustaining a culture with these characteristics requires a years-long, even decades-long effort.[2]

It might be useful to identify some of the sociological and cultural factors encouraging every political group or cultural identity that comes to power in Turkey to resort to the sanctity of the state (raison d'État). First among these factors is the fact that Turkey has a tradition

2 Tamanaha 2007: 13 and others.

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of strong state. A strong state implies a weak society. Traditionally, the society in Turkey has an existence that is secondary to and dependent on the state. This historical background ensured that the state is widely conceived of as the primary political value by the society in Turkey, which fed a cultural attitude that views every sacrifice -including that of the law- as justified for the survival of the state.

On the other hand, the subjects of politics in Turkey are not individuals, but cultural, ideological and class-based ideologies or collectivities. In this approach, which can be described as some sort of tribalism, the goal is to use the state apparatus to further the interests of one's own tribe. This also makes it possible, by capturing political power, to define the particular interests of the tribe as the common interest or as the interests of the state. Thus, the "sanctity" of the state, presumed by "raison d'État", is reflected in the views and interests of the group that happens to be in power, and makes them unaccountable, even in legal terms.

b) Majoritarian Democracy

Judging by their performance in recent years, AKP cadres' view of democracy seems to be limited to change in government through elections. This understanding is accompanied by a "majoritarian" vision that is tried to be justified through the myth of "national will". The formula is as follow: Democracy means "national will", which manifests itself in elections, and national will is materialized and concentrated on the representatives of the majority. This understanding underlies the accusations hurled at the opposition, ranging from the relatively mild "presumption" to "treason", and the mentality reflected in the call "form a party if you have what it takes and compete in the elections".

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This is a majoritarian and particularist understanding of democracy, not a pluralist one. This views holds that democracy grants unlimited power to the winner. What is more, it is implied that this power is not limited to the public sphere, and that all the different elements of society need to adopt the values of the majority under the disguise of "our national and moral values". Turkey, after suffering from "incomplete law without democracy" for many years, now inches towards "democracy without law". With the proviso that the old emphasis on law was a cover for the official ideology, whereas the nominal democracy of today completely rejects

the idea of law. They have one thing in common, though: Both cherish a particularist understanding that rejects the pluralist structure of the society and the legitimacy of differences.

This nominal democracy is an enemy of pluralism as the majority party tries to establish complete control over social life and denies the right of those who do not share their political ideals to exist even in civil sphere. This mentality holds that the majority has the right to do this because the majority represents the "national will", that is to say, the will of the nation. Thus, the only right accorded to those who do not share the views of the majority is to sit and wait until the next elections. They should avoid raising their voices against or next to the "national will", "know their places", stay away from expressing their views on public issues, and absolutely avoid criticizing the policies of the government of the majority. In short, the only thing left to people who disagree with AKP is to remain silent and be obedient. Thus, what AKP stands up for under the name of democracy is the state's continued tutelage of the society. The thinking seems to be as follows: state tutelage through bureaucracy was objectionable when the state was controlled by others, but it has become legitimate now that the state is controlled by us (AKP members and supporters).

In short, the only thing left to people who disagree with AKP is to remain silent and be obedient.

Under the influence of this flawed thinking, AKP views and tries to picture standard control mechanisms in liberal democracies, such as judicial independence and constitutional review, as undemocratic limits placed on the exercise of the "national will", and by extension, on their democratic right to govern.

c) Politics of Friends and Foes

Another factor behind the disregard of law in the politics and public administration of Turkey, which became rampant especially in the last couple of years, is the style of politics based on making a sharp distinction between friends and foes, which afflicts members of the government and holders of public office in general. Members of government tend to treat any opposition or any criticism of their political-administrative decisions and measures as hostility.

This style of politics is not unique to Turkey. For example, the war on terrorism doctrine developed by the US President Bush following the September 11, 2001 attacks on the World Trade Center was based on a similar thinking. The motto of that doctrine, although it came in dif-

ferent versions, was "you are either with us or with the enemy"[3]. The logic underlying Erdoğan's doctrine of "war on the parallel state" is the same logic known in the international relations literature as the "Bush doctrine" or the logic of "you are either with us or against us (with the enemy)".

It should be noted that what we are up against is different from the traditional distrust of opposition held by previous governments in Turkey. The problem here is the identity that defines "us" in opposition to the "other-enemy", and the rule of that identity. We are facing a form of particularism that believes it possesses the exclusive right to represent the good of the nation (the "national will" and the national interest). Therefore, those outside the government's circle are seen as enemies trying to undermine the "national interest", and a call is made to close the ranks to the enemy. What makes this mindset detrimental to the rule of law, in particular, is that the public administration and even the judiciary are coerced into taking the "side" of the governing party. The "war on the parallel state", which has been going on for some time now and which targets an allegedly criminal group nested within state bureaucracy, facilitated the implementation of the politics of friends and foes. What is more, the governing party was able to take advantage of this war to establish a de-facto extraordinary (unconstitutional) regime.

d) The Purging of the "Parallel State"

Another reason behind the AKP government's disregard for the rule of law is its determination to purge the "parallel state" believed to be nested within the state bureaucracy. The concept of "parallel state" refers to a group of public servants in state bureaucracy, especially in law enforcement agencies, who, in the carrying out of their duties, follow orders given by individuals or groups that are outside the official-legal hierarchy, and act in a coordinated manner. The allegation is that this group nested within the state bureaucracy is an offshoot of the Gülen Community, and follow orders given by Fethullah Gülen. According to the government and the President, public servants close to Gülen Community act as a parallel state, and are plotting to overthrow the government. The government and the governing party also claim that the "parallel state" has members within the judiciary, who tried to sow seeds of hatred between the government and the security forces

3 In a joint session of the Congress on September 20, 2011, President George W. Bush said "Either you are with us, or you are with the terrorists." See WhiteHouse.gov Address to a Joint Session of Congress and the American People. In his speeches, President Bush used variations of the phrase such as "you are either with us or against us" and "you are either with us or with the enemy".

by abusing the trials that aimed to end the military tutelage, and even attempted to "purge the national army". On these grounds, the government has created a de-facto situation similar to a state of emergency suspending the Constitution and the laws in the last two years, especially regarding its actions towards the Gülen Community.

First of all, it is clear that such organization nested within the state bureaucracy ("parallel"), if it exists, is incompatible with the rule of law. This is because it would mean the abuse of public office for particular and personal goals, and rampant arbitrariness and favoritism in public administration. Thus, if it exists, it is only natural that public servants who are members of this organization should be subjected to administrative and legal prosecution within the framework of law.

However, the same cannot be said for judicial decisions. The judicial system has its own mechanisms for the correction, if necessary, of the decisions made in the trials on ending military tutelage. As a matter of fact, some grievances were resolved through retrial following the decisions of the Constitutional Court triggered by personal applications. Apart from that, administrative and judicial prosecution of judges for their decisions is not possible on the grounds that their decisions are claimed to be "wrong" in legal terms, or are actually "wrong"; to be subject to prosecution, they must have violated the law on purpose in their decisions, and intentionally abused their powers. In legal practice, it is common for different courts to make different decisions or have different interpretations; thus when "different" decisions made by a court are considered to be "wrong" by others, this cannot be grounds for the administrative or penal prosecution of the judges who made that decision.

On the other hand, the presence of such an alleged organization within state bureaucracy can only be uncovered through judicial proceedings complying with due process. Unfortunately, however, the normal functioning of law was prevented in this case, and everyone thought to be connected with the issue by political considerations were treated as convicts. Likewise, the principle of individual criminal responsibility was brushed aside, and collective punishment was meted out. What is more, the "parallel state" served as an excuse to persecute a whole Community, its sympathizers, and even people rumored to be sympathizers, and an attempt was made to completely purge the civil sphere of the Community in question. Since this purging of the Community was made into an obsession, it turned into a witch hunt against anyone and everyone who did not see eye to eye with the government.

Moreover, it is dubious that the so-called "war on the parallel sate"

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is motivated by a real concern with law and democracy on the part of the government. This is all the more so, given that the government discovered, all of a sudden, the presence a “parallel state” within the state in December 2013, when large-scale corruption allegations involving its members surfaced. Government circles, including the then Prime Minister Erdoğan, argued that this was a coup attempt by the “parallel state”. This seriously undermines the credibility of the government’s claims regarding the “parallel state”. In addition, if this organization really exists, the AKP government must be held responsible in the first place, since it happened during their term.

All of these raise serious doubts about the claim that the main concern of the government in this case is to deal with "the parallel state nested within the state". There is a legitimate suspicion that the real concern is to use the "parallel state" as an excuse to eliminate the Gülen Community!s presence in the civil sphere as well, and to intimidate the opposition in general. Considering the fact that almost all the other religious communities and groups anyhow became attached to or dependent on the government, AKP's move against the Gülen Community seems to be part of a strategy to bring the civil sphere under complete state (party) control. Indeed, the operation initially seemed to target public servants that are members of the "parallel state", but its scope widened in time to include all civil elements that are close to the Community or thought to be sympathizers.

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So-called “audits”, in police escort, of almost all private schools associated with the Community, including kindergartens, became a routine practice. Likewise, there is an effort to intimidate industrial-commercial enterprises such as the Koza-İpek Group and Boydak Holding, which are thought to be “sympathizers”, using “audit” raids. The police even started to raid universities under the pretext of searching for terror suspects, as was witnessed in the case of Melikşah University. All of these show that the government is using “the purge of the parallel state within state” as an excuse to eliminate the Community and all actors providing material and moral support to the Community.

The ruling party is so "reckless" that they had no qualms with including the Gülen Community in the "Red Book" as a "terrorist organization" threatening national security. It is clear that by so doing the AKP government is abusing legal concepts and terminology. This event,

which is also a clear indication that AKP sees its own foes as "enemies of the state", is consistent with the party's general tendency to identify itself with the state and eventually create a party state. However, it is clear that a regime based on the identification of a party and the state is utterly incompatible with democracy and the rule of law.

Another reason to be suspicious about the government's intention to "purge the parallel state" is that the mechanisms initially created with this excuse happened to be used for all opponents eventually. Indeed, all segments of the society had their share of being charged with insulting the President, which came to symbolize pressures on the freedom of expression[4]. Overt threats hurled at the Doğan Media Group by members of government and their supporters, because this Group is seen as less then obedient to the wishes of the party state, is another clear indicator of this tendency. Similarly, the Prime Minister's statement prior to the June 7 elections that they were fighting with "three parties and three parallel organizations", implying that all opposition parties have connections with illegal organizations, shows that all actors other than the party state are treated as traitors[5].

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2. Preventing Arbitrariness in Government and Administration

a) Governance Based on the Rule of Law

Rule of law requires that the powers of the government and the public administration be limited by laws and by the constitution, and that

4 For example, sculptor Mehmet Aksoy, who won 10,000 TRY in libel damages from *the President Recep Tayyip Erdoğan over the "monstrosity" polemic, was sued for insulting the President, punishable by imprisonment up to 5 years and 6 months, when he responded to a question on whether he would spend the money on sculpting by saying "I don't spend illicit money on sculpture". Birgün daily newspaper 5.7.2015*

Another news was as follows: Investigations for "insulting the President" were started against 173 people who participated in a demonstration in Eskişehir, organized by the June Movement on the anniversary of the Soma disaster to commemorate the 301 workers who lost their lives. Birgün daily newspaper 24.6.2015

Lawsuit against Tolga Tanış, Washington representative of Hürriyet daily newspaper, conviction of Bülent Keleş, editor-in-chief of Today's Zaman, etc.

5 In a television program (Show TV) on May 24, 2015, broadcast from the Prime Ministerial Office in İzmir, Prime Minister Ahmet Davutoğlu said they were fighting with three parties and three parallel organizations:

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their activities remain strictly within those boundaries. Constitutional limits on the powers of the government and the public administration in Turkey, with the exception of a few gaps, are sufficient to create a governance based on the rule of law. Foremost among these limits are the constitutional principles of “law-based administration”, equality before law, merit-based hiring for public offices, and the obligation to disobey unlawful orders.

Currently, the most important problems with the functioning of the rule of law in public administration stem from an unwillingness to follow some of these principles, and in more general terms, from a deviation from the Weberian understanding of rational-legal bureaucracy. In recent years, there has been an increasingly rapid drift away from a merit-based, impartial and rule-based model of bureaucracy, and there is an effort to create a form of “household bureaucracy” based on loyalty to individuals or to a party. As a natural consequence of the tendency to replace merit by loyalty, objective exams designed to assess merit are abandoned when hiring public servants, and more and more positions are filled without any sort of exam or through “interviews”. There are also complaints, increasingly more widespread, that the obligation to ensure equal and impartial treatment in the provision of public services is violated for the same reason. Similarly, the constitutional principle of “obligation to disobey unlawful orders” is rendered meaningless as obedience to law is replaced by obedience to holders of political power.

One of the most important obstacles before governance based on the rule of law is the President's statement that the National Security Policy Document, also known as the "Red Book", will be binding for all official agencies and authorities. As a matter of fact, as was mentioned above, endless pressures on and prosecution of the members and sympathizers of the Gülen Community intensified following this announcement. In a country where the Red Book is said to supersede the Constitution, where even judicial authorities are exhorted to refer to this book instead of the Constitution when making their decisions, there can be no talk of "law-based administration" or "legal security". To the contrary, governance in this country can only be described as arbitrary, oppressive and unpredictable, which is indeed exactly what we have in Turkey.

Another factor challenging the governance based on law specific to contemporary Turkey is the practices of the President creating the impression that disrupt his impartiality and his negligence of the laws. This partisanship is reflected in his favoritism and support of the governing party. It should be noted that, ignoring the impartiality of a President to a great extent is a new situation for Turkey. The President, who

should be impartial according to the constitution, did not have any reservations in holding the campaigns in favor of the ruling party for the parliamentary elections.

Another detrimental effect of this situation is the risk that high level government executives and even the public officials in general shall perceive the deviation of the President from impartiality as an order for themselves to act in the same manner. While making an assessment with respect to the state of the rule of law in practice in Turkey, the possibility of the injustices and unlawful acts that are to be created as a result of the perception of the impartial and polarizing attitudes of a constitutionally powerful president, elected by popular vote, at the lower levels of the executive and the administration as an order cannot be ignored for sure.

One of the main indicators of law-based governance is the review and termination of unlawful administrative actions by an independent judiciary, and the launch of investigations and inquiries against the public servants who are disobedient to the law, which may result in administrative, financial or penal sanctions. For this reason, the effectiveness and the seriousness of the "fight against corruption" is the most important litmus test of law-based governance. However, in recent days it has become almost impossible to talk about a fight against corruption in Turkey. It became a routine practice for police officers who launch a corruption investigation, prosecutors who file charges, judges who make decisions, journalists who write stories, and others who are otherwise involved with the fight against corruption to lose their jobs, be expressly targeted by administrators, and be subjected to administrative- penal prosecution.

In a country where ministers openly instruct public servants to disregard law and not to implement court orders, talk of law-based governance is obviously meaningless.

b) Public Order and Security

Turkey has serious problems with protecting public order and providing security within the framework of law. Some of these problems have their roots in legal and administrative regulations, and others are related to implementation. Two important regulation-related issues are the extra powers given to[6] the police following the enactment of the inter-

6 Law on the Amendment of the Law No. 6638 Dated 27.3.2015 on the Duties and Powers of the Police, the Law on the Organization, Duties and Powers of the Gendarmerie, and Miscellaneous Laws went into effect following its publication in the Official Gazette No. 29316 dated 4.4.2015.

nal security bill, and the new MİT (National Intelligence Organization) Law, which allows intelligence units to engage in extra-legal activities with [7] impunity.

One of the goals of this legislation, which increased police powers to a level that is incompatible with the rule of law in a democracy, seems to be to forcefully disperse meetings and demonstrations organized to protest the increasing oppression of the government. The new legislation regarding the MİT, on the other hand, aims to use the intelligence agency to establish control over society, and to provide a legal cover to unlawful and shady activities (resembling the "deep state" of the past) that this scheme requires. This is the first step towards becoming a "security and intelligence state".

It was later discovered that another specific goal of this legislation was to "legalize" illegal activities of the MİT, such as illegal arms shipments to third countries. The government is so reckless in engaging in such shady activities that a "terrorism" investigation was launched against the editor-in-chief of the Cumhuriyet daily newspaper, which published records showing that MİT trailer trucks were used to make illegal arms shipments to another country. On the other hand, the administrative regulation allowing civil authorities to give orders to law enforcement agencies, who normally act under the orders of prosecutors, is another source of problems.

The most important implementation-related problem in the provision of public order and security is police violence. Police forces, ostensibly to protect public order, have developed a habit of using disproportionate force to disperse democratic demonstrations, especially from the "Gezi Events" onwards. Using the "purge of the parallel state" as an excuse, the government started a purge in the police force and partially in the gendarmerie in order to be able to use law enforcement agencies in its oppressive policies, and to cover up the scandal involving MİT trucks. This purge, solely motivated by partisan-political goals, has almost liquidated institutional structures that train police officers. Closures of Police Colleges and the Police Academy dealt a significant blow to the training of security personnel, and risks the breakdown of law and order. In addition, this purge opened the way for people without any serious training to be hired as police officers "thanks to the government", and created a partisan police force.

7 Law on the Amendment of the Law No. 6532 Dated 17/4/2914 on State Intelligence Services and the Law on the National Security Organization went into effect following its publication in the Official Gazette No. 28983 dated 36.4.2014.

c) Prosecution of Public Servants' Unlawful Actions

Another problem with establishing law-based governance in Turkey is the difficulty of prosecuting public servants' unlawful actions. Although the Constitution requires that the administration acts within the framework of law, and orders public servants to disobey unlawful orders, public agencies have been disobeying the law repeatedly and on purpose, and even insist on implementing administrative practices that are openly criminal. As the Weberian model of law-based and impartial bureaucracy is replaced by a form of "household" bureaucracy, public servants start to consider themselves bound by the orders of the holders of political power and not by the laws.

In many examples, administrative agencies went so far as to disobey court orders, following instructions from political authorities to do so[8]. One reason why so many public servants can disregard law without any hesitation, including by obeying unlawful orders, is that their prosecution is only possible upon approval from their administrative and/or political superiors who gave the unlawful orders in the first place. Also, the constitutional requirement that damages paid to individuals wronged by the administration be collected from the responsible public servants is not implemented or selectively implemented, encouraging unlawful behavior among public servants.

d) Judicial Control of Executive and Administrative Actions

Judicial Oversight: The Constitution states that the administration can be held accountable, with a few exceptions, for all of its actions and transactions. The Constitution thus provides for the judicial review of most administrative actions by courts in terms of their compliance with the law. However, the practice shows that exceptions provided for in the Constitution can have grave consequences in terms of the protection of individual rights and freedoms. HSYK's (Supreme Board of Judges and Prosecutors) disciplinary actions and reassignment decisions concerning judges and prosecutors, in particular, not only create negative consequences for those involved, but also have the potential to turn into a slippery slope to total disregard for the rule of law. This is because it makes implementing the law, especially when it inconve-

8 "*Let them demolish if they have power to do so, they ordered an injunction but they will not be able to stop it, I will open it, I will sit in it*" was Prime Minister Erdoğan's response when the 11th Administrative Court of Ankara found illegal and issued an injunction against the action that ended the protected status of the land where the Presidential palace is located. Hürriyet, 5.3.2014, http://www.hurriyet.com.tr/ekonomi/25944219.asp

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niences the government or the governing party, a matter of exceptional courage for judges and prosecutors.

Additionally, for judicial review to be effective, court orders need to be implemented, and their requirements to be carried out. However, as has been pointed out above, disobedience of court orders that are not liked by the government, and the tendency for this to become the political-administrative norm, makes it very difficult to prevent non-compliance with the law on the part of the administration.

More generally, for judicial review to be able to serve the rule of law, there needs to be de jure and de facto guarantees for judicial independence and for the principle of natural judge, which will be examined in detail in the section on judiciary below.

Political Oversight: Political oversight of the Parliament is a means of ensuring democratic accountability of the government, and it is vital for preventing arbitrary government and arbitrary administration and for ensuring transparency of administrative actions. It is obvious that when the governing party has a strong majority in the legislative authority, the usual mechanisms for the TBMM to have a oversight on the activities of the executive authority are insufficient. However, what we have had in Turkey for the last couple of years is beyond this situation. The main reason for this is that the governing party's cadres, as was explained in the introduction to this Section, have a flawed understanding of democracy. The governing party has a "majoritarian" understanding of democracy and a conception of politics that is based on a strict dichotomy of "friends and foes", which leads party members to exclude the opposition from legislative activity almost completely, and to obstruct all efforts at political oversight.

"This is because it makes implementing the law, especially when it inconveniences the government or the governing party, a matter of exceptional courage for judges and prosecutors.

The oversight that the Ombudsman is supposed to exercise over public administration on behalf of the Parliament is not functional either. First of all, the method of election of the Ombudsman, provided for in the Constitution, is far from ensuring the impartiality of the holder of this office. This is because the Ombudsman is elected by a simple majority in the final round of voting, which guarantees that the governing party effectively appoints that person single-handedly.

Finally, financial oversight of the government and the public administration is practically non-existent in Turkey. Government's dismissal of the parliamentary questions raised by opposition regarding public expenditures, and the voting on the Final Account Bill, which is carried

out without any serious discussion or deliberation, as if it were a routine legislative work, are clear indicators of lack of financial oversight. The Court of Auditors' oversight of public agencies on behalf of the Turkish Grand National Assembly is also prevented to a large extent, both in de jure and de facto terms.

3. Legal Security and Predictability

a) The Concept of Law and Its Implementation

In Turkey, the moral authority of the concept of "law" has always been weak. This has become even more pronounced when the "law" (kanun) replaced by the word "act" (yasa) in common usage. Indeed, the word "law" evokes a basic, stable and relatively permanent norm and implies "rightness", whereas the word "act" has none of these connotations and refers simply to any piece of legislation passed by a legislative authority. In other words, "law" sounds as if it is a norm that the legislative organ has an obligation to enact because it is right; whereas the only distinguishing feature of an "act" is that it is enacted by the legislative authority. In practice, bills that are officially named "acts" (or reported as such) are enacted in volume and rapidly, and amended further weakening the idea that "law" is a basic norm. In addition, the enactment of the laws in the parliament usually takes place without any serious discussion or deliberation, often presenting the opposition with a fait accompli, which contributes to the weakening of the authority of law.

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Parliamentary opposition is prevented from making any meaningful contribution to lawmaking, which in fact requires a broad civic participation. Government bills could be made public when they are still in the process of drafting in relevant ministries to make sure there is a public discussion about them, to render legislative process more participatory, and to avoid possible mistakes. Clauses in the Constitution and in the Bylaw regarding legislative process need to be revised to reflect these and other concerns. In addition, there is a lack of serious, well thought out preambles to laws.

Another development that adds to this negative trajectory is the emergence and increasingly widespread use of the practice of "omnibus bills". The practice of "omnibus bills" started to be used more frequently during the tenure of the AKP government, so much so that it

almost became the default method for enacting laws. The widespread use of omnibus bills not only violates the universal legal principle that laws need to be open, clear and accessible, it also destroys citizens' confidence in the concept of law.

Legal security and predictability has been significantly damaged in Turkey, and laws are made and re-made incessantly. So much so that it became a challenge even for practicing lawyers to identify just what norms are currently in effect. It became routine practice to enact laws with the purpose of favoring or hindering certain individuals or groups, and laws stopped being general. For example, it is widely believed that the endless amendments to the Public Procurement Law in the last couple of years was motivated by the government's desire to provide unfair advantage to certain individuals and groups in the distribution of public spending.

Laws are not stable or predictable any more; frequent amendments are made to the laws, then unmade, sometimes remade, and finding out when the amendment was made through which act of the parliament now resembles solving an intricate puzzle. "Ignorance of the law" is turning into a "legitimate excuse" not only for common citizens, but for experts as well. Everyone is faced today with a bundle -not system- of regulations that are far from being "clear" (understandable or accessible), and that contradict one another.

b) Protection of Fundamental Rights

It should be mentioned at the outset that states are the most notorious violators of basic rights and freedoms. Therefore, the first thing to do to protect individuals' fundamental rights is to ensure that holders of public office do not violate these laws. The main responsibility for the protection of fundamental rights belongs to public authorities and agencies, but civil society organizations also play an important role. It is also important that the public has confidence in the activities of civil rights organizations in this regard. However, for human rights organizations to be able to perform this function, they need to be fully protected in legal terms. Unfortunately, political and administrative bodies in Turkey not only fail to respect human rights, they are also deaf to the findings, criticisms and recommendations of human rights organizations.

(i) Equal Treatment and Non-Discrimination

Equality before law is an essential component of the rule of law. This is why the Constitution of the Republic of Turkey states that everyone is

equal before the law, and there can be no arbitrary discrimination. This principle requires, on the one hand, that laws and legal norms have to be abstract and general so that no individual or group receives unfair advantages or is subject to unfair disadvantages, and on the other hand, requires that these rules are applied equally, without any discrimination.

It has been already explained above that there is a drift, in the making of the laws, away from the principle of equality before law. The political will that encourages this deviation in law making is also reflected in the application of laws. As a result, the practice of discriminating against individuals and groups labeled as the "other" or the "enemy" by the government is increasingly widespread and has become the routine. This tendency of the government started roughly around the time of the Gezi protests, and expanded to include all segments of the society following the December 17-25 events. The fear and the anxiety generated by "Gezi events" among AKP leadership turned anyone and everyone who opposes their government or who criticizes their actions into legitimate targets for discrimination. Accordingly, the selective application of the laws (that is to say, application only to selected individuals or groups) is becoming a routine practice.

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On the other hand, the corruption investigations that started in December 17-25 made Fethullah Gülen Community the target of the government's wrath and unlawful practices encouraged by the government. The thing is, unlawful practices that were initiated to hurt this group were then extended, as in the examples of the closure of prep schools and pressures on the media, to include other individuals and other groups. Unlawful purges and investigations within the police force and the judiciary form another dimension of the campaign against the Gülen Community.

More generally, the Alevi community in Turkey has always been subject to discrimination for many years, a situation that has not changed under the AKP government. There are even complaints that they face more discrimination today, especially when it comes to employment in government agencies. Immediately before the Gezi protests, the government announced that the 3rd bridge to be constructed over the Bosphorus would be named Sultan Selim the Stern (*Yavuz Sultan Selim*), a historical figure who is negatively perceived in the collective

memory of Alevi citizens, thus further reinforcing this community's view that the government is prejudiced towards them. It is in fact reported that the number Alevi citizens participating to the Gezi protests was particularly high.

A similar situation is applicable for LGBT individuals, whose lifestyles are not approved of by the traditional-conservative values of the incumbent government; in fact, LGBTs may even constitute the group experiencing the most severe and widespread discrimination in Turkey. LGBT individuals often face intolerance, violence and even hate-incited murders. In the round-table meeting entitled "Developing Tolerance: LGBTs in Turkey" organized on September 8, 2015, by the Freedom Research Association, representatives from LGBT organizations emphasized the intolerance and discrimination they faced especially from officials and institutions wielding public authority. LGBT individuals also face negative discrimination and mistreatment in terms of sexual health services, employment in public institutions and military service.

Discrimination against non-Muslim citizens in their dealings with public offices and in employment within the police force and the military is also deeply-established. The failure to fully recognize to the rights granted by the Lausanne Treaty to Non-Muslim groups has continued during the AKP Government. Furthermore; while illegal constructions and buildings lacking proper habitation licenses are fairly mundane occurrences in Turkey, Sevan Nişanyan, an Armenian citizen in the Republic of Turkey, was sentenced to prison due to an "illegal" construction he built on his own estate – thus illustrating another example of negative discrimination against non-Muslim citizens.

(ii) The Right to Life and Personal Security

There are testimonies by lawyers and human rights activists that providing the security of life of detainees and prisoners is turning into a problem. Protection of the lives of inmates is a human rights issue, and constant deaths in custody or in prisons require thorough investigation.

Another problem in this regard is military suicides[9]. It is reported

9 In his response to CHP Istanbul Deputy Mahmut Tanal's written parliamentary question, Minister of National Defense İsmet Yılmaz stated that the number of military suicides was 157 in 2002, 95 in 2003, 87 in 2004, 99 in 2005, 85 in 2006, 88 in 2007, 83 in 2008, 75 in 2009, 80 in 2010, 65 in 2011, 69 in 2012, and 52 from January 1st to October 2013, and 1035 for the entire period. Parliamentary question No. 7/31331, dated 06/09/2013, 4th legislative year of the 24th term of the Parliament; http:// www2.tbmm.gov.tr/d24/7/7-31331s.pdf. For other sources of information on this issue, please see. Kerem Altıparmak & Duygu Türemez, Servet Gündüz ve Diğerleri Kararının Uygulanması Raporu 2015, [2015 Report on the Implementation

that the rate of increase in suicides during military service is 2.5 times higher than the rate of increase in civilian suicides for the same age group. Despite improvements following ECHR decisions, there are serious doubts about the adequacy of the psychological examination carried out during recruitment, and the continued psychological support during service. Due to structural problems that make it difficult to investigate military deaths, it is close to impossible to uncover the facts in these cases. Therefore, the investigation and prosecution of these events should be carried out by civilian prosecutors and courts, not by military authorities. Soldiers to testify in these investigations and proceedings should be given the necessary legal protection.

Another chronic problem is "violence against women" and the resulting deaths. Some of the deaths in this category stem from domestic violence, others from what are known as "honor killings", and some are suicides by women. There is a widespread belief and complaint that the state fails to take preventive measures in the face of these social and cultural problems, and does not fulfill its obligation to carry out effective investigation and prosecution of the offenders.

Another category of deaths for which the state has a positive responsibility to prevent is the deaths of workers in work accidents. The number of fatal work accidents in Turkey is well above the world average[10]. It is observed that public authorities fail to adequately fulfill their responsibility for preparing the legal framework for work safety and monitoring its implementation, and fail to carry out effective investigation of work related deaths and the prosecution of those responsible.

(iii) Freedom of Speech and Freedom of the Press[11]

Freedom of speech and freedom of the press, although they are among the foundations of a free society, have traditionally been accorded very little protection in Turkey. This fact is recognized both in ECHR's decisions finding Turkey guilty of violations, and in the reports of numerous international human rights organizations. Problems with constitutional-legal arrangements regarding the freedom of speech and freedom

of the Judgment of Servet Gunduz and Others vs.Turkey] p.20 and others. http://www.aihmiz.org.tr/files/supheliaskerolumlerirapor.pdf

10 The total number of work related deaths between 2005 and 2013 was reported to be 11,047, averaging 1227 deaths a year. However, the actual number is believed to be much higher. See. Aziz Çelik, Birgün daily newspaper, 19.3.2015

11 Events and facts listed in the media report of the Progressive Journalists Association, which covers April, May and June of 2015 provide sufficient evidence to assess the current situation of the freedom of the media. See. http://www.cgd.org.tr/index.php?Did=370&Page=1

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of the press are not the only reason behind the insufficient and weak protection of these rights. A more important reason is a nationalist, pro-state and "moralist" culture that prevails in legal circles.

In recent years, another political factor has been added to this list: The government dislikes pluralism and differences, and equates public order with silencing all critical voices. Segments of society that think differently, raise their voices, and defend and demand their rights are seen by the AKP government as a threat, not only to the "public order" but also to its continued rule.

This mentality manifests itself in the silencing of all criticism and opposition, whether voiced in visual, audio or printed media, through a judiciary that acts in tandem with the government. The government is so allergic to criticism that it even tries to bring social media under control. The government started many investigations within the last year and a half against people who expressed their views on social media, trying to prevent them from voicing their opinions and having chats, and even tried to block access to social media by administrative fiat, which was, fortunately, overturned by the Constitutional Court.

All the investigations started and the lawsuits brought show that social media are under constant surveillance by government agencies. It became a routine practice to prosecute people who express critical views on social platforms such as Twitter, Facebook or YouTube, or people who share such views, for insulting the President or members of the government, and even to arrest people for re-tweeting critical remarks. When research assistants at a public university sent a few tweets critical of the government, the governor of the province sent an official letter to the university asking for an investigation to be started, which is eerily reminiscent of a Big Brother show.

During AKP governments, all sorts of critical or even satirical remarks, in particular those directed at the once Prime Minister and now President Erdoğan, were perceived as "insults", and lawsuits were filed against writers, commentators, or cartoonists who expressed these views. What is interesting is that in these cases, the judiciary usually made decisions that were in line with the expectations of the government.

Publication bans that are used from time to time are another example of the violation of the freedom of speech and freedom of the press. The fact that publication bans were imposed during corruption investigations involving members of the government gives rise to the legitimate suspicion that the motivation behind the bans was not the protection of privacy but to shield members of government from criticism and to pre-

vent public discussion of events. The frequent use of publication bans, following almost every major development, is a violation of the right of the public to be informed, shields holders of public office from public criticism and discussion of their conduct even in cases where they are responsible, provides them with unfair immunity against prosecution, and ultimately renders law ineffective. Civil and criminal cases are brought, and tax and other financial investigations are launched against individuals and organizations who choose to inform the public by disobeying the publication ban, which creates the impression that the goal is to silence all opposition media[12]. On the other hand, it appears widely on the media that some public figures intervene in ongoing investigations and lawsuits.

The biggest recent attack on the freedom of the press was the police raid against pro-Gülen media outlets in December 2014 which was followed by the detentions and arrests. It is clear that the September 2015 raids against the television networks Bugün and Kanaltürk and against the Koza-İpek Group which controls the daily newspaper Bugün had the same aim. In these raids, Ekrem Dumanlı, the editor-in-chief of the daily newspaper Zaman, and Hidayet Karaca, the CEO of Samanyolu broadcasting group, were detained. Ekrem Dumanlı was released after a while, but Hidayet Karaca was arrested. Karaca is still under arrest after two years, without any serious charges. This shows that the government is able to use legal mechanisms to silence or intimidate its opponents.

Another indicator that these operations are unlawful and politically motivated is that the raids and detentions in question were carried out in a coordinated manner, as part of a single campaign. In the meantime, a prosecutor from the "Investigation Bureau on Crimes Against the Constitutional Order" ordered General Directorate of Türksat to end broadcasts of television stations close to the Gülen Movement. Although this order was initially not followed, it was eventually implemented by the broadcast platforms Tivibu and Digiturk, which proceeded to remove pro-Gülen TV channels from their list of broadcasted channels, despite the absence of any court decision authorizing such an action, which is clearly and ironically a violation of the Turkish Constitution.

(iv) Freedom of Conscience and Religion

Some of the pressures on the Sunni Muslim majority have been eliminated during the AKP governments, but there was no noticeable im-

12 For example, Istanbul Chief Public Prosecutor's office started an investigation against the daily newspapers Bugün, Cumhuriyet, Posta and Hürriyet for their coverage of the hostage situation in Çağlayan Courthouse, alleging that it constituted "a propaganda on behalf of a terrorist organization". Progressive Journalists Association, Medya Raporu [Media Report] 5.7.2015

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provement in the condition of the Alevis and non-Muslim minorities. The Directorate of Religious Affairs keeps serving the Sunni majority exclusively, and Alevi worship places are not publicly funded, which is a privilege reserved for Sunni mosques. At a more basic level, the Alevi faith is treated as a matter of folkloric diversity and variety, not as a matter of freedom of conscience and religion. In addition, there is an increase in the complaints that Alevis are discriminated against in terms of employment in government agencies.

On the other hand, the European Court of Human rights ruled, in various of its decisions, that compulsory religious education is a violation of the freedom of conscience and religion of non-Sunni citizens, foremost among them the Alevi community. Despite these rulings, the government insists on this practice in secondary schools, which is a blatant violation of the freedom of conscience of Alevis, non-Muslims citizens, and all citizens who do not want religious instruction to be part of their children's education.

In the meantime, there is no improvement regarding non-Muslim citizens' needs for religious education, and the government took no steps to re-open the Halki Seminary, which remains closed despite all the official statements and promises to the contrary.

Despite numerous ECHR decisions ruling that the failure to recognize the right to conscientious objection constitutes a violation of the freedom of conscience, no steps were taken in this regard either.

In addition to the Directorate of Religious Affairs serving the Sunni majority exclusively, and functioning to keep religious life under official control, mosques have been turned into an instrument of government propaganda by the Directorate. Worshipers are forced to hear standard Friday sermons prepared by the Directorate, which serve to convey the talking points of the government under the guise of religious requirement. Two days prior to the elections, a "sermon" attacking the views of two of the opposition parties was read in all the mosques in Turkey, which is disrespectful of the freedom of religion of many individuals, to say the least.

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Complaints and concerns by people with a secular lifestyle that there are threats to and actual interventions in their way of life should also be noted.

(v) Freedom of Assembly and Association

The situation with regards to the right of assembly and demonstration can be outlined as follows: Meetings and demonstrations that do not bother the government enjoy full freedom, whereas meetings and demonstrations that are critical of the government or that are organized by the opposition are at the mercy of the arbitrary decisions of public authorities. From “Gezi events” onwards, in particular, the government and public authorities started to view political-critical meetings and demonstrations as a threat to the government. Both the government circles and in some examples the judiciary made a habit of describing the exercise of these rights for purposes of criticism, which is a matter of course in a democracy, as a coup attempt against the government.

The situation with regards to the right of association is more interesting. A misfortune befell this right the moment it was translated into Turkish. The English word "association" refers both to "organization", and in a more general sense, to peaceful assembly, coming together for various purposes, forming a union and organizing. This right is then a precondition for a free and pluralist civil society in democracies. In Turkish, however, because there is no word that can express all the connotations of "association", the word "örgütlenme" (organization) is used,

which is unfortunate because the root of this word, "örgüt", is used to refer to criminal organizations, a fact happily abused by public authorities. Roughly from the 1980 military intervention onwards, the word "örgüt" has been reserved in official parlance for terrorist and criminal organizations, and efforts were made to spread this usage to legislative and judicial circles. Given this background, whenever two or more people "associate", this is viewed by public authorities -sometimes even by civilians- as a dangerous development in itself.

This is why all associations, foundations and labor unions in Turkey are subject to a very strict legal regime, and all public authorities, including representatives of the central government and law enforcement agencies, view all sorts of organized activity -including meetings and demonstrations- with suspicion. This suspicious attitude is one of the most important reasons behind the eagerness of the police to use violent force to disperse protests and demonstrations. Some lawyers complain that this suspicious attitude permeates the courts as well, with judges viewing “association” as proof of criminal intent.

The suspicion on the part of the state towards association and the abuse of the word "örgüt" became unreasonable when the National Security Council decided to include monitoring "legal-looking illegal

associations" (legal görünümlü illegal örgütler) among its duties in the latest edition of the "National Security Policy Document". The expression "legal-looking illegal associations" is a very dangerous because it shows that civil society organizations operating within the framework of the law can be declared "illegal" at any moment, if and when the political authority desires so, and the philosophy behind it is incompatible with freedom of association and principles of civil society.

This attitude, which unfortunately enjoys widespread acceptance in society, can be expressed as follows: Individuals have no right of peaceful assembly or association unless they are officially registered as an “association”, “foundation” or some other official designation. If they associate and organize activities without registering, they turn into an “illegal association” and by definition become criminals. On the other hand, they are not safe even when they form a “legal” association because they could be declared “illegal” at any moment by law enforcement and judicial agencies.

(vi) Rights of Detainees and Defendants (The Right to Liberty and Security of the Person)

The right to liberty and security of the person, which guarantees the physical liberty of individuals, is about the protection of a most fundamental liberty. Problems with the way in which the preventive measure of arrest regarding this right is used show that even this most fundamental liberty is under serious threat. Arrest, which aims to ensure a fair hearing in criminal cases and to make sure sentences are implemented, is a preventive measure that needs to be used only in exceptional cases and is thus subject to stringent conditions, but in practice it is used frequently and without legitimate grounds. There is also a widespread belief that arrest is being used as an instrument of oppression and punishment.

Frequently used in cases of a political nature such as Ergenekon, Sledgehammer and KCK trials, arrests today are still used very frequently and in an even more problematic manner. Arrest decisions are made at the outset of the investigation, and indictments are delayed for more than a year. During this period, arrestees’ and their lawyers’ access to the prosecution’s files are limited on the grounds of the secrecy of investigation, and the defendants, not knowing what they are charged with and which of their actions are investigated, are unable to exercise their rights.

One of the most important problems regarding arrests stems from the

Criminal Courts of Peace established in 2014[13]. These courts, equipped with the power to decide on all preventive measures during the investigation phase, were presented by the Prime Minister himself as "project courts" to carry out the "war on the parallel state". People appointed to these courts are widely perceived by the public to be very close to the government. Each province has a very small number of these courts, and their decisions can only be appealed to other criminal courts of peace, not to higher courts. Thus, if there are two judges of criminal court of peace in a province, they oversee each other's decisions, and make the final decisions on each other's preventive measures.

It is clear that this closed-circuit system is far from providing arrestees with genuine *habeas corpus* protection. This is why there are serious doubts abut the legality of decisions of arrest and denial of release made

13 Article 48 of the Law No. 6545 Dated 18/6/2014 on the Amendment of the Turkish Penal Code and Miscellaneous Laws amended article 10 of the Law No 5235 and established Criminal Courts of Peace, and this amendment went into effect following its publication in the Official Gazette No. 29044 dated 28.6.2014. The relevant provision is as follows:

"Criminal court of peace

ARTICLE 10- Criminal courts of peace are established to make decisions and carry out other tasks that are made by judges during investigations and to examine appeals of these decisions, without prejudice to other duties defined by the law.

In jurisdictions where the workload requires, more than one criminal courts of peace can be established. In this case, the criminal courts of peace are numbered. Judges who are independently assigned to criminal courts of peace cannot be assigned to other courts or other duties by judicial justice commissions.

A registrar and sufficient personnel are assigned to the criminal courts of peace.

Criminal courts of peace are established in each province and in selected counties depending on the workload and the geographical conditions of the regions, by the Ministry of Justice following the approval of the Supreme Board of Judges and Prosecutors.

Criminal courts of peace are named after the province or county in which they are located.

The jurisdiction of criminal courts of peace covers the area within the administrative borders of the provinces and counties in which they are located, as well as the counties that are placed under their jurisdiction.

In provinces that contain high criminal courts and metropolitan municipalities, the jurisdiction of the criminal court of peace that is named after the province or county within the borders of the metropolitan municipality is determined by the Supreme Board of Judges and Prosecutors, regardless of the administrative borders of the province or county in question.

Decisions concerning the establishment or removal of a criminal court of peace depending on geographical conditions and workload are made by the Supreme Board of Judges and Prosecutors upon the recommendation of the Ministry of Justice."

by these courts. The grounds for the rejection of the requests for release are usually far from satisfactory -in some cases there are no grounds to speak of-, and more recently, there have been reports on the media that some of the refusals are based on grounds that indicate total disregard of law. If it is true, as was reported on the media, that some of the requests for release were denied on such absurd grounds as "no new evidence was presented to justify the release", it is clear that this approach, which violates the principle of presumption of innocence and reverses the burden of proof, amounts to a total rejection of basic rights.

Another serious problem is that detention periods in general are very long. Because trials take a long time, detention periods are also very long. An unfortunate judicial culture has developed of not releasing detainees until the case is decided, even when reasons that justified detention in the first place no longer exist. Especially in cases where a conviction is expected, detainees are not released even when reasons for detention no longer exist, and defendants end up spending an excessive amount of time behind bars. There are even cases where defendants spend more time in detention than the sentence that would be imposed if they were convicted. On the other hand, judges are very reluctant to use other preventive measures that could be alternatives to detention.

For all these reasons, there is an urgent need for reform to raise awareness among judges that arrests and pre-trial detentions, which amount to a serious limitation of the right to liberty and security of the person, eroding trust in the protection of fundamental rights.

(vii) The Right to Property and Freedom of Enterprise

Predictability provided by the rule of law not only ensures individual freedoms, it also contributes to the stability of productive economic activities, and ultimately to economic development, by guaranteeing freedom of contract and the right to property. The right to property, protected by the rule of law, provides assurances to individuals that they will own the products of their labor and enterprise, thus encouraging hard work and productivity. On the other hand, predictability, provided by the rule of law, makes it possible to calculate the potential costs and benefits of economic contracts, and encourages entrepreneurs to enter into contracts with strangers, thus increasing the volume of economic activity. This is why the rule of law is a precondition for economic development.[14]

In Turkey, it is difficult to speak of complete legal certainty and predictability with regards to real estate property, due to endless cadastral

14 Tamanaha 2007: 11.

work and unceasing conflicts over forest and coastal ownership. The completion of land registry in coordination with forest cadasters and inclusion of the forests in land registries is an urgent necessity to be able to establish real estate ownership with certainty. Otherwise, lawsuits involving forests can be opened at any time, leading to cases for cancellation of title deeds, which is possible in Turkey, rendering talk of guarantee of property and economic stability meaningless. In addition, property boundaries need to be finalized and conflicts over boundaries need to be resolved as soon as possible.

On the other hand, protection of cultural and natural heritages in Turkey also require the adoption of a policy that is compatible with property rights. Unfortunately, the current system of protection is neither compatible with property rights, nor rational. The same applies to the policies regarding the protection of agricultural land and pastures. These policies need to be revised to make them compatible with property rights and better able to achieve their stated goals, boosting economic development.

The making, implementation and amendment of city plans create major consequences for real estate ownership. To establish the rule of law, it is important that these decisions, which create economic rents of vast proportions, be open to public scrutiny and be made on the basis of objective criteria, and mechanisms be created to distribute the rent in an equitable manner. A system that allows arbitrary creation and individual appropriation of rent cannot lead to the rule of law, or to the development of a law-based culture.

In a system based on the rule of law, freedom of enterprise is as important as the right to property and is one of the factors that underpin economic development. It is clear that freedom of enterprise can only be exercised in full in the presence of legal certainty and predictability.

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In Turkey, where the state is the biggest employer, transparency and fair competition in public procurement is a must for the creation of a healthy capital structure in the private sector. The presence of a strong and pluralist capital structure forms the sociological foundation for the rule of law. Without an independent and pluralist capital system, it is impossible to establish a genuinely limited government. Currently, however, the public procurement system in Turkey is far from being transparent or predictable. The frequent amendments to the Public Procurement

Law, of which there are now hundreds, and the creation of a new article for almost each new tender, render the law meaningless.

The fight against corruption is also closely related to public procurement tenders. This is because large scale corruption is carried out through public tenders. The points made above in relation to the fight against corruption are also indicators of a serious problem in terms of freedom of work, business and enterprise. This is because widespread corruption hinders fair competition.

The selective and arbitrary cancellation of permits and licenses and the denial of the renewals thereof, unnecessary and vindictive tax investigations, and even police raids into workplaces, all of which are faced by enterprises that are owned by groups thought to be close to the opposition, form another dimension of the problems with freedom of enterprise. There are strong indicators that heavy tax penalties are used to eliminate certain business groups.

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In addition to the indirect methods detailed above, there have also been cases of illegal confiscation and closure of businesses, which indicate total disregard of economic freedoms. Politically motivated closure of prep schools, which numbered in the thousands and employed hundreds of thousands of people, without taking any precautions for the compensation or mitigation of their losses, are indicators that the party state started an allout campaign to annihilate its opponents in economic terms as well. Similarly, the targeting of a bank by the President himself, as well as moves taken by certain parties to put the bank under a financially difficult position, are not only a clear violation of freedom of enterprise, but also an indication to eradicate all opposition. In either case, this amounts to a total rejection of law-based governance and the principle of the rule of law.

4. Judicial Justice

It would be appropriate to begin examining judicial justice by making some general observations about members of the judiciary (mainly judges and prosecutors) in Turkey. The mentality and the culture dominant in judicial circles in Turkey is statist-oriented, leading the judiciary itself to engage in violations rather than protecting rights. Likewise, judges and prosecutors have a tendency to equate being “men of law” with “advocacy” for a particular group. As a matter of fact, many judges and prosecutors have a hard time letting go of their particular iden-

tities, and most of the time,are influenced by their feelings of loyalty and attachment to particular groups.

a) Procedural Fairness and Fair Trial

The rule of law requires, among other things, that people seeking judicial redress of their grievances and/or the solution of their conflicts are able to get fair results from the courts. This, in turn, requires, in addition to independent courts, guarantees for judges, and the principle of natural justice, the rules governing trials to be fair and the judicial procedures to be implemented fairly. Procedural fairness is so important that the idea of “procedure before substance” enjoys widespread acceptance in Turkish society as well.

Procedural fairness, as mentioned above, requires that courts treat the sides of the case or conflict fairly and do not favor one side over the other. This means that judges have to treat like cases alike, and different cases differently. When different treatment is meted out, there needs to be a genuinely “relevant” difference and sound justification. In short, fair treatment and impartiality is only possible if arbitrary discrimination between parties to a case is avoided.

In recent years, especially after the December 17-25 corruption allegations surfaced, these requirements of judicial justice seem to have been forgotten in Turkey. We are going through a period in which every case that is feared to damage the political position of the governing party is subjected to judicial processes permeated with arbitrary discrimination. Principles of fair treatment and impartiality are discarded in favor of members of government and their cronies, and against individuals thought to be associated with the Gülen community, labeled the "parallel state". These people, regardless of whether they are public servants or civilians, are unable to enjoy guarantees of fair treatment and impartiality during investigations and trials, and are treated as if they are traitors or enemies who "do not deserve any rights".

When it comes to “right to speak”, another requirement of procedural justice, there is a long tradition in Turkey of limiting parties’ involvement in the making of the judicial decisions, and there are de jure and mostly de facto limits, especially in criminal cases, for suspects and defendants to defend themselves. The very setup of the courts reflects the idea that “prosecution” and “defense” are not equal. Trials are not conducted in a way that would allow opposite evidence and arguments to be presented and scrutinized; the defense, in particular, is unable to question the witnesses of the prosecution. As a result, the “verdict” in criminal cases is more of a joint statement by the judge(s)

and the prosecutor, who together represent the state, rather than the end product of a dialectical process.

On the other hand, decisions of the European Court of Human Rights establish that the right to a fair trial, which is another way of saying procedural fairness in the language of rights, is frequently violated in Turkey's judicial system, especially in the case of suspects' and defendants' rights. Arbitrary arrests triggered by government on political considerations against certain individuals and groups have become a routine practice. In the last two years, the judiciary has been implementing the government's policy of "purging the parallel state", and we can predict that ECHR decisions finding Turkey guilty of violations in these cases will start flowing in.

There was no improvement regarding the conclusion of trials within a reasonable time, another component of fair trial, despite clear directives of the Constitution and ECHR decisions. Although the legal maxim that "justice delayed is justice denied" is widely recognized, the current condition of the judicial system in Turkey indicates that finding a solution to this problem in the short term is very difficult if not impossible. About 1.5 million of the six million currently pending cases have been in this status for more than four years.

The failure to conclude cases involving cadasters and real estate, even decades after initial hearing, hinders the protection of property rights. It is obvious that a real estate market where establishing ownership is a challenge does not encourage investment.

Lengthy trials in criminal cases not only result in long detention periods, they also create suspicions about the credibility of the evidence used, and lead many to question the fairness of the verdicts reached. Another problem associated with this is that lengthy trials undermine trust in the judiciary system and lead victims to despair of justice.

Lengthy trials are partly due to the provisions in the laws governing procedure, partly to the fact that there are too many conflicts, and partly to the built-in habits and judicial culture prevalent among members of the judiciary.

A plurality of individual applications to the Constitutional Court contain complaints of lengthy trial. The Court has made hundreds of decisions upholding these complaints and granting compensation. A structural solution, however, needs to be found, as individual applications will not be able to solve this. These applications also increase the workload of the Constitutional Court significantly, consuming the Court's time and resources that would better be spent in other areas. There is

little to be gained by paying compensation because of lengthy trials. What needs to be done is to conduct serious research and investigation into the causes of lengthy trials, to identify those causes, and to make reforms to mitigate the problem.

Prosecutors should be organized under an autonomous structure to be called the Office of the Chief Prosecutor of Turkey, and their professional training should be separated from that of the judges and provided by expert academic personnel, as detailed below in the section on the Academy of Justice.

b) Criminal Justice

The lack of an effective system of investigation in Turkey creates negative consequences for criminal justice. First of all, an independent judicial law enforcement, separate from administrative law enforcement, which would act under orders from prosecutors, does not exist. This causes, on the one hand, lack of professionalism in the conduct of criminal investigations, and on the other hand, invites administrative authorities' involvement in the process of investigation. Considering that prosecutors in Turkey are dependent upon law enforcement for the investigation of crimes, it is clear that this constitutes a serious problem for the system of criminal justice in Turkey. This is why prosecutors, as well as law enforcement, need to receive professional training on methods to be used in criminal investigations, and serious consideration should be given to the idea of erecting stronger barriers between judges and prosecutors.

In Turkey, there is a revolving door between these two positions, with judges being easily appointed as prosecutors, and vice versa, which is very problematic. On the one hand, if prosecutors, who are used to representing one of the sides in a trial and perceive themselves as being on the "side of the state", suddenly find themselves as judges presiding over cases, this makes it difficult for them to adjust to their new roles and treat both sides fairly; at the very least, this adjustment requires time. On the other hand, when judges are appointed as prosecutors all of a sudden, they are usually not prepared for the technical and psychological aspects of the job.

Prosecutors should be organized under an autonomous structure to be called the Office of the Chief Prosecutor of Turkey, and their professional training should be separated from that of the judges and provided by expert academic personnel, as detailed below in the section on the Academy of Justice. A judicial law enforcement agency should also be established, to serve under the proposed Office of the Chief Prosecutor. Judicial powers of the Gendarmerie force should be abolished, and expert criminology laboratories should serve under the prosecutor's office.

The current structure of the Institute of Forensic Medicine is one of most important reasons behind lengthy criminal trials. This Institute should be reorganized, and the number of branches and committees of experts should be increased. In addition, a strong mechanism of cooperation and coordination should be established between the Institute of Forensic Medicine and universities.

The structure of the penal system is also important for criminal justice. First of all, the physical and psychological environment of the prisons should be conducive to mitigating crimes. If prisons are not safe, respectful of fundamental rights and conducive to rehabilitation, they cannot contribute to the prevention of repeat offenses, which should be the main goal of the penal system. Indeed, Turkey has a high rate of repeat offenses by ex-convicts.

c) The Independence and Impartiality of Courts

Fair trial requires that courts are independent of non-judicial public authorities, including, first and foremost, the political authorities, in terms of both structure and functioning (in organizational and functional terms). Even though the Constitution provides for the independence of the judiciary from both the executive and the legislative organs, serious problems are encountered in practice stemming from legal and administrative arrangements. Judicial independence requires the administration of the judiciary to be carried out by an autonomous organization, separate from other executive and administrative structures. In Turkey, the Constitution gives this task to the Supreme Board of Judges and Prosecutors (HSYK), which was reorganized in the 2010 Constitutional amendment to better comply with the principles of independence and impartiality.

However, following a legal regulation regarding the Board's work, made in 2014 on the initiative of the government, and the election of new members under the amended rules, the emerging opinion among the public is that the HSYK has largely come under the control of the Minister of Justice (and hence, of the government). Because the election which determined members of the HSYK was largely won by the list of candidates from the "Union in the Judiciary Platform," which has full support of the Ministry of Justice; the Board's ability to act independently and impartially from the government and the executive authority was severely reduced. Indeed, the dismissal of judges and prosecutors whose decisions had inconvenienced the government, and the arrest and trial of some of them took place following the election of new members. The fact that the HSYK has in some of these cases acted following suggestions or orders by the Minister of Justice, Prime

Minister or the President reflects a deeply concerning situation about the rule of law in the country. In short, HSYK works very much in tandem with the government, which is a source of grave concern for the independence and impartiality of the courts.

Government intervention in the judiciary has drawn the attention of the international public opinion lately, with many international institutions and organization, foremost among them the Venice Commission, making statements expressing concern about the independence of the judiciary in Turkey. In a statement made on June 20, 2015, the Venice Commission called attention to practices in Turkey that violate universal standards and European norms, and called upon the Turkish authorities to reconsider the recent actions against judges and prosecutors, to revise the Law on HSYK to minimize the influence of government representatives within the Board, to prevent the Board from intervening in ongoing investigations and trials, and to establish Constitutional guarantees regarding the assignments and reassignments of judges and prosecutors.

Another development that gave rise to concern for judicial independence was the big increase in the number of members of the Court of Cassation and the Council of State, under the guise of “reorganization”. There are concerns that the large number of new appointments to the Court of Cassation and the Council of State will bring these institutions under the control of the government. In the meantime, an amendment reduced the period of service required before lawyers could be appointed as judges from 5 to 3 years, making it easier for the government to fill positions in the judiciary with its own supporters. Lawyers observe that it is possible to encounter “new” judges with little experience appointed to serve as chief judges in high criminal courts.

Investigations and prosecutions of the Gülen Community and of the public servants and civilians who are thought to be associated with this Community, including the one involving the charge of establishing a "terrorist organization", presumably started to prevent "Crimes Against the Constitutional Order", constitute another very clear indicator of the fact that the judiciary is not acting independently of the executive. It is obvious that the investigation describing the Community as a "terrorist organization", in particular, has no legal basis whatsoever. It is a well known fact that in launching these investigations, the prosecutors did not act on their own initiative but following suggestions and orders by the government and by the President to do so.

Another more general problem with the independence and impartiality of the judiciary is that judges sometimes see themselves as pro-

tectors of the "interests of the state", or fail to act independently of their own ideological tendencies, loyalties or allegiances. There have been many cases in which either of these factors led courts astray from justice and fairness. Until about 2008-2009, when judges and prosecutors occasionally disregarded justice and fairness, this was usually due to their statist-oriented political views, and allegiance to the official ideology. In recent years, however, we have witnessed more cases in which judges and prosecutors close to the governing party, to the Gülen Community or to other groups failing to act independently of their loyalties and sympathies.

All of these indicate that priority consideration should be given to the training and hiring of judges and prosecutors. It is essential for the rule of law that the hiring of judges is absolutely free of partisan considerations. This is why methods such as interviews, which are susceptible to subjectivity and partisanship, should be replaced by objective written examinations which are better equipped to assess relevant knowledge and experience.

Initial on the job training to judges in Turkey is provided by the Academy of Justice. However, this institution largely lost its impartiality following a series of legal and administrative actions taken by the government. Moreover, the training provided by the Academy of Justice is not sufficient to train judges who are equipped with all the competencies required to practice their profession in line with universal standards.

“Academy” in name only, this institution first of all needs to have permanent academic staff on its roster who specialize in the training of judges and prosecutors, if it is ever to become a real academy. Furthermore, provision of an independent and merit-based training requires making the Academy truly autonomous by ending the control the Ministry of Justice has over the Academy. Once it is reorganized as a truly independent and autonomous institution, the Academy should train its own qualified and expert personnel. Following this reorganization, examinations for prospective judges and prosecutors should be done by the Academy. In addition, judges and prosecutors should acquire overseas experience, preferably in the European Court of Human Rights, in order to acquire the professional knowledge and experience necessary for implementing universal principles of justice.

Finally, legal education in Turkey must be restructured to facilitate reaching these goals. Unfortunately, the curriculum followed in faculties of law, which is more or less the same in all universities, has an almost exclusive focus on Turkish law. It is clear that this system, which fails to instill a strong sense of law and justice and treats law as a na-

tional matter rather than a universal value, churns out lawyers with a narrow training and does not contribute to the provision of justice. Likewise, the current system, which allows young graduates fresh out of college to be appointed as judges, without requiring much in the way of professional experience, cannot provide justice or the rule of law. The system should be reformed so that judges are selected from among people with longer professional or academic experience, and additional criteria such as accreditation by Bar Associations should be considered.

d) Guarantees for Judges

Following the amendments to the law, which were made after corruption allegations involving the government surfaced, constitutional guarantees for judges apply only to those judges who act in tandem with the government, or who hear cases that do not interest the government. Indeed, prosecutors who attempted to investigate the corruption allegations in question, and judges who accepted requests for the release from detention of a television journalist and some police officers who were thought to be members of the "parallel state", were dismissed by the HSYK. Following the designation of the religious community in question as an "armed terrorist organization" in the National Security Policy Document (the "Red Book"), the President informed the public that other judges and prosecutors could be dismissed as well, confirmed by developments within the last couple of weeks.

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This is unacceptable in a state governed by "the rule of law" for two reasons. First, because the "policy" document in question, widely known as the "red book", has no constitutional basis, court decisions based on this document mean a total rejection of "law" and the Constitution itself. This is because the Constitution (Article 138) requires judges to base their decisions not on this or that policy document, but on their personal conviction in line with "the Constitution, relevant statutes and law". Secondly, it is impossible to speak of the rule of law in a country where a political authority can announce before any official procedure that certain judges are going to be dismissed.

A statement by the General Secretary of the HSYK that "the necessary actions" will be taken against judges who would take similar decisions about the defendants made it abundantly clear that judges are

expected to base their decisions not on the law or the principles of law, but on the whims and wishes of the government, and that any judge who failed to abide to this demand and expectation could see his/her career come under threat. Following the HSYK elections in 2014, judges and prosecutors who made decisions that did not comply with the requests and/or expectations of the government faced retributive administrative action such as frequent reassignments, which is another proof that career advancement and even job security of judges and prosecutors depend upon how compatible their decisions are with the wishes of the government.

Violation of the rights of the judges and prosecutors in question is not the only ill consequence of the disregard for constitutional guarantees of judges. These practices, because they constitute a rejection of the principle of "guarantees for judges", will hang like the "sword of Damocles" over the heads of judges and prosecutors, who will find it more difficult to make decisions that inconvenience the government in the future, even if this is what the law requires. It will become a matter of courage to make such decisions. Under these circumstances, judges are naturally concerned about their career prospects and job security.

e) The Principle of Natural Judge

The most blatant recent violation of the principle of natural judge was the establishment of the Criminal Courts of Peace, tasked with carrying out the "war on the parallel state". With the Law No. 6545 dated 18.6.2014, which amended the Code of Criminal Procedure, all decisions concerning preventive measures during the investigation phase are placed in the exclusive jurisdiction of these courts. Thus, all decisions concerning pre-trial measures such as detention and surveillance of communication are made by these courts, and these decisions can only be appealed to other Criminal Courts of Peace, whose decisions in turn are final. These courts also have the exclusive power to decide on the objections to public prosecutors' decisions of non-prosecution.

With these courts, which are few in number and filled by judges found to be "reliable" by the government, a closed circuit system was created, with the aim of eliminating the possibility of a decision that would inconvenience the government. Judges who were found to be non-compliant were reassigned.[15]

15 For example, the judge of the Eskişehir Criminal Court of Peace, who lodged a challenge against the amendments in question on the grounds that they are unconstitutional, was assigned to a minor province.

The amendment in question, as mentioned above, was announced to the public by the then Prime Minister Erdoğan, who described these courts as "project courts". In response to the criticism in the media, following the first appointments to these courts, that most of the appointees had made remarks in the social media that were openly supportive of the Prime Minister and the AKP, the head of the 1st Department of HSYK admitted that these appointments might have been a mistake. There were also reports on the media that the judge who signed the decision for the detention of the judges in question ran for mayor as an AKP candidate in local elections, and was a member of the local party administration.[16]

All of these developments have created the impression that the newly established criminal courts of peace were specially designed to carry out demands of the government; the ensuing practices of these courts have further reinforced this impression. These courts were instrumental not only in taking down the prosecutors and police officers who initiated the December 17-25 corruption operation, but also in conducting operations against the so-called "Community media," and the prosecutors and members of the gendarmerie who took legal action against those carrying arms in MİT trucks to unknown groups in Syria.

Although the Constitutional Court ruled that the presence of these courts did not violate the principle of natural judge, it is obvious, considering the conditions, manner and purpose of their establishment, that their involvement in the investigations and prosecutions related to the "purge of the parallel state" does violate the principle of natural judge. For these reasons, decisions made by these courts are in violation of the principles of rule of law and justice.

f) Implementation of Court Decisions

Implementation of court decisions is necessary for the judicial review of the actions of the executive and administrative organs to be effective, as well as for the effective redress of grievances through courts. The main problem in this respect is the lack of implementation of court decisions, especially in cases involving conflicts that arise from citizens' transactions with state agencies. Failure to implement administrative courts' decisions that find the public administration guilty, through unilateral action, of violating individuals' legitimate rights and interests constitutes a significant portion of these violations. Disobeying court decisions ordering the release from detention of suspects and defendants in criminal cases is another serious problem.

16 Bugün daily newspaper, 2.7.2015, p. 12.

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Failure to implement court decisions of the first type above has almost become a routine practice in bureaucracy. This is a general practice, but it is applied to members or sympathizers of the Gülen Community, which is designated as the "enemy" by the government, with additional vehemence. Public administrators are given clear orders by the government to disobey court decisions in favor of these people. Another strictly implemented policy is the denial of the rights of suspects and defendants in criminal investigations and prosecutions, if they associated with the Gülen Community. The latest example of this practice was the disobedience of the court order to release Hidayet Karaca, the CEO of Samanyolu Television, and some police officers from detention. However, there are no legal grounds for disobeying a court order unless it is amended or overturned by a higher court, and disobedience constitutes a blatant crime.

the difficulty of prosecuting public servants for their job-related actions, and the failure to implement the principle of holding those public servants who were at fault responsible for the payment of compensations collected from state encourages disregard for law, and even provides impunity to some public servants who commit crimes. All of these hinder the implementation of court decisions.

In recent years, the AKP government has also made a habit of not implementing ECHR decisions that it does not approve of. As mentioned above, in response to ECHR decisions ruling that compulsory religious education is a violation of human rights, the government, instead of taking legal and administrative measures to end the violation, chose to openly criticize the Court for its decisions, and publicly declared that it would not comply.

In addition, the difficulty of prosecuting public servants for their job-related actions, and the failure to implement the principle of holding those public servants who were at fault responsible for the payment of compensations collected from state encourages disregard for law, and even provides impunity to some public servants who commit crimes. All of these hinder the implementation of court decisions.

A final point is that decisions of the Constitutional Court do not apply backwards, as a constitutional requirement, which is open to abuse. A government or public agency with malicious intent can use the time between the effective date of a decision of the Constitutional Court striking down a law or a decree law and the date on which the reasoned decision of the Court is published in the Official Gazette and becomes effective, to engage in actions that violate law. This was how the government established its control over HSYK, through dismissals and appointments and other administrative actions taken before the Constitutional Court's reasoned decision was published.

g) Working Conditions of Members of the Judiciary

There have been partial improvements in recent years in the physical conditions of courthouses and hearing rooms. However, there are still many problems with the working conditions of the members of the judiciary. One of these problems is that all sorts of spending and the provision of office and other equipment requires approval from prosecutor's offices. More generally, courts, for various reasons, have an excessive workload, and urgent measures -from amendments in the rules of procedure to the training of judges and to reducing the number of cases brought before the courts- need to be taken to mitigate this problem.

III. CONCLUSION

The rule of law is one of the foundations of civilization and civilized living. There is no doubt that the rule of law is indispensable for a free, peaceful and in general civilized social existence. The rule of law is the foundation of a peaceful social order; without the rule of law, no one's life, liberty and property is secure. Both the stability and the peaceful transformation of the social order depend on the rule of law. Legal security and stability also underlies economic development and productivity in all fields.

This study has found that the current situation of the rule of law in Turkey is unfortunately very disappointing. As detailed above, arbitrary government has almost replaced law-based government in Turkey. The practice of law deviates strongly from the provision of justice, and is instrumentalized for the purposes of favoritism and exclusion. In many cases, law is steered by partisan political goals. The judiciary is far from achieving independence and impartiality, with these principles even losing their status as ideals to strive for. Courts started to be seen as instruments of government policy rather than as dispensers of justice. Law has almost lost its predictability and is far from providing individuals with a sense of security. Protection of the fundamental rights of individuals is weakened.

This undesirable picture, which is incompatible with Turkey's quest for becoming a civilized and pluralist society, as explained above, is not created solely by the AKP. However, this significant deviation from the rule of law and other political goals which are indicators of civilization has become more prominent in the last few years of AKP government, and this means something. What it means is related to the fact that AKP came to power on a platform of achieving these very goals, and initially took significant steps in this direction. What it means is implicit

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in the disappointment and loss of hope for the future that is created by AKP's reneging on its promises of liberalization and democratization.

It should be noted that the rule of law is not only about redressing individual grievances. It is also a matter of protecting democracy. Considering the many and indispensable benefits it provides, it is true that establishing the rule of law is a political ideal in its own right. At the same time, it is a precondition for a stable and institutionalized democracy. The rule of law, together with other liberal principles and institutions such as human rights, division of powers, checks and balances and an autonomous civil society, forms the essential foundation on which a genuinely democratic society is built. This is why it is very difficult, if not impossible, for democracy to take root in the absence or weakness of strong liberal foundations. In the absence of these foundation, it is impossible to establish a sustainable democracy; what emerges in such cases is a semi-authoritarian or semi-democratic regime. Democratic regimes in Western Europe and North America, compared to those in other places, are a lot more successful, which is attributed to the long history of liberal ideas and institutions in these countries.

This observation also sheds some light on why, despite its efforts to this end for a century and a half, Turkey has yet to establish a pluralist-democratic regime based on the rule of law. Because its historical record is not very favorable, Turkey can establish a pluralist-democratic regime only after regular and continuous effort is made.

Indeed, the intellectual, cultural and institutional components of democracy, including the rule of law, have very shallow historical roots in Turkey. There were no autonomous cities or municipalities, no landed or religious aristocracy or other local centers of power that could counter the authority of the central government, no idea of "sanctity of property", and no autonomous legal authority that could limit the powers of the Sultan in Turkey's history. In lands where the idea and institution of private property is not well established, there can be no talk of an autonomous society that can stand on its own feet, and the state inevitably becomes the benefactor of society. Because Turkey had no history of a religious authority autonomous from the state, the Islamic sharia also failed to act as a brake on the powers of the rulers. This is why the relationship between state and society in Turkey is traditionally top down not bottom up. That is to say, we have a historical sociology in which the state comes before the society, where the state constructed the society rather than vice versa. Given this historical background, it is not surprising that the political culture of Turkey is basically state-centered and based on the philosophy of raison d'État.

In conclusion, the establishment of the rule of law in Turkey, which historically lacks the intellectual and institutional foundations required, depends on the continued presence of a genuine and strong political will to this end. As this study shows, Turkey's current performance in terms of the rule of law is very poor. However, due to the weak historical roots mentioned above, it would be wrong to single out the AKP government as the only actor responsible. Nevertheless, this does not change the fact that this government not only reneged on its initial promise of contributing to the establishment of the rule of law, but also actively tried to reverse the steps taken in this direction.

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RULE OF LAW IN TURKEY

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