Turkey’s Democratization and the European Union

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The 26 November 1983 elections which ended the military administration did not ensure the swift return to democracy. Those who gained the right to rule the country after 26 November and the following general elections didn’t engage in the path of democratization. To them, ruling the country within the legal order of the 12th September Constitution was much easier.

In spite of this situation, the opposition initiated by intellectuals and lawmakers gradually increased the demand for democracy. Civil society intensified its efforts to assemble. During this period the European Union, and European institutions in general (either formal or civilian) no doubt gave their support to the forces struggling for democracy in Turkey. However, it cannot be argued that such support was sufficient. The number of projects implemented using EU funds is very few. On the other hand, the tendency of EU and Member States officials to criticise human rights violations in Turkey on an ethnic basis was an inadequate approach to the democratization and human rights improvements issue. Human rights violations in Turkey do not solely concern the members of a specific ethnic group. And, among the NGOs, it is not only some “known” ones who are fighting to improve human rights in Turkey. This single-dimensioned approach occasionally has led the Turkish public opinion to react. No matter how far behind civil society they stayed, political elites did not remain insensitive to civil requests for democratization and human rights improvement. From 1987 onwards, the 1982 Constitution was gradually amended towards more democratization.

As a result of all these constitutional amendments, the weight of the State in the State-Individual relations has decreased, the individual has gained significance, the scope of politics has broadened, steps have been taken to meet the requirements of a lawful State and the process of amending the Constitution has been facilitated. Despite all these changes, it still cannot be argued that the 1982 Constitution meets international standards or the principles laid down in the European Human Rights Convention. Further amendments must be adopted.

As well as internal dynamics, Turkey’s candidacy to the European Union also constituted a major driving force behind the adoption of the 2001 constitutional amendments. As the publication date of the European Union’s progress reports approaches, the Turkish Parliament is intensifying its amending efforts.

Democracy is an ever-evolving and developing concept. Leaving aside the Ancient Greek democracy, the understanding of democracy evolved continually for two centuries before it gained its present form and content. And it will no doubt continue to develop and change in the future. Turkey itself has a long constitutional history dating back to 1876, as well as an experience of pluralist democracy that it has been implementing since 1908 and especially after 1946. However, in this article, Turkey’s democratization process and the influence of the European Union on it will be analysed, taking the 1980 military coup as a starting point.

When assessing problems related to Turkey’s democratization, we will take as a reference international, in particular European, documents on human rights and democratic principles,
as well as the principles set in the Conclusions of the 29 June 1990 Copenhagen Summit, and also the practices of developed democratic countries.

**The Legal Order of 12th September**

The military coup of 12th September put an end to the order established by the 1961 Constitution. The democratic order set by the 1961 Constitution was an order which, under the circumstances of the time, to a great extent conformed to the standard of democracy as defined today by the Copenhagen political criteria. Though the concept of democracy has undoubtedly evolved since 1961, nevertheless, the 1961 Constitution, with the modification of a few articles, was a text that could meet the Copenhagen Criteria, even in today’s circumstances. The legal order that prevailed in the 1960’s and in the 1970’s also was a legal order no doubt capable of meeting the Copenhagen Criteria with small changes, since it conformed to the 1961 Constitution. As a consequence of this order being abolished with the 12th September coup, democracy in Turkey regressed.

The 12th September military regime fundamentally changed the basic legal order, limited the political participation required for a pluralist democracy, brought unacceptable restrictions to basic human rights and freedoms, weakened the independence of the judiciary and *judicial certainty*, and alienated the concept of the supremacy of law. In other words, “Society was forced to wear very tight clothing.”

Wanting to have control over all aspects of society, the regime brought militarism to an extreme. The “State” was put before the “human.” A legal order aimed at supervising all spheres of life was created. The military administration passed 378 laws before and 258 laws after the adoption of the 1982 Constitution. These laws are fundamental laws, such as Martial Law, the Law on Higher Education, the Law regarding the Supreme Board of Judges and Prosecutors, the Law on Higher Military Administrative Court, the Law on Military Judges, the Law on the State Council, the Law on Judges and Public Prosecutors, the Law concerning the National Security Council, etc.

These laws introduced prior to the adoption of the Constitution served as the basis for the Constitution, and many of their provisions were drawn as constitutional provisions. The 1982 Constitution, thus, emerged as a “constitution consistent with the laws”. Furthermore, this Constitution also forbade control by the Constitutional Court of the laws adopted during the military administration period. The 12th September Constitution was somehow applied as a second Constitution while regulating the martial law procedures. Martial Law procedures were themselves regulated almost as an illegal administrative regime. If we consider that Martial Law procedures had been applied continually since December 1978, the seriousness of the situation might be better understood.

There is no evidence that the European Union effectively opposed these developments as they took place in Turkey and as the concept of a democratic regime regressed. Europe tended to accept these events as “Turkey’s internal policy”. Opposition remained weak and ineffective. After the 1980 military coup, neither the European Union nor the European Council made any substantial step to ensure the protection of the 1961 Constitution and the legal order set in conformity with it. After the Army took over the administration and defeated the Parliament, the EEC Foreign Ministers Council, granting the Military some time credit, declared on 15 September 1980 that it would continue cooperation with Turkey. Following a request made by
the European Parliament to the Council and the Commission to suspend the Turkey-EEC Agreement, it was necessary to wait until 22 January 1982 for relations to be formally frozen. The same day, the European Parliament also took the decision to suspend the duties of the Joint Parliamentary Committee’s European wing until general elections were held in Turkey and a parliament was formed.

The Internal Dynamics of Democratization

Opposing the 12 September Administration was not easy. It would have taken a hero to oppose such an administration in a context where there was no legal certainty, where fear was dominant and where all means of pressure were used. Even handing the administration a petition containing democratic requests was considered as a crime. In this context, it should be remembered that those who signed “The Intellectuals’ Petition” were all prosecuted.

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In spite of this situation, the opposition initiated by intellectuals and lawmakers gradually increased the demand for democracy. Civil society intensified its efforts to assemble. The Foundation for Turkish Democracy was established in 1987. The 1990’s witnessed the creation of the Helsinki Citizen’s Association and the Foundation for Social Democracy. These and similar organizations carried out, and continue to carry out, a very important struggle for democratization in Turkey.

The chairmen of higher judicial bodies, on the occasion of opening ceremonies of new judicial years, or at anniversaries of the Constitutional Court and of the State Council, relentlessly reiterated their requests for the rule of law, the independence of the judiciary and democracy in Turkey.

By the end of the 1980’s, “Turkey began to speak up”. The “Wednesday Meetings” organized in Ankara by the Political Sciences Faculty Association (Mülkiyeliler Birliği) and meetings that the Istanbul branch of the same Association held every weekend for four years in Istanbul may be forgotten today. These meetings, where Turkey’s democratization problems were debated, received high interest. Prior to the 1991 elections, all political party leaders - including the banded ones- attended these meetings. We mention these meetings only as an example, since it is known that throughout Turkey, professional chambers and NGOs arranged similar meetings.

The “Democracy Assembly” headed by Aziz Nesin and Sadun Aren gathered during the same period. The “Democracy Observation Council” created by the Democracy Assembly set up the Constitutional Assembly and, after months of preparations and discussions on Turkey’s constitutional problem together with NGOs and political parties, the basic principles for a new constitutional text were finally adopted. Parallel to these works, the Istanbul branch of the Political Sciences Faculty Association organized a “Constitutional Forum” which met for one week and concluded its proceedings by producing a document close to 1000 pages.
One should not forget that in the 1980’s and early 1990’s, concrete constitutional studies were also undertaken. During this period, trade unions, the press council, TUSIAD, several civil initiatives and single individuals designed and opened to discussion basic constitutional principles or Constitution texts directly.

This context created by Turkey’s democratic forces influenced the political parties. Prior to the parliamentary elections held in 1991, all major political parties had acknowledged the importance of drafting a new constitution and had undertaken studies in this direction. One may cite among them the book published by DYP entitled “Working Regime, Working State” and the one edited by SHP titled “Motivated Constitutional Text”. All of such studies were later published in 1993 in 3 volumes by Parliament’s Presidency.

However, the project of drafting a new constitution was not put into concrete form, and it wasn’t until 1995 that comprehensive constitutional amendments were adopted.

However, the NGOs requests for democratization, far from stopping, continued increasingly. Especially after the constitutional amendment of October 2001, public opinion created intense pressures for the adoption of the “harmonization laws” by the Parliament. In the months of June-July 2002, as Parliament was heading towards the decision to call for early elections. Political parties on the eve of early elections didn’t remain insensitive to the call made by some 175 NGO’s for the passing of harmonization laws before parliamentary recess. The new Law, modifying various laws, limits the death penalty to times of war or imminent threat of war, lifts the prohibitions on teaching and broadcasting in mother tongue and brings some further improvements. It was finally adopted by the Parliament on 3 August 2002, as a result of intense NGO pressures.

A point that attracts attention in Turkey’s struggle for democratization is that universities remained completely outside this struggle. One may even argue that academic circles constituted an impediment to democratization. Although some professors surely contributed on an individual basis to the struggle for democratization, it is widely known that such academicians were seen with a critical eye by the chairmen of the High Education Board (YÖK), and were subject to pressure or were forced to resign from their position.

The European Union’s view on NGOs

Following the 1983 general elections, a process to revive EU-Turkey relations was initiated and, on 14 April 1987, Turkey formally applied for full EU membership.

During this period the European Union, and European institutions in general (either formal or civilian) no doubt gave their support to the forces struggling for democracy in Turkey. However, it cannot be argued that such support was sufficient. The number of projects implemented using EU funds is very few. Similarly, without denying the support given by European NGOs to their Turkish counterparts, one cannot say that it was enough either.

On the other hand, the tendency of EU and Member States officials to criticise human rights violations in Turkey on an ethnic basis was an inadequate approach to the democratization and human rights improvements issue. Human rights violations in Turkey do not solely concern the members of a specific ethnic group. And, among the NGOs, it is not only some “known” ones who are fighting to improve human rights in Turkey. This single-dimensioned approach occasionally has led the Turkish public opinion to react. In some cases, it has even
had an impeding effect on the improvement of human rights conditions. Moreover, the
tolerance shown by many European countries to terrorist organizations has also been also
criticised by the Turkish public.

The democratization of Turkey is a fundamental issue concerning everyone living in the
country. In this connection, all citizens, including workers, public officials, academicians,
women and children, regardless of their ethnic identities, have had problems and some of
these problems still exist today.

The Constitutional Amendments

No matter how far behind civil society they stayed, political elites did not remain insensitive
to civil requests for democratization and human rights improvement. From 1987 onwards, the
1982 Constitution was gradually amended towards more democratization.

The first amendment to the Constitution was adopted in 1987. Consequently, the voting age
was lowered from 21 to 20, the number of deputies increased from 400 to 450 and the
amending procedure modified in order to facilitate constitutional changes. One of these
modifications in particular was achieved by referendum and enabled the suppression of a
temporary article of the Constitution banning the majority of the pre-12 September politicians
from politics for a period of from 5 to 10 years.

The second constitutional amendment was drawn up in 1993 and lifted the State monopoly on
the setting up and operating of radio-television, thereby granting independence to the TRT.

The 1995 amendment to the Constitution was a truly comprehensive amendment. It modified
the preamble and article 14 of the Constitution. With these amendments, the scope of politics
was enlarged to a greater portion of the society. The “Sacred State” expression and other
formulations aimed at legitimating the 12th September military coup were deleted from the
Constitution’s preamble. The provision on the freedom to form associations was amended, the
one prohibiting trade union activities was abolished and the right for civil servants to unionize
was recognized. The voting age was further decreased and the right to vote was granted to
citizens living abroad. Part of the prohibitions on political parties were lifted. The grounds for
banning political parties were redefined. The number of deputies was increased to 550.
Finally, the political ban on professional associations having the quality of a public institution
was lifted.

The fourth constitutional amendment which was designed in 1999 foresaw the replacement of
the military members of the State Security Courts by judges appointed from the civil
judiciary.

The fifth amendment to the Constitution (1999) gave a constitutional status to the act of
privatization, paved the way for international arbitration to the benefit of foreign parties to
franchise contracts and agreements related to public services and diminished the powers of the
State Council in this field.

In October 2001, 34 articles of the Constitution were amended at once. Although one of these
articles was modified again in December 2002, the 2001 amendment, nevertheless, remains
the most comprehensive constitutional change ever made towards democratization.
The 2001 amendments in the Constitution can be summarized as below.

* In the preamble, the wording of an expression which narrowed freedom of expression was modified by replacing the words “any thought and deliberation” by “any activity”.

* The justifications provided in the Article 13 for the general limitation on fundamental rights and freedoms have been deleted and the scope for limitation has been narrowed down.

* The grounds for limitation foreseen in Article 14 on preventing the abuse of fundamental rights have also been narrowed. The custody period has been reduced, personal freedom and the guarantee for security have both been strengthened.

* The scope of the right of privacy, immunity of residence, freedom of communication and freedom to travel have been broadened.

* The constitutional provision forbidding the use of “languages prohibited by law” has been removed in such a way as to provide for freedom of expression, including the use of languages other than Turkish.

* The scope of freedom of association and peaceful assembly has been widened.

* The right for fair trial has been constitutionalized.

* The death penalty has been prohibited except in cases of terrorist crimes and in times of war or imminent threat of war.

* Systems have been created with the aim of improving work conditions.

* A provision has been designed to allow sanctions other than permanent dissolution to be given to political parties, and the right to vote has been granted to some prisoners.

* The right to petition, subject to certain conditions, has been granted to foreigners.

* The composition of the National Security Council has been changed so as to ensure that its civilian members are in a majority, and the new text puts emphasis on the advisory nature of this body’s decisions.

* Other than these, few technical changes have also been made.

As a result of all these constitutional amendments, the weight of the State in the State-Individual relations has decreased, the individual has gained significance, the scope of politics has broadened, steps have been taken to meet the requirements of a lawful State and the process of amending the Constitution has been facilitated.

Despite all these changes, it still cannot be argued that the 1982 Constitution meets international standards or the principles laid down in the European Human Rights Convention. Further amendments must be adopted.
As well as internal dynamics, Turkey’s candidacy to the European Union also constituted a major driving force behind the adoption of the 2001 constitutional amendments. As the publication date of the European Union’s progress reports approaches, the Turkish Parliament is intensifying its amending efforts.

**Harmonization Legislation**

Most of the constitutional amendments are not directly applicable. It is, therefore, necessary to adopt the relevant implementing legislation. The changes in the Constitution also require modification of many provisions in existing laws so as to bring them into conformity with the new constitutional text. Parliament has adopted major legislation in this field. In particular, the adoption of three “harmonization packages” should be pointed out.

The first one of these laws was voted on on 6 February 2002, the second on 26 March 2002 and the third one on 3 August 2002.

The first harmonization legislation, which respectively amended Article 312 of the Penal Code and Article 7 of the Anti-Terrorist Law, broadened the scope of freedom of expression, reduced the custody period and improved prisoners rights.

The second harmonization law, being more comprehensive, narrowed restrictions on freedom of the press, freedom of association and of peaceful assembly, provided for sanctions other than permanent dissolution for political parties and restricted the grounds for banning political parties.

As I have previously pointed out, the third harmonization law was adopted, along with the decision on early elections, as a result of intense public pressure. This major legislative package was adopted by Parliament in a way that can be considered “miraculous”.

The package limits the death penalty to times of war or imminent threat of war, further broadens the scope of freedom of expression, consolidates the freedom to form associations, increases the rights of congregational foundations allows the broadcasting of radio-television programmes in languages other than Turkish, allows education in mother tongue, restricts and re-defines the authority of the police, and creates the possibility to renew judicial decisions, subject to certain conditions.

The changes brought about by these three reforms and by other laws previously adopted are what those who have been struggling for the past 20 years for Turkey’s democratization had demanded. The changes also incarnate the modifications requested by the European Union within the process of Turkey’s accession to EU.

One has to recognize that if Turkey had not applied for full membership to the EU and, if conformity to the Copenhagen criteria had not been required as a condition for accession, Turkey would have lagged behind the point reached today.

However, this would have been a shame, not only for Turkey, but equally for Europe. If human rights and democracy are indeed a universal issue today, the responsibility for human rights violations and anti-democratic practices in any country also lies in developed democratic countries. Democratically and economically advanced societies have an
obligation to parts of the world which lag behind in democracy or economics. The peace and harmony of advanced societies lies in the progress made locally by less developed societies.