
The EU's Progress Report on Turkey: No End in Sight

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Theme: Such is the current stalemate, seven years after accession talks began and with no new chapter opened since Spain's EU Presidency in 2010, that the report is hardly noticed. Nevertheless, it remains a useful roadmap of what Turkey has achieved and needs to do.

Summary: The report, released on 10 October, underscored the areas where progress is lacking, particularly as regards the rule of law, press freedom, the judiciary and human and minority rights.

Analysis:

Background

In the almost one year since the last report was issued, the Turkish economy –one of the fastest-growing among emerging markets– has slowed down, 324 officers were given jail sentences for seeking to overthrow the mildly Islamist government, the country has been increasingly drawn into the civil war in neighbouring Syria and the 28-year-old armed campaign by the Kurdistan Workers' Party (PKK) for independence continues to flare up.

GDP growth in 2012 looks like being less than half the brisk pace of 8.5% in 2011, as the economy is beginning to cool down (the current account deficit was 10% of GDP in 2011). Such a pace is the envy of all crisis-hit EU countries, particularly Spain which, apart from anaemic growth in 2011, has been mired in recession since 2009 and will not come out of it until 2014, and then weakly. Sustained growth over the last 10 years has trebled Turkey's per capita income to more than US\$10,000.

The simmering tensions between the Justice and Development (AK) Party of Recep Tayyip Erdoğan, who has been Prime Minister since 2013 and hankers to be President as of 2014 (when the person will be directly elected for the first time), and the armed forces came to a head last month when a court handed out jail sentences of between 13 and 20 years to 324 officers (out of 365) in the 'Sledgehammer' trial. The trial, part of a wider conspiracy known as Ergenekon, was a watershed as for the first time in the country's democracy civilian prosecutors had charged the officers.

The Harvard professor Dani Rodrik, the son-in-law of Cetin Dogan, a former general and the chief suspect in the coup plot, claimed the trial was a gross miscarriage of justice.¹

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¹ http://www.washingtonpost.com/opinions/turkeys-miscarriage-of-justice/2012/09/21/e2125276-033d-11e2-8102-ebee9c66e190_story.html.

The Turkish army, the bastion of the secular Republic founded by Mustafa Kemal Atatürk in 1923, has a long history of intervention in politics, having ejected four governments directly or indirectly since 1960. It went on the offensive against the AKP as soon as it took office.

Syria has become a first-order security risk for Turkey. Earlier this month the army fired on Syrian military targets after mortar bombs accidentally landed in the south-eastern Turkish town of Akcakale, killing five people. The Turkish government has been at the forefront of seeking regime change in Syria, a former Ottoman domain. The government fostered the establishment of the opposition Syrian National Council and supports the Syrian Free Army. It is an open secret that arms are funnelled from Turkey to the Syrian rebels. More than 40,000 Syrian refugees have fled to Turkey, creating a sizeable humanitarian problem.

The Syrian civil war has compounded the Kurdish problem in Turkey (where there are an estimated 14 million Kurds). President Bashar al-Assad has resumed the backing that his father gave to the PKK and handed over control of some towns along the Turkish border to the PKK's allies in the Democratic Union Party, a Syrian Kurdish party.

The PKK's founder, Abdullah Öcalan, was based in Syria until he was forced to leave in 1998 after Turkey threatened war with its neighbour. He was captured by the Turkish security forces in 1999 and imprisoned.

None of these three issues, however, have such a direct bearing on Turkey's path towards EU membership as Ankara's continued failure to implement the 2005 Ankara Protocol and open its ports and airports to Greek Cypriot traffic and hence extend its customs union with the EU (since 1996) and recognise the Republic of Cyprus, an EU country since 2004. Turkey is the EU's sixth-biggest trading partner while the EU is Turkey's biggest.

As a result, the European Council suspended eight chapters (areas of EU law and policy known as *acquis*) in December 2006 of the 35 that Ankara has to fulfil. So far, only 13 have been opened (none for more than two years), one of which (science and research) has been provisionally closed. Ten are also frozen by the French and Cypriot governments.

Turkey invaded Cyprus in 1974 and since then has occupied the northern end of the island, the self-proclaimed Turkish Republic of Northern Cyprus which no other country recognises. Ankara refused to have any direct contact with Nicosia during its Presidency of the EU in the first half of 2012. Abdullah Gül, the Turkish President, called the Republic of Cyprus 'half-a-country, an incomplete country' and it had assumed a 'half-Presidency'. A government circular instructed all Turkish civil servants to abstain from meetings and contacts with the Cypriot Presidency. This approach hardly endeared Ankara even to those countries that support its membership.

Talks to reunify Cyprus, like those to join the EU, have ground to a halt in all but name. Stefan Füle, the Enlargement and European Neighbourhood Policy Commissioner, said the EU was shooting itself in the foot by not allowing the accession process to go on. He referred in particular to the energy chapter (unilaterally blocked by Cyprus since 2009), given that Turkey is becoming a major energy hub and the Union is energy-dependent. Turkey and Cyprus are wrangling over offshore gas wealth.

In the absence of progress in opening chapters, the European Council launched the Positive Agenda last December to keep Turkey on board by supporting and complementing the accession negotiations through enhanced cooperation in a number of areas of joint interest: political reforms, alignment with the *acquis*, dialogue on foreign policy, visas, mobility and migration, trade, energy, counter terrorism and participation in programmes.

The Report²

In democracy and the rule of law, work on a new constitution was started by a committee composed of three members from each of the four main political parties in parliament to replace the charter drawn up after the 1980 military coup. For the first time, representatives of minorities, beyond those minorities recognised by Turkey, were invited to parliament –to express their views on a new constitution–.

The key challenges to consensus include views on the separation of powers, state-society-religion relations and the Kurdish issue (citizenship, use of the mother-tongue and decentralisation).

The Law on the Ombudsman Institution was adopted in June, making it answerable to parliament and not subject to instructions from anyone. The body examines complaints and makes suggestions concerning the functioning of the administration with respect to the rule of law and human rights. However, it does not have the right to conduct inquiries on its own initiative.

There was further consolidation of civilian oversight of the security forces, and the General Staff generally abstained from exerting direct or indirect pressure on political issues. In January 2012 the national security course given by military officers was removed from the secondary school curriculum. Nonetheless, in January the Chief of General Staff criticised the use of the Kurdish language in public education.

As regards the judiciary, judges and prosecutors have failed to apply international human rights agreements when they conflict with domestic law, even though the Constitution clearly states that such agreements have precedence. The High Council established new criteria for assessing judges and prosecutors which will reward respect for the provisions of the European Convention on Human Rights and the European Court of Human Rights judgments.

The third judicial reform package, adopted last July, kept some provisions including the permitted length of pre-trial detention, which remains 10 years, an excessively long period in particular if pre-trial detention covers only the period up to the first-instance decision. It also fails to sufficiently revise problematic areas related to the administration of justice and protection of fundamental rights, and does not address issues related to definitions of criminal offences under either the Criminal Code or the Anti-terror Law that are at the source of a number of problems of the Turkish criminal justice system.

In anti-corruption policy, legal loopholes relating to political financing continued to be a concern. The auditing of political parties remained weak and there was no legal framework for auditing election campaigns or the financing of individual candidates. There was no legislation on campaign financing other than for political parties. Political party

² Available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf.

candidates, independent candidates for election and elected representatives were not subject to the regulations on financial transparency that apply to political parties. There were not enough checks on assets declared by political figures and public officials.

As for human rights, Turkey ratified the Council of Europe's Convention on preventing and combating violence against women and domestic violence last March. The European Court of Human Rights (ECtHR) delivered judgments on 160 applications finding that Turkey had violated rights guaranteed by the convention on human rights. The number of new applications to the ECtHR went up for the sixth consecutive year, with 8,010 new applications having been made since September 2011. Most concern the right to a fair trial and protection of property rights. As of September 2012, 16,641 applications regarding Turkey were pending. Turkey has abided by the majority of rulings, but has not executed all the judgments.

The downward trend in the incidence and severity of torture and ill-treatment by law-enforcement officials continued. However, excessive use of force during arrest and outside official detention places, as well as in official places of detention and prisons, continued to be a matter of concern.

Law enforcement bodies regularly launched counter-cases against people who alleged torture or ill-treatment. In many instances such cases were given priority by the courts. Law-enforcement officers found guilty of torture, ill-treatment or fatal shootings continued to receive short or suspended sentences.

Freedom of expression still leaves a lot to be desired. Some journalists were released pending trial after excessively long periods spent in pre-trial detention, while the judicial reform package prohibits the seizure of written work before publication. According to the Organisation for Security and Co-operation in Europe (OSCE), there were 95 journalists in prison in April 2012, compared with 57 a year earlier. Twenty of the journalists on the 2012 list have been released since, 10 of them as a consequence of the entry into force of the latest judicial reform package.

Many of those imprisoned face charges related to the Kurdish issue and engaging in propaganda for terrorism. Turkey still needs to amend its penal code and anti-terror legislation to make a clear distinction between the incitement to violence and the expression of non-violent ideas. In 2012, Turkey ranked 148 out of 179 countries surveyed by Reporters Without Borders for freedom of the press. From 2005 to 2008, and in 2010, Turkey's rank was around 100.³

Similarly restrictive is freedom of assembly. Excessive administrative restrictions on freedom of assembly persist, such as substantial prior notification requirements for demonstrations, and sometimes the confinement of demonstrations to designated sites and dates that are unsuitable. Freedom of association legislation is broadly in line with EU standards, and freedom of worship is generally respected. However, the Halki (Heybeliada) Greek Orthodox seminary remained closed, the Armenian Patriarchate's proposal to open a university department for the Armenian language and clergy remained pending for a fifth year and Alevis experienced difficulties in establishing new places of worship.

³ See the report by Marc Pierini for Carnegie Europe at <http://www.carnegieendowment.org/2012/10/05/press-freedom-in-turkey-interim-assessment-and-avenues-for-action/dz9z#>.

Anti-discrimination legislation is still lacking. Homosexuality is not a criminal offence in Turkey. However, lesbian, gay, bisexual and transgender persons continued to suffer discrimination, intimidation and were the victims of violent crime.

As regards labour and trade unions rights, legislation on trade unions and collective bargaining by civil servants was amended, leading to the first collective bargaining exercise in this sector. However, the new legislation is not fully in line with the EU *acquis* and International Labour Organisation (ILO) conventions, especially with regard to the right to strike for public servants, the process of collective bargaining and dispute settlement, as well as restrictions on large categories of public servants to form and join trade unions. The draft law on collective labour relations, amending the legal framework for trade unions in the private sector, has not been adopted. In May the Law on Strikes was amended to prohibit strikes in the aviation sector. This takes Turkey's labour legislation further from EU and ILO standards.

On the economy, the report has little criticism. Turkey's macroeconomic fundamentals, especially the budget deficit and public debt level in GDP terms, are well within EU parameters.

Conclusion: The European Commission's annual report on Turkey's progress, when the going was good and chapters were opened, used to encourage the reform process, but this is no longer the case. Turkey is going at its own, slow pace, discouraged by the hostility to its EU membership in countries such as Germany and France and in the knowledge that the euro zone's crisis has relegated the importance once attached to it joining the club.

Predictably, the report drew criticism from Ankara. Turkey's EU Minister Egemen Bağış said it was biased and made broad generalisations based on individual and isolated cases. He compared the report to a movie script that does not present an objective picture of Turkey and that nobody knows how it will eventually play out. No one knows at this stage what will be the outcome of this long-running saga.

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