

The EU's Progress Report on Turkey's Accession: Stalling Reform (ARI)

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Theme: The European Commission's annual report on Turkey's progress towards full EU membership showed that little progress had been made over the last year. It continued to raise serious concerns about freedom of expression, the independence of the judiciary and the military's interference in political life, among other issues.

Summary: The report, released on 5 November, came at a critical juncture for the ruling Justice and Development Party (AKP), which was almost banned earlier this year by the Constitutional Court for anti-secular activities. In October a group of ultranationalists went on trial for seeking to trigger a military coup. What little progress has been made since the last report has been largely in economic matters, although the economy is now wobbling.

Analysis:

Background

The year since the last progress report was issued has been a hectic one for the ruling Justice and Development Party (AKP) of Recep Tayyip Erdogan. In July the socially conservative AKP with Islamist roots narrowly avoided a ban for breaching the secular provisions of the constitution¹ and, in October, 86 ultranationalists went on trial in Istanbul accused of plotting bombings and assassinations to destabilise the country and provoke a coup by the military, the self-proclaimed guardians of secularism. Added to this, the resurgence of terrorism by the PKK, which is fighting for an independent Kurdish state, has been so strong that parliament renewed the army's mandate to bomb PKK targets over the border in Kurdish-controlled northern Iraq.

When the Constitutional Court publicly explained its decision regarding the AKP on 24 October, the judges said Erdogan had been guilty of 'determined and intense activities' against article 68 of the constitution, which establishes Turkey as a secular state. The Court had been asked to dissolve the AKP and ban 71 former and present party officials, including Abdullah Gül, the President, and Erdogan from having any role in politics for five years. The judges refrained from imposing these penalties, choosing instead to deprive

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¹ See the author's previous analysis at

http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/Elcano_in/Zonas_in/Europe/DT24-2008 and

http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/Elcano_in/Zonas_in/ARI36-2008.

the AKP of half the state funds it was entitled to this year. The Court singled out Erdogan's attempt to lift the ban on female students wearing Muslim headscarves in universities and highlighted his efforts to lower the minimum age at which students can go to Koranic classes. It said religious matters have been 'turned into central issues in politics at a scale leading to social divisions'. Erdogan was also criticised for describing Turkey as a 'modern Islamic state' and for seeking to 'transform and restructure the state within the framework of the rules of a certain religion'.

The Constitutional Court annulled, in an earlier decision, amendments to the constitution which would have lifted the headscarf ban for university students.

The secular establishment –a grouping which includes the armed forces, the judiciary, parts of the civil service, the media and universities and many women in urban areas, particularly Ankara and Istanbul– has never been comfortable with the AKP's winning of power in 2002 and its re-election in 2007 with a larger slice (46%) of the vote.²

On the economic front, Turkey ended its IMF programme in May but its deteriorating macroeconomic fundamentals (inflation is back in double figures and the current account deficit is more than 6% of GDP) may prompt the government to agree a new deal with the IMF.

Turkey's accession negotiations started in October 2005, but out of the 35 chapters, or policy areas, that must be completed before a candidate country can join, Turkey and the EU have opened only eight. Another eight were frozen in December 2006 because of Turkey's refusal to open its trade to vessels from Cyprus, an issue that has yet to be resolved.

Meanwhile, the views of EU citizens towards Turkey hardened. According to this year's Transatlantic Trends public opinion survey conducted by the German Marshall Fund of the United States, 57% of Europeans said Turkey had such different values that it is not really part of the West (see Figure 1). The highest percentages were recorded in Germany (76%) and France (68%), both of whose heads of government are lukewarm to put it mildly about Turkey joining the EU. The figure in Spain, whose current Socialist and previous Popular Party government actively back Turkey's membership, is 46%.

Figure 1. Turkey has such different values that it is not really part of the West (% agreeing)

Country	FR	GER	UK	IT	NL	PL	PT	SP	SK	TR	BG	RO
%	68	76	44	61	55	47	43	46	50	55	54	22

FR = France; GER = Germany; IT = Italy; NL = Netherlands; PL = Poland; PT = Portugal; SP = Spain; TR = Turkey; BG = Belgium; RO = Rumania.

Source: Transatlantic Trends, 2008.

Signalling the tone of the progress report, Olli Rehn, the EU Enlargement Commissioner, urged the government, almost one month before its publication, to make 'faster progress in the reforms that form the foundation of the accession process'.³ He said valuable time had been lost during 2008 owing to (yet) another political crisis –the case brought against the AKP by the state prosecutor for allegedly being a focal point of anti-secular activities–. The Constitutional Court's decision had averted a full-blown crisis, but 'highlighted the

² See the author's previous analysis at

http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/Elcano_in/Zonas_in/ARI+86-2007.

³ Turkey and the EU: a win-win game, Bosphorus Conference, 10 October, 2008.

need for urgent revision of the rules governing political parties, and also for a wider constitutional reform’.

The Report⁴

In **democracy and the rule of law**, the AKP gave a group of academics a mandate to revise the 1982 Constitution (drawn up during a military junta) with a view, among other things, to aligning Turkey with international standards on fundamental rights. However, no draft has been presented either to the public or to parliament, and no clear timetable has been set for discussing it.

Civilian oversight of the security forces remains an area of concern. The report said the armed forces continued to exercise ‘significant political influence via formal and informal mechanisms’. Senior officers continued to express opinions on domestic and foreign policy issues going beyond their remit, including Cyprus, the south-east, secularism, political parties and other non-military developments. No progress was made on strengthening parliamentary oversight of the military budget and expenditure. The Parliamentary Planning and Budget Committee reviews the budget of the Ministry of National Defence. However, extra-budgetary funds are excluded from parliamentary scrutiny. The Defence Industry Support Fund (SSDF), from which most procurement projects are funded, is still an extra-budgetary fund.

The **judiciary** is still not impartial. The report said that on some occasions senior members of the judiciary made public political comments which may compromise their impartiality in future cases. As regards independence, there has been no progress on the composition of the High Council of Judges and Prosecutors. The composition of the High Council is not representative of the judiciary as a whole: only senior members of the judiciary from the Court of Cassation and the Council of State are members of this Council.

Limited progress was made in the area of **anti-corruption policy**. No changes were made to restricting the immunity of members of parliament and there is no legislation in place on election campaign financing. Turkey needs to develop a track record of investigations, prosecutions and indictments of allegations of corruption, the report said.

In **human rights and the protection of minorities**, there were no new developments as regards ratification of human rights instruments, such as, for example, the Optional Protocol to the UN Convention against Torture (OPCAT), signed in September 2005. During the reporting period, the European Court of Human Rights (ECtHR) delivered a total of 266 judgments finding that Turkey had violated the ECHR. Similarly to last year, the total number of new applications to the ECtHR continued to increase, with 3,705 applications during the reporting period. The majority of these new applications concerned the right to a fair trial and protection of property rights. Few of them concerned violations of the right to life or torture and ill-treatment. Turkey abided by the final judgment of the ECtHR in the majority of cases. However, a considerable number of ECtHR judgments are awaiting enforcement by Turkey. This is sometimes because general legislative measures are required.

⁴ The full report is at http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf.

The number of applications to NGOs in relation to cases of **torture and ill-treatment** increased, in particular outside official places of detention, notably during apprehension, transfer, or in the open with no detention registered. Furthermore, there are cases where the legal safeguards in place failed to prevent or stop the occurrence of torture and ill-treatment while in custody or in prison.

Although the Minister of Justice expressed a public apology for a recent case of death following torture in detention, **impunity** for human rights violations is a cause for concern. The report said there was a lack of prompt, impartial and independent investigation into allegations of human rights violations by members of security forces. None of the 70 complaints submitted to the prosecutor in relation to the Diyarbakir incidents in March 2006 have been closed so far. Furthermore, judicial proceedings into allegations of torture and ill treatment are often delayed by the lack of efficient trial procedures or abuse of such procedures.

As regards **freedom of expression**, the report said the amendments⁵ to article 301 of the Turkish Criminal Code, under which people including the Nobel laureate Orhan Pamuk (in 2005) were prosecuted, left the wording largely unchanged and the prior authorisation requirement (by the Justice Minister) opens up the possibility that the article will become subject to political consideration.⁶ The report noted that the Minister of Justice authorised the criminal investigations to continue in 37 cases.

Moreover, other legal provisions that restrict freedom of expression remain a cause of concern. For example, articles 215, 216 and 217 of the Turkish Criminal Code, that criminalise offences against public order, and the Anti-Terror Law have been applied to prosecute and convict those expressing non-violent opinions on Kurdish issues. Turkish judges and prosecutors apply a wide interpretation of the provision on 'incitement to violence' or 'public interest', in particular as concerns Kurdish-related issues. The report said this is not in line with the ECtHR case law on freedom of expression and implies in particular a lack of differentiation between violent and non-violent opinions.

The legal framework for **freedom of association** further improved with the adoption of the amendments to the Law on foundations in February 2008, but frequent inspections of NGOs receiving funds from abroad, including EC funds, remain a cause of concern. Certain NGO activities were videotaped by the security forces, especially in east and south-east Turkey where there has been a resurgence of PKK terrorism.

Freedom of worship is generally respected, but the Alevis, the largest religious minority, still do not enjoy the same rights as the majority Sunnis. They are regarded by their majority Sunni counterparts as being deeply unorthodox, often even as not being Islamic

⁵ The amended article 301 reads as follows:

- (1) A person who publicly degrades the Turkish nation, the State of the Republic of Turkey, the Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced to a penalty of imprisonment for a term of six months to two years.
- (2) A person who publicly degrades the military or security organisations of the State shall be sentenced to a penalty in accordance with the first section.
- (3) The expression of an opinion for the purpose of criticism does not constitute an offence.

⁶ Pamuk, flanked by President Abdullah Gül, used his opening address at the Frankfurt Book Fair on 15 October 2008 to decry the 'oppression' of Turkey's writers. He said article 301 continued to be used to 'silence and suppress many other writers'. Pamuk said that while he was working on his novel *Museum of Innocence*, published earlier this year in Turkish, he needed to research old Turkish films and songs. He did this easily enough on *YouTube*, but after the site was banned in Turkey in 2007 he was no longer be able to do so.

at all. The Turkish Alliance of Protestant Churches submitted a report to parliament's Human Rights Committee on the state of religious minorities in Turkey. This report pointed out that non-Muslim groups in the country had been the targets of attacks, provided a list of such incidents and noted that no suspects had been arrested. Implementation of the Ministry of Interior circular of 19 June 2007 on freedom of religion of non-Muslim Turkish citizens has not yet had the desired effects.

While the legal situation of women's rights has improved, the report noted that domestic violence, honour killings and early and forced marriages are still a serious problem. According to the Prime Ministry Human Rights Directorate, 220 honour killings were reported in the country in 2007, most of which happened in big cities. This was more than in 2006.

No progress was made on normalising bilateral relations with **Cyprus**, which Turkey invaded in 1974, and implementing the Additional Protocol. The self-declared Turkish Republic of Northern Cyprus is only recognised by Turkey. The report welcomed the start of negotiations in September between the leaders of the two Cypriot communities for the first time since 2004 when a peace process brokered by the UN failed.

There was, however, a slight thaw in the relations with neighbouring **Armenia**. In September, Abdullah Gül became the first Turkish President to visit the country when he attended the World Cup qualifier in Yerevan (Turkey won).⁷ Armenia has never ceased to demand that the Turks recognise there was a genocide in the Ottoman Empire in 1915 that killed 1.5 million Armenians, something that Turkey does not accept. Turkey closed its border with Armenia in 1993 in sympathy with Azerbaijan during the 1988-94 Nagorno-Karabakh war. Armenia and Azerbaijan signed an agreement in November aimed at resolving the dispute over the territory of Nagorno-Karabakh which, if successful, could pave the way for a reopening of the border.

Conclusion: Broadly speaking, Turkey has lost a year of reforms because of further political crisis and the continued lack of cross-party consensus over the EU accession process. The Republican People's Party (CHP), the second-largest party, and the Nationalist Movement Party (MHP) have become paranoid about secularism and increasingly anti-EU. The CHP appealed 16 bills related to EU reforms to the Constitutional Court in 2008. 'The history of past enlargements shows that success in joining the EU depends on a collective effort of all major parties to reform the country', says Olli Rehn, the EU Enlargement Commissioner.⁸ 'As long as the EU is used as a football in domestic political games, the accession process cannot bring concrete benefits. It is not just one party, one region or one segment of society that joins the EU, but the whole country'.

Rehn said the time had come to set up the office of the Ombudsman as this would help to defuse the tensions surrounding the debate about the relationship between religion and the state and reassure Turkish citizens that their rights will be respected, whatever their personal beliefs or political affiliations. The relevant law, however, has been stuck in the Constitutional Court for over two years. Ironically, the idea of the Ombudsman is an intellectual gift from Turkey to modern democracies. The Swedish King Charles XII admired the functioning of this Ottoman institution during his time travelling in Turkey in

⁷ See 'Turkey and Armenia Inch Forward' by Hugh Pope, *Los Angeles Times*, 16/IX/2008, <http://www.latimes.com/news/opinion/commentary/la-oe-pope16-2008sep16.0.7307971.story>.

⁸ Speech on 10 October 2008.

the early 18th century. He established the office of His Majesty's Supreme Ombudsman in Sweden by signing an ordinance in Timurtasch, just south of Edirne, in 1713. Perhaps history can teach something.

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