POLITICS OF CONSTITUTION MAKING IN TURKEY

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Introduction

Constitution making, particularly during democratic transitions, is an excellent opportunity to build political institutions that will enjoy broad support from society and its political (and other) elites. Both the constitution-making process and its outcome (i.e., constitutional choices) are crucial aspects of the transition to and consolidation of democracy. Andrea Bonime-Blanc has argued that "constitution-making is at once the most varied and the most concentrated form of political activity during the transition. In it, political maneuvering, bargaining and negotiations take place and the political positions, agreements and disagreements between groups and leaders come to the fore. How the constitution drafters handle these issues may tell us crucial things about the transition and about the regime it leads to. The general character of both the process and its outcome may reveal clues about the new regime's potential for stability or instability."1

Put differently, the constitution-making process influences not only the mode of transition to democracy but also and perhaps more importantly, prospects for the consolidation of democracy. I argue here that a consensual or consociational style of constitution making tends to increase considerably the chances for democratic consolidation.

Thus, it seems no accident that some of the most stable democratic constitutions of the post-World War II period - the best-known examples are the German, Italian, and Spanish constitutions - are the products of broadly representative constituent assemblies and a highly consensual style of constitution making. In Italy, the Constituent Assembly elected in 1946 was dominated by three major parties (the Christian Democrats, Socialists, and Communists). Although the Christian Democrats were the strongest party, the combined leftist vote (Communists and Socialists) was greater than that of the Christian Democrats. The latter group, however, occupied the central position in the political alignment and could usually produce a realignment of all moderate and conservative forces around itself. Nevertheless, no single coalition dominated Italian constitution making: “Instead, fluid coalitions and consensual decision-making took place on an issue by issue basis. . . . Even in the face of . . . potentially divisive issues, the process . . . was completed on a consensual basis with most, if not all, political parties supporting the final version of the new constitution.” 2 The Italian constitution was highly praised as "a true political monument." As Gianfranco Pasquino observes, “So important was that period of collaboration, and so celebrated were its results, that to this day the Communists have stressed that they have little in common with the Christian Democrats, except for the fact that they drafted the constitution together.”3

Similarly, the constitution-making process in post-Franco Spain was dominated by an accommodational, consensual style, which was encouraged by the results of the first free legislative elections on 15 June 1977. The center-right Central Democratic Union (UCD), under the leadership of Adolfo Suarez, emerged as the largest party, with 34.7 percent of the vote and 165 of 350 (47.1 percent) Cortes seats. The Socialist Party
received 29.2 percent of the popular vote and 118 seats (33.7 percent). The two more ideological parties made disappointing showings; the Allianza Popular (AP), with links to the Francoist past, received only 8.5 percent of the vote; and the Communists obtained 9.3 percent of the vote. The new Cortes agreed at its first session that it would meet as a Constituent Assembly. The results of the elections left open the possibility of a rightist UCD-AD coalition in constitution making, but the UCD rarely resorted to this option. Although there were intermittent winning coalitions between the two parties, especially on moral issues, “such a coalition was in no way comprehensive or predominant. Instead of displaying polarization, the Spanish process may be a model of consensual politics where parties of widely differing ideologies, through accommodation, formed the predominant multilateral (consensual) coalition.”

Through painstaking, sometimes secret deliberations, compromises were reached between left and right on most fundamental constitutional issues. The consensual nature of the constitution making process is reflected in the fact that the Congress and the Senate adopted the constitution almost unanimously, with only a few AP and Basque members voting against it or abstaining on 31 October 1978. This is also true of the constitutional referendum of 6 December 1978, at which the constitution was approved by 87.87 percent of the popular votes cast.

At the other end of the spectrum, one can observe a confrontational or dissentious style of constitution making, the best examples of which are the 1946 French constitution and the 1976 Portuguese constitution. The French Constituent Assembly was dominated by three strong, disciplined, ideologically oriented parties (the Communists, the Socialists, and the Christian Democratic Popular Republican Movement) that failed to arrive at consensual solutions on a number of important constitutional issues. Consequently, the first draft of the constitution was rejected in the referendum, and the second was only narrowly adopted. Judging from the short life of the Fourth French Republic (1946-1958) and chronic government instability, this experience cannot be considered successful.

Similarly, the special circumstances that surrounded constitution making in post-Salazar Portugal affected both the style and the outcome of the constitution-making process. Because of a majority of the leftist parties (Socialists and Communists) in the Constituent Assembly and the influence of radical leftist officers, the process can be described as essentially dissentious rather than consensual: “Decision-making, coalitions and results were ideologically one-sided and achieved unilaterally . . . over the heads of the more centrist, second largest party, the People’ s Democratic Party.” The 1976 constitution was full of ideological, dogmatic, and often purely rhetorical provisions concerning the socioeconomic system; many of these ideological statements were eliminated or revised in the 1982 constitutional revision. Thus, the full consolidation of democracy in Portugal required two extensive revisions (in 1982 and 1989) of the constitution.

In light of such comparative evidence, the Turkish experience in constitution making can be described as a series of missed opportunities to create political institutions based on broad consensus. None of the three republican constitutions (those of 1924, 1961, and 1982) or the Ottoman constitution of 1876 were written by a Constituent or a Legislative Assembly broadly representative of social forces or through a process of negotiations, bargaining, and compromise. Consequently, they all had weak political legitimacy.
Indeed, Turkey offers a rich laboratory for an analysis of the politics of constitution-making. The first Ottoman Turkish constitution was proclaimed in 1876, not much later than those of many European countries. This was the first constitution in the Islamic world, excluding the Tunisian constitutional charter (destour) of 1861 which, however, did not establish an even partially elected legislative assembly. Since then, the development of constitutionalism in Turkey has followed a checkered course. The proclamation of the 1876 constitution was followed by the restoration of royal absolutism in 1878. The adoption of the 1924 constitution was followed by a long single-party rule of the Republican People’s Party (RPP; 1925-46). More recently, the democratic process was interrupted thrice by the military interventions of 1960, 1971, and 1980. Since the beginning of constitutionalism, Turkey has made five constitutions (those of 1876, 1921, 1924, 1961 and 1982), not counting the radical amendments of 1909, 1971, 1973, 1995, 2001 and 2004 and a much greater number of more minor amendments.

In the context of this work “constitutional government” should be understood to mean a system in which political power is shared and reciprocal controls are legally established among different branches of government, in other words, a system of “checks and balances”. In this sense constitutional government is not necessarily identical with “constitutional democracy” since the latter must, by definition, be based on effective and widespread political participation by the people. Historically speaking, constitutional government preceded constitutional democracy both in Turkey and in the West. Thus, while the origins of constitutional government in Turkey go back to the late nineteenth century, constitutional democracy became operative only from the mid-1940s with the transition to a true multi-party system.

A recent study on political culture and constitutionalism has concluded that the question of whether or not institutional models were borrowed from foreign sources has little relevance to the success or failure of constitutional regimes. Thus, the authors state that “the phenomenon of institutional borrowing, in fact, is actually quite common and need not be debilitating or delegitimating. Institutional models of government do not remain the property of their originating countries but become, instead, part of a broader global political culture from which all are free to take and borrow as they choose. Liberal democratic ideals of government are inherently universalistic. The real challenge is to make these borrowed institutions relevant to unique national cultures and historical experiences."

Whatever the conclusions in this regard, it should be emphasized that the Turkish experience with constitution-making is essentially indigenous which makes it even more interesting for comparative purposes.

This study attempts to discuss the scope of the constitutional amendments in Turkey since 1987 and the influence of the EU in this process. After a short sitorical background about constitution-making process in the Ottoman-Turkish politics, and success and failures in the process of constitutional amendments in Turkey between 1987-2008.

**Historical Backdrop**

Constitution making has a long past more than century in Turkish politics including the late Ottoman period. However it became basically the intiative of the “state
elite” or the founders of the modern Turkish Republic to prepare a constitutional text until the 1961 constitutional period. The first and the short lived Ottoman Constitution of 1876 was drafted by an intellectual statesman, Mithad Pasha, in light of the European constitutional texts of that time. However it was promulgated and lifted by the Sultan’s individual will. This constitution was amended and put into effect by the majority of the reopened Ottoman Parliament in 1908 and remained in effect until the Ottoman state automatically ended in 1923 when the new Turkish Republic was established.

Following the defeat of the Ottoman State in the First World War, a national liberation movement which was led by Mustafa Kemal Ataturk began to organize an alternative government in Ankara to the Sultan’s royal government in Istanbul. Soon after the opening of the first National Assembly in Ankara in 1920 the first Constitution of the pre-Republican period was written by Ataturk and his fellow Ismet Pasha (Inonu) in 1921. This was a constitution for wartime (War of National Liberation, 1919-1922) and described only the main structure of the government including the local administration without any reference to rights and freedoms. fundamental right which was had no practical value before the national liberation was achieved.

The first Constitution of the new Turkish Republic which was debated by the Grand National Assembly, promulgated in 1924. As a product of the ste elite, this new constitution had a novel part on fundamental rights of the citizens which was mainly translated from the French Declaration of Human Rights. This Constitution was in effect until 1960 when the Turkish Armed Forces intervened in politics for the first time. The 1960 and 1980 military interventions mainly aimed at “formulating a new constitution and restore law and order and return to democracy as soon as possible.”

Starting from the 1961 constitution making process, the method of “constitutive assembly” was introduced to Turkish politics. According to the Law No. 158 which founded the Constitutive Assembly defined that it was composed of National Unity Committee (NUC) and the House of Representatives (HR). The NUC was formed by the military members who had signatures on the Law No. 157 describing the causes and the objectives of the military intervention. The HR was selected by the principles of territorial and corporatist representation. The members of the HR were partially elected by an indirect election through a kind of electoral college, partially selected by the existing parties, excluding the outlawed government party (Democrat party), and partially appointed by the professional organizations such as bars, trade unions, artisan associations, and the youth organizations. In the HR the Republican People’s Party, the founder of the Republic, had majority and “intellectuals” (educated modern) were dominant. Trade unionist were very few and the poor and landless villagers were not represented. The reformist intellectuals and politicians on the one hand and the representatives of agricultural sector (conservative) on the other constituted the two opposing groups in the HR. Representatives from bureaucracy, intellectuals (authors) and teachers supported liberal reformist proposals during the constitutional debates. The major objective of the constitutive assembly was to prepare a new constitution and a new election law as soon as possible. It was also underlined by Law No. 158 that he new draft
constitution would not take effect without referendum. In other words, both a constitutive assembly and a constitutive referendum were integrated in the constitution making process first time. It was remarkable that although the NUC was a superior chamber over the HR in theory, it did not intervene in constitution making process and left it to the authority of the HR. The law No. 158 required the constitutive assembly to complete its task less than a year. For this, a constitution commission was set up in January 1961 and the new draft constitution was ready in early May 1961. The commision worked on two proposals which were prepared by Ankara and Istanbul universities prior to the military intervention. These proposals especially facilitated the constitution making process.

Following the second military intervention in 1980, the Law No. 2485 adopted by the National Security Council (NSC), the body of military government, a new “constitutive assembly” was established in 1981 to prepare necessary regulations including a new constitution, political parties’ law and election laws, aiming at restoring democratic order and holding free general elections. According to this law, the constitutive assembly consisted of the NSC ad the “consultative assembly.” Compared to the 1961 experience, the NSC, the equivalent of the NUC, had ultimate superior authority in lawmaking process as well as the constitution-making process. It was required that the NSC could either approve or amend the draft constitution which would be prepared by the Consultative Assembly and its constitution commission and refer its final text to the referendum. Both the methods of constitutive assembly and the constitutive referendum were integrated into the constitution making processs, but the NSC was not in a hurry to transfer its power to the civillians instead it strengthened its position in the government and increased the tutelage over civillian government by including effective “exit guarantees” for themselves. The September 12, 1980 military regime having had less trust to civilians and elected representatives in mind, selected 3/4 of the members of the Consultative Assembly among those who were nominated by the governorship of each province and 1/4 directly. In other words, members were not elected but appointed by the NSC and all political parties were excluded from the constitution-making process. Simply this assembly was unrepresentative and undemocratic. Constitutive power was used by the NSC as having the final say in lawmaking process. The Consultative Assembly, on the other hand, was seen as a club of unorganized, atomized, old and conservative intelelctuals without party origin.

While the 1961 consultative assembly initiated a constitution-making process with an emphasis on “institutionalization” originating from social and political factors inherent to its formation, the 1981 experience led to an understanding of “narrow politics” based on limited participation and a strong state with the idea that political instability was produced by “extensive participation.” The 1961 consultative assembly was more representative –at least socially- compared to the 1981 one. Despite the hegemony of intellectuals in 1961 assembly professional differentiation led to reformist and dynamic debates. Contrarily, bureaucratic majority in the 1981 assembly provided a sufficient ground for a static platform emphasizing superiority of the state over individual.
While the Law no. 158 described “what shall be done if and when the draft Constitution is rejected by referendum” –formation of a consultative assembly by a popular vote-, it was not set “what procedure shall be followed next if the 1982 Constitution is disapproved by people.” This meant that the 1981 constitutive power –the NSC and the Consultative Assembly- would last for an indefinite period. While there was a free public opinion formation process prior to the 1961 constitutional referendum, the NSC prohibited free propaganda on the draft 1982 Constitution. In fact, all political parties were dissolved in 1981. Another important point is that in 1982, the constitutional referendum was combined with the election to presidency of the Republic, so that, this created a plebicit impact on people. Citizens were obliged to exercise the right to approve the draft constitution as the only alternative.

There is a close relationship between the formation of constitutive assembly and the drafting a constitution. There are certain outcomes of the experinces of 1961 and 1981 constitutive assemblies. First of all, state organs which exercise the national sovereignty were redefined and their authorities and responsibilities were reorganized. Distrust to political parties and elected officers resulted in political bans, limitations on the rights and freedoms of people in the 1982 Constitution. Finally, the executive was empowered extremely by considering the fact that political instability was caused only by weak governments. It has been difficult to amend and repeal some of the antidemocratic provisions in these constitutions because of the binding provisions. However especially after 1987, the 1982 Constitution was amended or repealed several times by popularly elected parliaments in Turkey as secondary constitutive power.

Constitutional Amendments in Turkey, 1987-2008

The 1982 Constitution of Turkey is the product of the military intervention of 12 September 1980. The military regime (the National Security Council) that took over declared from the beginning its intention to restore democracy. It made equally clear, however, that this would not be a return to the status quo ante. Rather, it meant a radical restructuring of Turkish democracy so as to prevent the recurrence of the crises that had afflicted Turkish society and politics in the late 1970s. Thus, the Constitution of 1982 was prepared under the aegis of the NSC, with the help of a wholly appointed civilian Consultative Assembly, and approved by a popular referendum whose democratic legitimacy is open to question.

Thus, the 1982 Constitution, prepared under non-democratic conditions, reflected the authoritarian and statist values of its military founders. Its primary aim was to restore the authority of the state and to maintain public order rather than to protect the rights and liberties of its citizens. As is commonly observed, the underlying philosophy of the 1982 Constitution was to protect the state from the actions of its citizens, rather than protecting the fundamental rights and liberties of the citizens from the state's encroachment. Most of the fundamental rights commonly found in democratic constitutions were recognized by the 1982 Constitution but defined in highly restrictive terms. The Constitution also provided strong exit guarantees for the outgoing NSC regime by providing vaguely defined tutelary powers and reserved domains for the military. Therefore, quite
understandably, the 1982 Constitution became a subject of heated debate and controversy almost from its inception. Parallel to the social and political developments following the restoration of democracy in 1983, it was amended thirteen times (once in 1987, 1993, 1995, 2002, 2004, 2006, and 2007 and twice in 1999, 2001, 2005) sometimes fairly radically. A total of six constitutional amendments (by referendum in 1987, by parliamentary majority in 1999 and 2000, by presidential veto in 2003, and by constitutional court in 2007) failed to be effective in this period. The general directions of these amendments were to improve the protection of fundamental rights, to bolster the rule of law, and to limit the military's prerogatives in government. In addition to these constitutional amendments, a large number of ordinary laws were also modified in the same direction. Particularly noteworthy are the so-called "harmonization laws" that of all thirteen constitutional amendments, the most radical and comprehensive one was that of 2001 which involved 34 articles, to be followed by the 1995 amendment which amended 15 articles, and the amendment adopted on 7 May 2004 which changed 10 articles. In all these cases, the amendments were adopted through broad interparty agreements in parliament, since in none of them a single party held a two-thirds majority of the parliamentary seats required for the adoption of a constitutional amendment without a popular referendum. Particularly, the 2001 amendments were the product of intense negotiations and compromises within the so-called all-parties “accord committee” composed of members of all parliamentary parties. Such broad inter-party agreements in constitutional matters are a good omen for Turkish politics, which had displayed a singular lack of capacity for inter-party compromise in the 1950s, 1960s, and 1970s. Similar compromises were reached on most of the harmonization laws packages.

The scope and extent of the constitutional amendments have been positively influenced by the adoption of Accession Partnership priorities for Turkey by the European Council on March 8, 2001. On March 19, 2001, Turkey outlined a National Program to meet the Copenhagen political criteria with special reference to democratization and human rights.

Meanwhile, the ongoing work of the All Party Accord Commission also reached a point of maturity enabling the Parliament to adopt the most comprehensive amendment package so far.

The last quarter of 2001 faced an immense and rapid process of constitutional amendment in the TGNA.

EU Conditionality and Democratization Process in Turkey

Since 2001 Turkey has been undergoing a radical process of political as well as economic and social transformation. The main objective is to establish “a modern, pluralistic democratic system and a stable, growing and modernizing economy.”1 Turkey’s domestic conditions such as elites, grassroots’ demands and economic crises are major sources of change. However, the post-1999 Helsinki relations between Turkey and Europe put an “irreversible impetus” to further reforms.2 The EU’s formal recognition of Turkey as a candidate country in 1999, and its commitment at the end of 2002 to take a decision at the end of 2004 to start accession negotiations if Turkey met the so-called Copenhagen criteria obviously contributed to this ongoing reform process. This “policy Europeanization” was accomplished by the EU drive and Turkish political elites in an increasing participation and support of non-state actors.3
The impact of international and/or supranational actors in the process of consolidation of democracy is widely accepted but equally criticized, too. Although domestic factors are crucial for the survival of democracy international actors can also play a significant role in the elimination of undemocratic rules, norms, and principles governing the legal system of a country. Asymmetric power relations between international and domestic political actors can be considered as a fostering factor for domestic reforms. In this respect, “the principled conditionality established by the Copenhagen criteria in 1993 to accelerate the adoption of and adaptation to the *acquis communautaire*” has been considered as an important factor in policy-making and institutional change in newly member or candidate countries. The Copenhagen Council of 1993 established four criteria for membership of an enlarged EU in the Presidency Conclusions: Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

These criteria which were originally set for the Central and Eastern European countries who had an association agreement with the EU, became an integral part of the Traetey of Europe by the adoption of Amsterdam Treaty in May 1, 1999. According to Article 6 (1) of the Treaty “the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.” And any European State which respects the principles set out in Article 6 (1) may apply to become a member of the Union. In other words, earlier Copenhagen criteria indicated the commencement of the membership process for the former candidates but became the requirement for the beginning of the negotiations for Turkey and new candidate states.

It is also important to note that the pattern of details of *acquis* is not uniform but uneven for every candidate country. In addition to the Copenhagen criteria and the legal framework of *acquis* “informal conditionality which includes the operational pressures and recommendations” applied by the Commission officials to achieve particular outcomes during interactions with the candidate countries are equally important catalysts in democratic reforms.

*History of Turkey-EU Relations*

The commencement of the Turkish-EU relations was based on the association regime that was established by Ankara Agreement in 1963 between Turkey and European Economic Community (EEC). The history of these relationships is full of cycles of developments and drawbacks.

The Ankara Agreement, which became effective in December 1964, envisaged a gradual process of economic integration which would eventually establish free movement of labor between Turkey and the Community as well as a Customs Union. The main objective of Ankara Agreement, which is indicated in Article 2, was the development of Turkish economy and the promotion of the employment and living standards in Turkey by constructing economic and commercial relations between the Community and Turkey. Article 28 of this agreement which could be seen as an initial and preparatory step for the membership of Turkey, indicates that the contracting parties shall examine the possibility
of the accession of Turkey as the operation of the agreement has advanced and as Turkey accepts the obligations arising from the treaties establishing the Community.

The complementary document for the Ankara Agreement is the Additional Protocol, which was signed in 1970 and put into effect in 1971. It set out the rules of the transitional stage that was emphasized in the Ankara Agreement, and clarified how the customs Union would be established. It can be called an implementation agreement that implements the principles that were laid in the Ankara Agreement. It is important as it regulates the period of full accession of Turkey to the Community. As opposed to the unilateral nature of preparatory stage this stage covers balanced and reciprocal obligations of contracting parties. It states that "EEC would abolish tariff and imports quotas from Turkey (with some exceptions including fabrics) …whereas Turkey would do the same in accordance with the time table containing two calendars set for 12 and 22 years, and called for the harmonization of Turkish legislation with that of the EU in economic matters."

Due to political and economic instability in Turkey and inadequate financial aid by the EC to promote Turkish economy, the association agreement was frozen economically in the late 1970s and politically after the military intervention of 12 September 1980 virtually. Following a six year suspension, the association was reactivated in 1986. Turkey’s application for full membership on April 14, 1987 was rejected by the European Council in 1989 simply with reference to Turkey’s economic problems. Instead, the Commission urged more cooperation and development of customs union through revitalization of the association. The Association Council was convened in 1991 after almost five years. The coalition government’s democratization package and strong will for political reforms as well as Turkey’s position as a regional power in the post-cold war period increased the interest of EU in Turkey. In this respect Presidency Conclusions of the Lisbon Summit of June 1992 emphasized that.

With regard to Turkey, the European Council underlines that the Turkish role in the present European political situation is of the greatest importance and that there is every reason to intensify cooperation and develop relations with Turkey in line with the prospect laid down in the Association Agreement of 1964 including a political dialogue at the highest level. In 1993, it was underlined that the Council would intensify "cooperation and development of relation with Turkey in line with the prospects laid down in the association agreement in 1964 and the protocol of 1970 as far as it relates to the establishment of a custom union." In other words, Turkey’s relation with EU was reduced to custom union only. However, disqualification of memberships of Kurdish origin deputies of Democracy Party and its ban by the constitutional court led to a crisis between Turkey and the European Parliament (EP) in 1994. The overwhelming majority of EP decided to suspend the joint parliamentary committee on September, 1994. Meanwhile, it was expressed that democratization and human rights records would be considered as “conditionality” for customs union. The European Parliament’s decision on December 13, 1995 to admit Turkey into the EU’s Customs Union reintroduced optimism in political circles.

On 6 March 1995 the EC-Turkey Association Council decided to move onto the final stage of the customs union and resume financial cooperation. The Council also decided to step up cooperation in several sectors, to strengthen institutional cooperation and to intensify political dialogue. On 13 December 1995 Parliament gave its assent to the customs union.
The Decision on the final phase of customs union came into force on 31 December 1995; on the institutional front, it set up a consultation body, the Customs Union Joint Committee. Parallel to the EP’s recommendation to the European Council the Luxembourg Summit confirmed Turkey’s eligibility but excluded her from the enlargement process and set “A European Strategy for Turkey.”26 Once again political conditionality was emphasized with special reference to the alignment of human rights standards and practices with those in force in the European Union; respect for and protection of minorities; and the promotion of relations with Greece and Cyprus.

On 4 March 1998, following the request of the Luxembourg European Council (12 and 13 December 1997), the Commission adopted its Communication on a European strategy for Turkey.27 The main elements of the pre-accession strategy for Turkey include the approximation of legislation and the adoption of the acquis. The Communication also contains initial operational proposals for implementing the strategy. Apart from extending the customs union to the service sector and agriculture, the Communication proposes closer cooperation between the EC and Turkey and the approximation of legislation in certain areas: accession partnership, national program and harmonization calendar, participation to EU cooperation program and screening and control. The strategy was welcomed by the Cardiff European Council of 15-16 June 1998, invited the Commission and the appropriate Turkish authorities "to pursue the objective of harmonising Turkey’s legislation and practice with the acquis". In due course, there would need to be a thorough examination of Turkish legislation.18 The Vienna Summit, held on 11-12 December, 1998, also underlined the great importance that it attaches to the further development of relations between the EU and Turkey very shortly.28

**Conditionality and Compliance with the EU Acquis: Progress Reports on and LegislativeReforms in Turkey Compared**

The European Council in Cardiff in June 1998 noted that the Commission would present a report on Turkey based on Article 28 of the Association Agreement and the conclusions of the Luxembourg European Council. Starting from 1998 the EU Commission prepared regular annual report on Turkey’s progress towards accession. As is the case in previous Reports, “progress” has been measured on the basis of decisions actually taken, legislation actually adopted, international conventions actually ratified (with due attention being given to implementation), and measures actually implemented. Below legislative reforms which were advised by the Reports and their accomplishment by the Turkish governments and Parliament will be analyzed.

Considering the political system in Turkey capable of framing and applying legislation compatible with the acquis communautaire and praising the constitutional reforms of 1995 and the successive legal reforms towards democratization, the 1998 Progress Report underlined the following problems areas:29

- *De jure* and *de facto* difference in the treatment accorded to minorities officially recognised under the Lausanne Treaty and those outside its scope.
- Recognition of Kurds as minority
- Lack of civilian control of the army, and its influence in political life through the National Security Council.
• State security courts which are not compatible with a democratic system and run counter to the principles of the European Convention on Human Rights.

• Ratification of the International Covenant for Civil and Political Rights.

• Abolishment of the death penalty

• Ratification of the Framework Convention for the Protection of National Minorities.

• Restrictions in the freedom of expression

• Limitations in the freedom of association

• Impunity for law enforcement officials

• Bans on the usage of Kurdish language in “political communication” or education and broadcast.

• Bureaucratic restrictions affecting, for example, the ownership of premises and expansion of activities, practice of religion other than (Sunni)

Since the adoption of the 1998 Regular Report on Turkey, bilateral relations between the EU and Turkey developed without any major change. However, the relations was marked by the arrest and trial of PKK leader Abdullah Öcalan in 1999. The coalition government under the leadership of Bülent Ecevit passed the constitutional and legal amendments removing the military judge in the SSCs which were entered into force on 22 June 1999 before his trial. The catastrophic earthquake of 17 August 1999 also influenced to a large extent relations between the EU and Turkey with special reference to financial aid.

The coalition government’s reforms positively affected the functioning of the judicial system. In this respect, training programmes for judges and prosecutors to raise their awareness and to improve their capacity in the human rights field had practical outcomes. In January 1999 the Constitutional Court annulled a legal provision, which entitled security officers to “fire directly and without hesitation at persons who do not stop when warned.” Later in June 1999, a circular issued by the Prime Ministry aimed also at the effective implementation and stringent verification of the implementation of the October 1998 “Regulation on Apprehension, Detention and Release Procedures.” In August 1999 the Parliament adopted a law amending Articles 243, 245 and 354 of the Penal Code. This law redefined torture, ill treatment and abuse of power against individuals by public officials and foresees higher penalties for public officials who commit such offences, or medical personnel who draft fake reports on torture. In September 1999, a law postponing prosecutions and punishment for offences committed through the press and broadcasting was approved. In December 1999, the authorities issued a circular according to which religious communities would not have to seek permission from the state in order to restore buildings of charitable institutions and those consecrated for worship.

Obviously the EU’s formal recognition of Turkey as a candidate state and her inclusion in EU programs at Helsinki Summit December 10 and 11, 1999 was conducive to more progress towards democracy in Turkey: accession preparations must concentrate in the light of the political and economic criteria and the obligations of a Member State,
combined with a national programme for the adoption of the acquis. Appropriate monitoring mechanisms will be established. With a view to intensifying the harmonisation of Turkey's legislation and practice with the acquis, the Commission is invited to prepare a process of analytical examination of the acquis. The European Council asks the Commission to present a single framework for coordinating all sources of European Union financial assistance for pre-accession.

Thus, Commission’s assessment on progress in Turkey encouraged it to continue and set up their efforts to comply with the accession criteria. The Commission's 1999 Regular Report on Turkey's progress towards accession was reaffirmed, however, that negotiations would not start until the political criteria had been met. The Report listed a number of problem areas to be reformed as follows:

- The place and importance of the National Security Council in political life
- Ratification of a number of important Human Rights Conventions
- Existence of extra-judicial executions and torture
- Limitations regarding freedom of association and freedom of assembly
- Different treatment between those religious minorities recognised by the Lausanne Treaty and other religious minorities
- Abolition of the death penalty.
- Recognition of Kurds as minority

In 2000 Turkey has continued to implement the Association Agreement and the Customs Union Agreement and contributed to the smooth functioning of the various joint institutions. The Helsinki European Council invited the Commission “to prepare a process of analytical examination of the acquis.” To this end, eight sub-committees were established through a Decision of the EC-Turkey Association Council of 11 April 2000. These subcommittees were assigned to fulfil a two-fold task: “to prepare a process of analytical examination of the acquis with a view to intensifying the harmonisation of Turkey’s legislation and practice with the Community’s rules and regulations and to monitor the implementation of the Accession Partnership priorities.” Probably the most significant development was the fact that Turkish public started to debate on the conditions of Turkey’s accession to the EU with special reference to the political reforms.

In this process the Supreme Board of Co-ordination for Human Rights in which all Ministries and State organs concerned are represented prepared a new 5-year development plan, in July 2000, on the political reforms to be carried out in order to comply with the political Copenhagen criteria. Moreover, the Council of Ministers
decided to continuously follow developments in the areas of human rights, democracy and the rule of law, and to evaluate periodically the efforts made in adapting to EU standards.

Turkey signed two major international instruments in the field of human rights, namely, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights in August 2000. An “Inter-Party-Accord Committee” in collaboration with the Constitution Committee of the GNA started to work out constitutional amendments. Due to presidential elections, which took place in May 2000, the Parliament failed to initiate any legislative work. In June 2000 the General Secretariat for EU Affairs was set up by the Parliament to ensure the effective coordination of all governmental affairs related to EU-Turkey relations. The law on the Prosecution of civil servants and other state officials, which was adopted in December 1999, aims in particular at facilitating the criminal prosecution of security forces officials. Since 1999 training of judges and prosecutors, covering such issues as the effectiveness of the judiciary, alternative measures for imprisonment, human rights issues, and EC Law in general, was launched. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was ratified by law and entered into force in February 2000. Human rights education has been incorporated in the curricula of police academies since the beginning of the 1999-2000 academic year. On 31 March 2000 the Supreme Court of Appeals confirmed the freedom of individuals under the Civil Code to give their children any names of their choosing, including Kurdish ones.

The Commission's 2000 Regular Report on Turkey's progress towards accession states that the basic features of a democratic system continue to exist but Turkey was slow in implementing the institutional reforms needed to guarantee democracy and the rule of law.32

A positive development since the last regular report is the launching in Turkish society of a wide-ranging debate on the political reforms necessary with a view to accession to the EU. Two important initiatives have been taken in this context: the signing of several international human rights instruments and the recent endorsement by the government of the work of the Supreme Board of Co-ordination for Human Rights.33

However, compliance with the Copenhagen political criteria is a prerequisite for the opening of accession negotiations. So far, Turkey did not fulfill these political criteria. Changes in the executive have taken place with respect to EU-Turkey relations but a number of basic institutional issues, such as civilian control over the military, remain to be addressed... The important draft laws related to the functioning of the judiciary referred to in last year’s regular report are still pending. No further improvement has taken place concerning the State Security Courts since the last reform of these Courts in June 1999. Corruption remains a matter of concern... The death penalty is not being carried out... but many aspects of the overall human rights situation remain worrying. Torture and ill treatment are far from being eradicated, even though the matter is taken seriously by the authorities and the parliament and training programmes on human rights are being implemented... Freedom of expression as well as freedom of association and assembly are still regularly restricted.34

Additionally, the following issues were considered as priority areas for accession:35

- Place and importance of military in politics and its representation in some state organs
such as the Board of Institution of Higher Education

• Control by the central administration over local government remains strong
• Adoption of the draft Penal Code and the draft law amending the Code of Criminal Procedure
• Creation of a judicial police, and the setting up of an Ombudsman's office
• State Security Courts
• Reparation for the consequences of convictions that have been found contrary to the European Convention of Human Rights by the European Court of Human Rights.
• Modernising the legal provisions and sanctions applicable to young offenders.
• Ratification of the Criminal Law Convention on Corruption, the Civil Law Convention on Corruption, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
• Abolishment of death penalty
• In the framework of the fight against torture and ill treatment, there is still an urgent need to bring legal procedures concerning pre-trial detention into line with the provisions of the European Convention on Human Rights and the relevant case law of the European Court.
• Freedom of expression
• The role of trade unions and the right to strike
• Laws and regulations on children’s rights and child labour are in conformity with the Convention on the Rights of the Child, but their enforcement leaves much to be desired.
• Ratification of the Council of Europe Framework Convention for the Protection of National Minorities

The main purpose of the Accession Partnership Document, which was adopted on March 2001 by the Council “is to set out in a single framework the priority areas for further work identified in the European Commission’s 2000 Regular Report on the
progress made by Turkey towards membership.”36 The Accession Partnership document is the most important medium of the pre-accession strategy and the first concrete step that integrates Turkey to the enlargement process. It lays down the objectives that have to be achieved in short and medium terms and frames the financial aid that will be given by the EU. The Accession partnership Document for Turkey was accepted by the Commission in March 8, 2001.37

Except for the “Cyprus issue” and “border disputes” items which were included under the title of political criteria the Commission emphasized “enhanced political dialogue” and mainly the following political criteria for short term:

• Strengthen legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the European Convention of Human Rights. Address in that context the situation of those persons in prison sentenced for expressing non-violent opinions.

• Strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage development of civil society.

• Strengthen legal provisions and undertake all necessary measures to reinforce the fight against torture practices, and ensure compliance with the European Convention for the Prevention of Torture.

and for medium-term:

• Guarantee full enjoyment by all individuals without any discrimination and irrespective of their language, race, colour, sex, political opinion, philosophical belief or religion of all human rights and fundamental freedoms.

• Further develop conditions for the enjoyment of freedom of thought, conscience and religion.

• Review of the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the European Convention for the Protection of Human Rights; ensure the implementation of such legal reforms and conformity with practices in EUMember States.

• Abolish the death penalty, sign and ratify Protocol 6 of the European Convention of Human Rights.


Following the adoption of the framework regulation for the Accession Partnership by the General Affairs Council and approval of the Accession Partnership by the Council in February 2001, the Turkish Government announced her National Program for the Adoption of the EU Acquis on March 19, 2001. The national strategy of Turkey can be derived out from the national program. Considering EU membership as a new step toward the implementation of and Atatürk’s vision for the Republic, the Program promised to take necessary measures for the effective implementation of the universal norms set by the EU acquis and practices in EU members states:

As of 2001, the Turkish Government will speed up the ongoing work on political, administrative and judicial reforms and will duly convey its legislative proposals to the
Turkish Grand National Assembly. The goal is to strengthen, on the basis of Turkey’s international commitments and EU standards, the provisions of the Constitution and other legislation to promote freedom; provide for a more participatory democracy with additional safeguards; reinforce the balance of powers and competences between State organs; and enhance the rule of law. In the context of the reform process regarding democracy and human rights, the review of the Constitution will have priority. The constitutional amendments will also establish the framework for the review of other legislation.

The Turkish Government will closely monitor progress in the country in the areas of human rights, democracy and the rule of law, regularly evaluate the work underway for harmonization with the EU acquis, and will take all necessary measures to speed up the ongoing work.

In addition, legal and administrative measures will be introduced in the short or medium term regarding individual rights and freedoms, the freedom of thought and expression, the freedom of association and peaceful assembly, civil society, the Judiciary, pre-trial detention and detention conditions in prisons, the fight against torture, human rights violations, training of law-enforcement personnel and other civil servants on human rights issues, regional disparities.

Throughout the 2001 financial and political bilateral relations between the EU and Turkey were extended. Enhanced political dialogue continued under the French, Swedish and Belgian Presidencies with political directors’ Troika meetings in Ankara and Stockholm, two meetings of Political Directors in Brussels, and political dialogue as part of the EC-Turkey Association Council in Luxembourg on 26 June 2001. These meetings covered key issues for EU-Turkey relations such as human rights, Cyprus, the peaceful settlement of border disputes, European Security and Defence Policy and wider issues such as the fight against terrorism, the situation in the Caucasus, the Middle East and the Balkans.

Eight subcommittees of the Association Committee began the process of the preparation of the analytical examination of the acquis in two rounds, in the period June 2000 to July 2001.

In its 2001 Regular Report, the Commission found that:

The constitutional amendments adopted by the Turkish Parliament on 3 October 2001 are a significant step towards strengthening guarantees in the field of human rights and fundamental freedoms and limiting capital punishment. The amendments narrow the grounds for limiting such fundamental freedoms as the freedom of expression and dissemination of thought, freedom of the press and freedom of association. Attention has now turned to the effective implementation of these important changes. The Turkish Government is finalising a package of new draft legislation that is aimed at implementing a number of constitutional amendments, in particular with regard to freedom of expression and thought. It should facilitate progress towards satisfying the Accession Partnership priorities.

The Report also emphasized that Turkey made some progress in relation to priorities described by the Accession Partnership Document and the Turkish National Programme for the Adoption of the Acquis (NPAA) as follows:
On pre-trial detention, the amendment of Article 19 of the Constitution reduces to four days the period of police custody before bringing the person detained before a judge in cases of collective offences. This is a positive development from the point of view of the prevention of ill treatment of detainees and should be applied also for offences falling under the competence of the State Security courts and in state of emergency provinces.

Numerous training courses in human rights have taken place for judges and law enforcement officials but it is too early to evaluate their impact. A limited number of initiatives were taken to strengthen the efficiency of the judiciary, such as the establishment of criminal enforcement judges as a new judicial function and the setting-up of special sections in the judiciary specialising in intellectual property rights and consumer protection.

The de facto moratorium on capital punishment has been maintained. Important political reforms were announced in the NPAA and incorporated in constitutional amendments. The package of thirty-four amendments to the 1982 Constitution was adopted on 3 October 2001, introducing new provisions on issues such as freedom of thought and expression, the prevention of torture, the strengthening of civilian authority, freedom of association, and gender equality related to the Copenhagen political criteria, the Accession Partnership and the NPAA. The constitutional reform package has introduced a number of amendments affecting the constitutional guarantees for economic and social rights.

The main amendments deal with: broadening the scope of the right to work (Article 19), enhanced gender equality (Articles 41 and 66), broadening the scope of trade union rights and freedoms (Article 51) and guaranteeing the right to a fair wage in light of the economic conditions (Article 55).

As part of the constitutional reform package, the provision of Article 118 concerning the role and the composition of the National Security Council was amended. The number of civilian members of the NSC has been increased from five to nine while the number of the military representatives remains at five. In addition, the new text puts emphasis on the advisory nature of this body, stressing that its role is limited to recommendations.

A total of 117 new laws were adopted between October 2000 and June 2001. During the same session, Parliament simplified its internal procedures and discussed the establishment of a Parliamentary Committee for EU integration.

By a decree of 19 March 2001, the EU Secretariat was entrusted with the implementation, coordination and monitoring of Turkey's NPAA. Additionally, nine interministerial subcommittees were established to co-ordinate the transposition and implementation of EU legislation.

In June 2001, Parliament amended the law concerning public prosecution of civil servants in corruption cases. Under this law, the public prosecutor would have to ask permission from the relevant authority to start proceedings related to corruption charges. On 27 September 2001, Turkey signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as well as the Council of Europe Civil Law and the Criminal Law Conventions on Corruption.

As far as Turkey’s position with respect to various international conventions on human rights is concerned, on 18 April 2001, Turkey signed Protocol 12 to the ECHR on the
general prohibition of discrimination by public authorities. With respect to the enforcement of human rights, Turkey has established a number of bodies the Human Rights Presidency, the High Human Rights Board, the Human Rights Consultation Boards and the Investigation Boards. The Human Rights Presidency is intended to monitor the implementation of legislation in the area of human rights.

According to the 2001 Regular Report, a revised NPAA will have to take these and other developments into account, such as those on cultural rights. The NPAA falls considerably short of the Accession Partnership priority of guaranteeing cultural rights for all citizens irrespective of origin. Furthermore, the priority on the removal of all legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting is to be included. With respect to the death penalty, a commitment in the NPAA to sign Protocol 6 of the ECHR is lacking. The document should specify how Turkey intends to guarantee freedom of religion, in particular with respect to minority religions not covered by the Lausanne Treaty (Muslim and non-Muslim communities).41

The Report also emphasized the following priority areas to be reformed:42

• Civilian control over the military.

• Ratification of some major human rights instruments such as the UN Convention on the Elimination of All Forms of Racial Discrimination, the Statute of the International Criminal Court, the UN International Covenant on Civil and Political Rights, the UN International Covenant on Economic, Social and Cultural Rights.

• Ratification of Protocol 6 to the ECHR on the abolition of the death penalty and of the Council of Europe Framework Convention for the Protection of National Minorities.

• Changes in legislation to give concrete content to the constitutional amendments, in particular to reflect the changes of the preamble and of Articles 13 and 14 and also of Articles 22, 26 and 28.

• Reform of the Penal Code (notably Articles 159 concerning insults to parliament, army, republic and judiciary and Article 312, concerning incitement to racial, ethnic or religious enmity) and Article 7 and 8 of the anti-terrorist law (disseminating separatist propaganda).

• Legislative changes to make the use of any language in broadcasting fully effective.

• Procedural difficulties of Christian churches with respect to ownership of property.

• Education in languages other than Turkish.

• Adoption of the draft Civil Code.

• Independence of the judiciary, the powers of State Security Courts and military courts in compliance with rulings of the European Court of Human Rights.

A process of detailed legislative scrutiny started in the first half of 2002 within the eight sub-committees of the Association Committee. The first series of meetings were completed in July 2002 to identify the differences in Turkish legislation with the acquis in various sectors were identified with the participation of all political actors as well as experts.
The late 2001 and early 2002 witnessed a series of constitutional legal reforms in Turkey. The constitutional amendments of October 2001 led to the adoption of three sets of implementing legislation in 2002. Meanwhile a new Civil Code was adopted in November 2001. The reforms adopted in August 2002 are particularly far-reaching. Taken together, these reforms provide much of the groundwork for strengthening democracy and the protection of human rights in Turkey.43

Progress in the priority areas described in the 2001 Accession Partnership and 2001 NPAA were evaluated in the 2002 Regular Report as follows:44

Short-term priorities

Following the constitutional reforms aimed at strengthening the right to freedom of expression, freedom of association and freedom of peaceful assembly, three sets of legislation were adopted in February, March and August 2002. Changes were made to Articles 159 and 312 of the Turkish Penal Code, easing the restrictions on the freedom of expression. Other changes to the Anti-Terror Law, the Press Law, the Law on Political Parties and the Law on Associations eased certain restrictions on association, the press and broadcasting. The law on associations has been modified and some restrictions lifted. Various grounds for banning associations are still applicable, next to the generally restrictive character of the Law on Associations.

Nevertheless, the impact of the reforms is still limited, and there are as yet few clear signs of consistent interpretation and implementation of the new provisions. The issue of the situation of persons imprisoned for having expressed non-violent opinions has not been addressed. There have been a number of initiatives to improve the dialogue with civil society. Legal provisions have been strengthened to reinforce the fight against torture. Some measures have been adopted to deter torture practices, but there is limited evidence of prosecution of officials suspected of torture.

Legal procedures concerning pre-trial detention (i.e. police custody) have been further aligned with the ECHR and with the recommendations of the Committee for the Prevention of Torture. However, incommunicado detention is still possible for prisoners convicted under State Security Courts. In January 2002 the Government withdrew its reservation to Article 5 of the ECHR (right to liberty and security) with respect to provinces under emergency rule. There are still concerns related to the application of Decree 430 which applies a derogatory regime in the South East. The amendment of the law on State Security Courts has improved detainees’ rights.

There has been progress on strengthening the provisions for legal redress against violations of human rights. Legislation has been amended to allow for retrial in the event of convictions that have been found contrary to the ECHR. These measures, however, will only apply to rulings of the European Court in relation to applications made after August 2003. New administrative bodies have been set up to monitor human rights violations. Training courses in human rights have taken place for judges and law enforcement officials. The duration of training at Police Academies has been extended from 9 month to 2 years. Initiatives have been taken to strengthen the efficiency of the judiciary, and the scope of the competence of State Security Courts has been amended. However the functioning of State Security Courts is still not in line with international standards. The de facto moratorium on capital punishment has been maintained during the reporting period. The constitutional reform which removed the provision forbidding the use by Turkish citizens of their mother tongue has been implemented through the
lifting of the ban on Radio/TV broadcasts in languages other than Turkish. Insufficient information makes it difficult to assess the impact of the action plan for the South East.

Medium-term Priorities

Legislative steps have been taken to promote the full enjoyment by all individuals, without any discrimination, of fundamental rights and freedoms. The principle of non-discrimination and gender equality is enshrined in the new Civil Code. The respect for the principle of freedom of religion has been enhanced through the modification of the Law on Foundations. Certain non-Muslim minorities are now entitled to enjoy property rights, subject to permission from the Council of Ministers. Nevertheless religious minorities continue to face difficulties on the issues of legal personality, property rights, training of clergy and education.

The Turkish Constitution has been partially amended in respect of fundamental rights and freedoms, and a number of legislative amendments have been introduced. However, these constitutional and legislative reforms contain a number of significant limitations on the full enjoyment of fundamental rights and freedoms. Important restrictions remain, notably to the freedom of expression, the freedom of peaceful assembly, the freedom of association, the freedom of religion and the right to legal redress. Capital punishment has now been abolished, except in case of war. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have not been ratified. Detention conditions in prisons have been further adjusted, although they are not fully in line with the UN Standard Minimum Rules for the Treatment of Prisoners and other international norms. Problems remain in areas still covered by the emergency rule.

The constitutional role of the National Security Council has been amended, so that it is now, in principle, an advisory body. Changes in its composition, including an increase in the number of civilians, have not so far modified the way in which the National Security Council operates in practice. The state of emergency was lifted in two provinces in the South East in July 2002 with the exception of Diyarbakir and Sirnak, where it is due to be lifted before the end of 2002. There has been progress in ensuring cultural diversity and cultural rights, including in the field of education.

Some provisions preventing the enjoyment of these rights such as the ban on broadcasting and education in languages other than Turkish have been abolished. Nevertheless, there has been limited improvement in practice in the ability of members of ethnic groups, to express their linguistic and cultural identity. In terms of legislation, progress can be reported in complying with a number of medium-term priorities. However, further legislative changes are needed. A sustained effort in terms of implementation and actual improvement of the situation on the ground is needed.

In addition to these, Turkey ratified the UN Convention for the Suppression of the Financing of Terrorism as well as the UN Convention for the Suppression of Terrorist Bombings in January 2002. The Government adopted an “Action Plan on Enhancing Transparency and Good Governance in the Public Sector.” In this respect, in January 2002, Parliament adopted a new Law on Public Procurement with the aim of enhancing
transparency and curbing corruption. In April 2002 Turkey ratified the UN Convention on the Elimination of All Forms of Racial Discrimination and the optional protocol to the Convention on the Rights of the Child in May.

However, the Report concluded that Turkey did not fully meet the political criteria on the ground that:

First, the reforms contain a number of significant limitations, which are set out in this report, on the full enjoyment of fundamental rights and freedoms. Important restrictions remain, notably, to freedom of expression, including in particular the written press and broadcasting, freedom of peaceful assembly, freedom of association, freedom of religion and the right to legal redress.

Secondly, many of the reforms require the adoption of regulations or other administrative measures, which should be in line with European standards. Some of these measures have already been introduced and others are being drawn up. To be effective, the reforms will need to be implemented in practice by executive and judicial bodies at different levelsm throughout the country.

Thirdly, a number of important issues arising under the political criteria have yet to be adequately addressed. These include the fight against torture and ill-treatment, civilian control of the military, the situation of persons imprisoned for expressing non-violent opinions, and compliance with the decisions of the European Court of Human Rights. In the light of the noticeable progress made in recent years and of the remaining areas requiring further attention, Turkey is encouraged to pursue the reform process to strengthen democracy and the protection of human rights, in law and in practice. This will enable Turkey to overcome the remaining obstacles to full compliance with the political criteria.

The Report especially emphasized the following priority areas to be reformed:

- Ratification of the Council of Europe Framework Convention for the Protection of National Minorities
- Restrictions concerning freedom of association and the right to strike.
- The content of compulsory religious courses
- The prohibitions of the Law on Foundations in the renting or lending of property
- The jurisdiction of military courts over civilians.
- Ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, the Council of Europe Civil Law and Criminal Law Conventions on Corruption.

Later, in the Copenhagen presidency conclusions of 12 and 13 December 2002 in economic terms, the necessity of extension and deepening of EC-Turkey Customs Union was emphasized by increasing financial aids to Turkey. This financial assistance is titled “preaccession assistance” and financed under the budget heading “pre-accession expenditure”.

Moreover, Copenhagen presidency conclusions had political implications. Furthermore, the European Council recalled its decision that Turkey is a candidate state and it
welcomes the important steps taken by Turkey in meeting the Copenhagen criteria and gives the date, December 2004, for opening accession negotiations with Turkey. This summit had a special importance for Turkey’s position as it gives a concrete date for Turkey’s accession.

The new single party government formed by the JDP attached itself to the objective of meeting the Copenhagen political criteria since the electoral campaign of 3 November 2002 general elections.

Simultaneously the new Turkish government of JDP with strong attachment to EU affairs issued a new and revised “National Program” indicating political, economic and social criteria in order for membership talks to begin in early 2005. In line with the revised Accession Partnership which was adopted by the Council in May 2003 the political criteria section of the 2003 Turkish Program for the Adoption of the Acquis underlined the following major objectives:

• The Government is resolved to complete legislative measures relevant to the Copenhagen political criteria within the 1st legislative year of the 22nd legislative session of the Turkish Grand National Assembly. The Government is determined, in principle, that the impact of all concluded reforms will be observed simultaneously, in letter and spirit, by June 2004.

• The complete redrafting of all basic legislation is a long-term legislative process, which will also continue during the accession negotiations. The Government has opted to accelerate the harmonization of various laws in order to fulfill the political criteria, the prerequisite to the opening of accession negotiations, through “harmonization legislation packages”. However, the ultimate long-term aim is to renew basic legislation through an integrated approach.

• The Government attaches importance and priority to both the continuation and the expansion of freedom of expression. Support for the development of civil society and its participation in democratic life will be continued. In this vein, the relevant legislation will continue to be reviewed in the light of the European Convention on Human Rights. Torture and maltreatment will be prevented and zero tolerance will be shown in this matter. The legislative and administrative measures adopted for this purpose will be implemented strictly. Human rights training for public officials will be expanded and intensified. Legal reforms will be emphasized as the basis of the democratization process. The effective implementation of the measures concerning the conditions in prisons and detention houses will be achieved.

• The Government is convinced that ensuring the full and equal enjoyment of all fundamental rights and freedoms and cultural rights by all individuals without discrimination is its fundamental duty. In this context, the freedoms of thought, conscience, religion and belief will be strictly safeguarded in accordance with Article 9 of the ECHR. The legislation concerning freedom of worship will be simplified in implementation in light of the ECHR and its Additional Protocol No. 1, with a view to addressing the needs of different religions and faiths. Ensuring gender equality in practice will be prioritized. The implementation of the provisions on the learning of and the broadcasting in different languages and dialects used by Turkish citizens in their daily lives will be ensured.
• The functions of the National Security Council and the Secretariat-General of the National Security Council shall be harmonized with the consultative status as redefined through constitutional and legislative amendments. As regards the acquis, the both 2001 and 2003 NPAA served as a checklist for the various legislative initiatives. The NPAA made it possible for the relevant Turkish authorities to have an overview of what has been done and what remains to be done in view of the adoption of the relevant legislation.48

The 2003 Regular Report evaluated the Progress in relation to priorities set out in the revised Accession Partnership document and the 2003 NPAA as follows:49

Turkey has begun to address the priorities defined by the revised Accession Partnership. Overall, progress has been made, but substantial efforts are still necessary to complete the tasks foreseen for the period 2003-2004. For a considerable number of these priorities, the government will benefit from EU assistance, as projects directly related to these priorities have been included in the 2003 national programme. With regard to short-term priorities concerning the enhanced political dialogue and political criteria, significant progress has been made in meeting the priorities. In particular, there has been a sustained legislative effort aiming at bringing the relevant legislation in line with the EU standards. In some areas, there is a need for additional legislative efforts. Overall, implementation on the ground is uneven and the concrete results of the reforms remain to be seen.

... The two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights have been ratified. Turkey made important reservations. Legal provisions have been strengthened to reinforce the fight against torture. The government has adopted a zero tolerance policy towards torture. Legislative measures have been taken to guarantee the right for detained persons to access in private to a lawyer and to sanction torture perpetrators. In practice however, the right to access in private to a lawyer is not always respected. The training of law enforcement officials on human rights issues has continued and new initiatives have been taken.

There has been progress in lifting existing restrictions to freedom of expression. Changes were made to the Turkish Penal Code and the Anti-Terror Act. Most cases brought against individuals have resulted in acquittals issued by courts. The situation of persons imprisoned for having expressed non-violent opinions has been addressed and several people have already been released. Some cases have been subject to retrial, so far without any practical effect. Some, but not all, legal restrictions concerning freedom of association and assembly have been lifted. There has been little progress in the area of freedom of religion. In practice, non-Moslem communities continue to face serious restrictions.

Initiatives have been taken to strengthen the efficiency of the judiciary. A Justice Academy has been set up. The scope of the competence of State Security Courts has been further amended. However, the powers and functioning of State Security Courts is still not in line with European standards and practice. The reform package adopted in July introduced important changes to the duties, structure and functioning of the National Security Council.
Further legislative and regulatory measures have been adopted concerning radio and TV broadcasting in language other than Turkish, but these amendments have not yet led to such broadcasting in practice. The state of emergency has been lifted in the Southeast leading to a positive psychological impact and an improvement of the security situation. There is as yet no comprehensive approach towards reducing regional disparities, and the question of internally displaced persons remains to be addressed, albeit the Turkish side has recently started, together with international partners, some promising initiatives.

As stated above, four new reform packages were adopted since August 2002. These were enacted in January 2003 in Act No. 4778 (the fourth package), in February in Act No. 4793 (the fifth), in July in Act No. 4928 (the sixth), and in August in Act No. 4963 (the seventh). The reform packages address a range of issues related to human rights and the protection of minorities. These include strengthening the fight against torture, broadening the scope of fundamental freedoms such as the freedom of expression, association, demonstration and peaceful assembly, enhancing legal redress and improving cultural rights. A number of regulations and circulars have also been issued by the authorities in order to implement measures from the reform packages of 2002 and 2003.

Parliament adopted 143 new laws and ratified several international and European conventions such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Civil Law Convention on Corruption, the International Covenant on Civil and Political Rights, on Social and Economic Rights as well as Protocol 6 of the European Convention on Human Rights with some important reservations, the UN International Covenant on Civil and Political Rights and the UN International Covenant on Economic, Social and Cultural Rights. With reservations to the right to education and to minorities’ rights. The Report underlined the fact that the strengthening of the independence and the functioning of the judiciary, the overall framework for the exercise of fundamental freedoms (association, expression and religion), further alignment of civil-military relations with European practice, the situation in the Southeast and cultural rights need more attention especially with regard to full and effective implementation of reforms in line with European standards.

- Removal of the representatives of the NSC in civilian boards such as the Supreme Board of Radio and Televison (RTÜK) and the Higher Education Board (YÖK).
- Full parliamentary control over military expenditures
- The efficiency and the independence of the judiciary.
- Reforming SSCs, in line with the European standards in particular with the defence rights and the principle of fair trial.
- Cumbersome procedures for associations
- Limitations on religious freedom as compared with European standards
- Ratification of the Optional Protocol to the UN International Covenant on Civil and Political Rights, the Council of Europe Framework Convention for the Protection of National Minorities, the Additional Protocol No. 12 to the ECHR on the general
prohibition of discrimination by public authorities, the 1996 Revised European Social Charter, the Statute of the International Criminal Court.

- Torture
- Obstacles before non-Moslem religious minorities with respect to legal personality, property rights, internal management, and the ban on the training of clergy.
- Practical problems in the use of languages and dialects other than Turkish in the areas of art and learning.
- 10 percent threshold in general elections
- Legislative and social obstacles before nomadic gypsies (Roma)

As indicated in the 2004 Regular Report, Turkey achieved significant legislative progress in many areas, through further reform packages in 2004. Between October 2003 and July 2004, the TGNA adopted a total of 261 new laws related to both the Copenhagen political criteria and the EU acquis including Law on the Right to Information, the Law on the abolition of some of the articles of the Law on NSC and NSC General Secretariat, the Law on Public Financial Management and Control, the Law Amending the Law on Banking, the Law Amending the Law on the Establishment, Duties and Trial Procedures of Juvenile Courts, and the 8th and 9th Harmonization Packages implementing the Constitutional Amendments of May 2004.

The May 2004 constitutional reform addressed a number of issues related to human rights, including the eradication of all remaining death penalty provisions; strengthening gender equality; broadening freedom of the press; aligning the judiciary with European standards; establishing the supremacy of international agreements in the area of fundamental freedoms over internal legislation; and abolishing the state security courts.

Turkey signed or ratified several international conventions including the Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances, the First Optional Protocol to the International Covenant on Civil and Political Rights, providing for recourse procedures that extend the right of petition to individuals, the Second Optional Protocol on the abolition of the death penalty, and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

European Commission’s recommendations underlined the fact that Turkey has substantially progressed in its political reform process, in particular by means of far reaching constitutional and legislative changes adopted over the last years, in line with the priorities set out in the Accession Partnership. In view of the overall progress of reforms attained and provided that Turkey brings into force the outstanding legislation ..., the Commission considers that Turkey sufficiently fulfils the political criteria and recommends that accession negotiations be opened.

The 2004 Report also stated in its “Global Assessment on Accession Partnership”: Significant progress has been achieved in aligning the overall framework for the exercise of fundamental freedoms with European standards. The principle of equality of men and women has been strengthened and provisions allowing reduced sentences for so-called “honour killings” have been removed. A new penal code introduces further alignment in
particular in relation to women’s rights, non-discrimination and the fight against torture and ill-treatment.

... Nonetheless, on the ground, detainees are still not always made aware of their rights by the law enforcement bodies and prosecutors are not always promptly and adequately conducting investigations against public officials accused of torture. Continued efforts will be necessary to eradicate these methods, including the consistent imposition of appropriate sanctions on the perpetrators of torture and ill-treatment.

...

The situation of people sentenced for nonviolent expression of opinion is now being addressed in line with the repeal or amendment of certain legislation. Retrials have taken place in line with EctHR judgements and several persons sentenced under the old provisions were either acquitted or released. However, provisions enabling retrial still do not apply to all relevant EctHR judgements.

...

While freedom of religious belief is guaranteed in the Constitution, non-Muslim religious communities continue to experience serious problems, including difficulties connected with legal personality, property rights, training of clergy, schools and internal management, which could be remedied through the adoption of appropriate legislation. Alevis are still not recognised as a Muslim minority.

...

There has been progress in the implementation of reforms concerning cultural rights. Kurdish language classes recently began in several private language schools in the Southeast of Turkey. Broadcasting in Kurdish and other languages and dialects other than Turkish is now permitted, if under restrictive conditions, and such broadcasts have started... In this regard, Turkey’s reservations to UN human rights covenants on the right to education and protection of minorities are of concern.

...

Budgetary transparency has been enhanced. The Court of Auditors was granted permission to audit military and defence expenditures. Extra-budgetary funds have been included in the general budget allowing for full parliamentary control. For the first time, a civilian has been appointed to the position of Secretary General of the National Security Council in August 2004. However, the armed forces continue to exercise influence through informal mechanisms.

...

The government undertook major steps to achieve better implementation of the reforms. The Reform Monitoring Group, a body set up under the chairmanship of the deputy Prime Minister responsible for Human Rights, was established to supervise the reforms across the board and to solve practical problems. Significant progress took place also on the ground; however, the implementation of reforms remains uneven.
Additionally, the situation of gypsies (Roma), the ratification of the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages and the Additional Protocol No. 12 to the ECHR on the general prohibition of discrimination by public authorities would be considered in priority.

**General Assessment**

Including the 1995 Constitutional amendments, in line with the EU *acquis* and with special reference to the relevant articles of the ECHR, these democratization reforms basically eliminated the major weaknesses of the Turkish democracy. During the period between 2001 and 2004, the Turkish parliament adopted three constitutional amendments and nine harmonization packages and 66 laws that reinforce and safeguard fundamental rights and freedoms, democracy, the rule of law, and the protection of and respect for minorities, as set out in the Turkey National Programs for the Adoption of the European Union Acquis. In parliamentary debates, Turkish representatives simultaneously expressed the requirements of the EU and demands of the Turkish public for further reform. In other words, the Turkish case can be assessed not only as a matter of “logic of consequentiality” but at the same time “logic of appropriateness.”

The changes to the Turkish political and legal system over the past years are part of a longer process and it will take time before the spirit of the reforms is fully reflected in the attitudes of executive and judicial bodies, at all levels and throughout the country. A steady determination will be required in order to tackle outstanding challenges and overcome bureaucratic hurdles. Political reform will continue to be closely monitored.

In relation to Presidency conclusions of Brussels Summit of 16 and 17 December 2004, it is recognized that Turkey made the decisive progress in its far-reaching reform process and expressed its confidence that Turkey will sustain that process of reform.

Turkey sufficiently fulfils the Copenhagen political criteria to open accession negotiations provided that it brings into force these specific pieces of legislation. It invited the Commission to present to the Council a proposal for a framework for negotiations with Turkey, on the basis set out in paragraph 23. It requested the Council to agree on that framework with a view to opening negotiations on 3 October 2005.

Keeping all “anti” factors towards Turkey’s EU membership as constant, one can strongly argue that “conditionality” of the EU in one way or another helped and guided Turkey to make constitutional and legal reforms successfully. Contrary to the hypothesis, Turkey impressively complied with “hard” conditionality in the process of legislative reform (harmonization with *acquis*). As underlined in the 2005 Regular Report, there are still deficiencies in Turkish democracy especially with special reference to the exercise of fundamental rights and freedoms. Incorporation of the democratic ethos into people’s daily life and the consolidation of principles and procedures of democratic reforms in daily bureaucratic practice may need time. In this respect, three pillar strategy presented by the Commission to reinforce and support the reform process in Turkey, in particular in relation to the continued fulfilment of the Copenhagen political criteria.

Consolidation of democracy is a multiple process for which constitutional developments may provide a target to which all dynamics of society must attach. Turkey’s success story towards democratic reforms can only be understood by its long-lasting efforts...
towards modernization and democratization. Despite its failures in different historical junctures of democratic development, its cumulative experience and the will of democracy at the top and the bottom made it easier to achieve the legislative reforms.

Notes

TABLE 1 Constitutional Amendments by the GNA in Turkey, 1983-2005

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<th>YEAR/AMEND</th>
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<td>432</td>
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<tr>
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2 Bonime-Blanc, *Spain’s Transition to Democracy*, 121.


4 Bonime-Blanc, *Spain’s Transition to Democracy*, 143, also 54-55.


8 The Turkish Armed Forces intervened in politics on May 27, 1960 first and remained in power until late 1961. Then it sent a military communique to the majority government of Suleyman Demirel on March 12, 1971 to restore public order and economy. The second full intervention of the TAF happened on September 12, 1980 and lasted until late 1983.

9 Kristy Hughes, “The Political Dynamics of Turkish Accession to the EU: a European
Success Story or the EU’s Most Contested Enlargement?” Swedish Institute for European Policy Studies, December 2004, 1.


There is a pending annulment case at the Constitutional Court on recently amended provision regulating clothing at higher education institutions by Article 130 of the Constitution.

1982 Constitution: Amendment of the Constitution, Participation in Elections and Referenda

ARTICLE 175. (As amended on May 17, 1987)

The constitutional amendment shall be proposed in writing by at least one-third of the total number of members of the Turkish Grand National Assembly. Proposals to amend the Constitution shall be debated twice in the Plenary Session. The adoption of a proposal for an amendment shall require a three-fifths majority of the total number of members of the Assembly by secret ballot.

The consideration and adopting of proposals for the amendment of the Constitution shall be subject to the provisions governing the consideration and adoption of legislation, with the exception of the conditions set forth in this article.

The President of the Republic may refer the laws related to the Constitutional amendments for further consideration. If the Assembly adopts the draft law referred by the President by a two-thirds majority, the President may submit the law to referendum.

If a law is adopted by a three-fifths or less than two-thirds majority of the total number of votes of the Assembly and is not referred by the President for further consideration, it shall be published in the Official Gazette and shall be submitted to referendum.

A law on the Constitutional amendment adopted by a two-thirds majority of the total number of members of the Turkish Grand National Assembly directly or if referred back by the President for further consideration, or its articles as considered necessary may be submitted to a referendum by the President. Laws or related articles of the Constitutional amendment not submitted to referendum shall be published in the Official Gazette.

Laws related to Constitutional amendment which are submitted to referendum, shall require the approval of more than half of the valid votes cast.

The Turkish Grand National Assembly, in adopting the laws related to the Constitutional amendment, shall also decide on which provisions shall be submitted to referendum together and which shall be submitted individually.

Every measure including fines shall be taken to secure participation in referenda, general elections, by-elections and local elections.

18 For Copenhagen 1993 Presidency Conclusions, see http://ue.eu.int/ueDocs/cms_Data/docs /pressData/en/ec/72921.pdf
20 Rüdvan Karlık, Avrupa Birliği ve Türkiye (European Union and Turkey) (Ankara: Beta, 2003), 886.
21 Hughes et al., “Conditionality and Compliance in the EU’s Eastward Enlargement: Regional Policy and the Reform of Sub-national Government”.
22 On Turkey’s relation with the EU, see Canan Balkır ve Allen Williams, eds., Turkey and Europe (London: Pinter Publishers, 1993); Meltem Müftüler-Baç, Turkey's Relations with a Changing Europe (Manchester: Manchester University Press, 1997); Meltem Müftüler-Baç,


27 The Presidency Conclusions of the Luxembourg Summit, see http://www.europarl.eu.int/summits/lux1_en.htm.
29 Turkey’s pre-accession strategy, see http://europa.eu.int/scadplus/leg/en/lvb/e40113.htm.
30 The Presidency Conclusions of the Vienna Summit, see http://www.europarl.eu.int/summits/wie1_en.htm.
34 The 2000 Regular Report, 72.
36 The 2001 Regular Report, 100.
37 The 2001 Regular Report, 103.
38 The 2001 Regular Report, 12-30 and 100-4.
42 The 2002 Progress Report, 144-5 and 149-150.
43 The 2002 Progress Report, 139.
44 The 2002 Progress Report, 18-42.
45 For Presidency Conclusions, see http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/735842.pdf.
48 See Appendix A.
50 The 2003 Regular Report, 12-36.
54 Paul Kubicek, “Turkish Accession to the European Union: Challenges and Opportunities, World Affairs, Vol. 168 No.2 (Fall 2005), 67-78.
55 For Presidency conclusions, see http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf.