



Turkey's Legal Reforms: Positive but not Enough

By Ragıp Soylu

International human-rights organizations and Western governments have for some time been putting significant pressure on Turkey to reform its justice sector substantially so as to completely protect freedom of speech and reduce the number of convictions stemming from the much-criticized counterterrorism law. The country's government, mainly for its own reasons but also with an eye to this criticism, has decided to take several steps to overhaul the criminal justice system.

After months of discussion and debate with relevant parties, President Tayyip Erdoğan signed the First Judicial Reform Package into law in October. Its 39 articles include amendments covering matters from counterterrorism law to judicial proceedings, with the introduction of plea deals and summary trials likely to have implications for the nature of the justice system. The government underlines the positive changes it is bringing with regard to freedom of speech and movement, but in the background several issues that deserve closer attention.

Overall the package seems to aim to polish the government's image following its major electoral defeats in municipal elections earlier this year. There has been a heated debate within the ruling Justice and Development Party (AKP) over how to explain this setback and correct the factors behind it. One reason underlined by party officials is the dwindling support for the AKP among educated, white-collar, and urban voters who care about fundamental rights and freedoms.

Professional Changes

The legal-reforms package can be divided into three sets of articles.

First, some amendments aim to resolve persistent legal problems brought up by the bar associations and the legal establishment. Justice Minister Abdulhamit Gül, who has substantial experience in the legal sector, has worked closely with Union of Turkish Bar Associations, and specifically its head, Metin Feyzioğlu, a secularist, nationalist lawyer who until recently used to often publicly quarrel with President Erdoğan. Gül and Feyzioğlu drafted several important changes together. These cover introducing a professional examination for law graduates to qualify as lawyers, allowing the government to issue special passports that grant visa-free travel rights to lawyers who have at least 15 years of job experience, and raising the educational requirements for enrolling in law faculties.

With these changes, Gül—a longstanding conservative politician—has tried to reach different groups, from secularist to ultranationalist, within the legal community to shore support for his position and agenda. Instead of trying to introduce a partisan program of reforms, with Feyzioğlu, he has put forward measures that could be beneficial to all lawyers while staying consistent with the government's vision.



Fundamental Rights

Second, the reform package includes clauses that address issues related to fundamental rights and freedoms. However, the changes are more cosmetic, given that the courts had already issued decisions on these matters that set precedents.

A change in the counterterrorism law makes it clear that expression of opinion and criticism within news dissemination cannot constitute a crime. The government was compelled to make this change following a decision by the Constitutional Court earlier this year on the cases against the 2,000 signatories (dubbed “academics for peace”) of a declaration criticizing the security forces for their

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aggressive handling of Kurdistan Workers’ Party militants in urban centers in 2015. The court decided that their criticism was within the boundaries of freedom of speech, and therefore that the cases should be dismissed. Similarly, a teacher who was imprisoned for publicly criticizing the security forces was released following a Constitutional Court judgment. The government simply enshrined the court’s decisions in law to prevent further arrests and reduce the number of imprisonments that have been frequently criticized by human rights groups. Another of the government’s main aims was to meet EU criteria on terrorism law to expedite the introduction of a visa-free travel regime with the union.

The reform package also includes clauses that allow people who have been convicted of insulting the president to appeal in higher courts. In 2018, over

20,000 individuals were prosecuted and a record 2,462 convicted on such charges. The changes are expected to reduce the number of such convictions and prison sentences that are becoming a heavy burden for the judicial system and a public-relations disaster for the government. With these changes, Justice Minister Gül also seems to be attempting to reduce the number of cases that could go to the European Court of Human Rights, because the law states that individuals first need to exhaust the domestic legal remedies.

Additionally, the package has a clause to stop the administrative practice of not issuing passports to individuals who have been dismissed from public office on suspicion of terrorism, even if there is no court-ordered travel ban on them. Now anyone applying for a passport will be subject to a police check. This was presented by the government as a positive change because the Interior Ministry was not obeying the court orders to do so after some people affected by the previous administrative practice had sued. However, in a clear violation of freedom of travel, it is still up to the police to make the last decision regarding the dismissed individuals, who may not have been convicted of any crime.

Other changes, such as authorizing the courts to censor specific online content rather than entire websites or limiting the time allowed for pre-trial detention are meaningless. The courts are already blocking individual links on websites rather than their entire content, and most pre-trial detainees rarely spend more than the newly introduced limit of three months in detention during the investigation phase.

Plea Deals and Summary Trials

Third, the government—in an attempt to cut paperwork, shorten the average trial time, and address the overload of court cases—has introduced an unprecedented legal framework in the form of plea deals and summary trials. Prosecutors would be able

to halve the length of prison sentences if defendants agree to plead guilty. The change also allows judges to make a decision without a hearing for crimes punishable by up to two years in prison, which could be considered as a violation of right of defense by the European Court of Human Rights. Defendants would be able to appeal the judgments and go to regular Turkish courts.

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The changes introduced constitute a step in the right direction. To the government's credit, in an attempt to improve the education of judges and prosecutors, the Justice Ministry has stepped up its efforts to establish a Justice Academy this year, which would have a curriculum based “universal” law and norms. However, the changes fail to substantially reform the system in a way that minimizes the risk of prosecution against people who use their freedom of speech.

The fundamental problem in Turkey's judicial system is not the laws or regulations, but their unfair and incorrect implementation. The constitution already enshrines decisions of the European Court of Human Rights as a source of law, yet judges and prosecutors prefer to ignore them when it comes to politically sensitive issues such as insulting the president. Over the course of the last year, lower courts even refused to carry out the Constitutional Court's binding decision that ordered the release of journalists Sahin Alpay and Mehmet Altan in fear of social-media backlash and political pressure. Many individuals were re-arrested or released based on the whims of social-media trolls from the various parts of the political world.

It remains to be seen whether voters will be satisfied with these changes. It is likely that the government's approach of using Feyzioğlu—an increasingly irrelevant figure among the opposition circles because of his sudden rapprochement with the government—will not produce much hoped-for popularity among voters as well as the legal community. Justice Minister Gül earlier this year announced that the government would introduce further reform packages as part of its Justice Reform Strategy. Before any final judgment on the AKP's plans for the justice sector can be made, it will be crucial to see the content and implementation of these reform packages.

The EU and the United States should continue to encourage such reforms, however unsatisfactory, to improve the standards of the country's justice sector and democracy. As Turkey's military intervention in Syria comes to an end, the government will have more incentives to continue its reforms at home to repair its international image. But it could be more fruitful if the EU and United States reach out to Turkey on fundamental legal issues behind closed doors, with certain incentives such as a visa-free travel regime for Turkish citizens. Neither the government, nor public opinion has the stomach to listen to public criticism of Turkey over its human-rights records. Turkish officials frequently point out the fact that EU leaders did not shy away from holding a summit in Egypt this summer while the government was executing a certain number of political dissidents. Turkish media have often cited the police's heavy-handed approach against Yellow Vest protestors in France as something that legitimizes police brutality at home.

Pushing against human-rights abuses in Turkey without taking the moral high ground would be the best way for European and U.S. officials to make progress. The stifling of dissent and free speech is becoming a more universal problem day by day, rather than something only Turkish citizens suffer from, and a response to it must be universal.

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