COMMENTARY

Remarks on Turkey's Judicial Reform Strategy Document

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ABSTRACT *The Judicial Reform Strategy Document, which was announced to the public on May 30, 2019, is the third of Turkey's reform documents aiming for structural transformation in judicial justice. This document perpetuates the political vision adopted by the previous reform documents of 2009 and 2015 to align with the EU acquis communautaire. The document, which was completed after almost a year of work by the Turkish Ministry of Justice with active participation of various stakeholders, structures the reform perspective on the enlargement of rights and freedoms, the European Union perspective, and the principle of trust in the judiciary. This paper discusses and evaluates the key elements of the reform strategy document.*

Introduction

On May 30, 2019, Turkish President Recep Tayyip Erdoğan announced the Judicial Reform Strategy Document, the third of Turkey's structural reform documents in the field of justice. The document with the motto of "reassuring justice," was prepared by the Ministry of Justice after nearly a year of collaborative work with various stakeholders including the Supreme Court, the Union of Turkish Bar Associations, bar associations, law faculties, civil society organizations, academicians, judges, prosecutors, and lawyers.[1] Thus, unlike the preparation processes of the previous documents, this document has been laid out on the basis of more comprehensive consultations and broader participation.

Preparation processes of such documents are crucial in determining not only the competence of the final text, but also its endorsement by relevant stakeholders and the public. During the preparation of this document not only were a large number of stakeholders directly involved, but they were also encouraged to present detailed opinions and suggestions without any restrictions. The method of "situation analysis," was performed to identify the existing situations, problem areas, and public expectations, more clearly and accurately.

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"Justice is the basis of governance" phrase glistens within a Turkish courtroom heralding in the essence of the newly declared Judicial Reform Strategy. Aspects of this reform include the establishment of special courts in the areas of environment, reconstruction and energy.

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The normative content of the reform document has been determined with the aim of ensuring compliance with the European Union (EU) norms and international law. To this end, EU Progress Reports, Venice Commission Reports, the European Court of Human Rights jurisprudence, principles of the Council of Europe and other international organizations, as well as expert evaluations have been taken into consideration. In addition, some assessments resulting from discussions with representatives of the Council of Europe, the European Commission and the European Court of Human Rights (ECHR) were made for the document. The document can be considered as a practical manifestation of Turkey's efforts to internalize and institutionalize the values of the EU and to attain the ideal of a contemporary pluralist and liberal democratic political order.

Despite some ruptures, Turkey has been negotiating with the EU for harmonization with the *acquis communautaire*. Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom, Security) of the EU accession negotiations are particularly important for understanding Turkey's judicial reform strategy documents. Within the framework of these negotiations the first Judicial Reform Strategy Document was declared in 2009 to fulfill one of the informal opening

criteria and covered reform steps for the period between 2010 and 2014. The second strategy document was declared in 2015. According to the objectives set in these two documents concrete reform policies were carried out within the Turkish legal system and judiciary.

The most recent document, emerging as the third roadmap of reform strategies in the judiciary, presents a perspective in line with Turkey's 2023 vision. It consists of 9 main goals, 63 objectives, and 256 policy actions, all of which imply concrete steps to be taken within the Turkish judicial system. It is stated that an Action Plan would be adopted soon in order to carry out the reform process effectively and open the process up to public scrutiny.

The reform perspective of this document is structured on three main principles, namely the "development of rights and freedoms," "the European Union perspective," and "trust in the judiciary". This perspective will be evaluated below with reference to its concrete goals and objectives.

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Democratic Politics and Judicial Justice

During the last 16 years the Turkish government has demonstrated its political will to consolidate the country's democratic political system through the principles of rule and supremacy of law. Turkey has carried out several structural reforms to lift restrictions on, and expand fundamental rights and freedoms. Legislative changes in the area of criminal justice and regulations in the judiciary have been thus introduced. The democratic practice has been consolidated by revising laws that lead to violations of rights and extralegal malpractices such as torture and ill-treatment. In addition, reform steps have been taken to protect and promote freedom of expression. Constitutional and legal arrangements have been made to prevent interventions of tutelary forces within the democratic political sphere. These included legislative changes to eliminate judicial activism, and the instrumentalization of the judiciary as a tutelage center.

Despite the intensity of global terrorism, the security risks that the country faces due to its geostrategic location, and the coup attempt of July 15, 2016, which threatened the constitutional order, the Turkish government has continuously shown a strong political will to strengthen the institutions of the democratic political system. The present strategy document is another indicator of Turkey's reformist perspective to broaden up the sphere

In order to ensure the right to a fair trial within a reasonable period of time, the document envisages a holistic reformation and simplification of judicial processes

of rights and freedoms while coping with various security challenges. As can be seen below, the goals, objectives, and actions of the document reflect this understanding clearly.

The document sets out the will to develop and guarantee the right to an effective judicial remedy as a primary objective. Without a doubt, this right will be fully exercised when the right to be heard[2] is placed under a legal guarantee and implemented in practice. Article 36 of the Turkish Constitution and Article 6 of the European Convention on Human Rights, stipulating the right to a fair trial constitute the legal basis of this right, while the principles and rules of its implementation are laid down in procedural laws.[3]

Systemic Rationalization

In overall terms, the strategy document aims to ensure the systemic rationalization of Turkish judicial justice. In fact, the document intends to restructure all judicial phases in the simplest viable form. Among its objectives are eliminating repeated processes in the judicial system, ensuring performance and efficiency in the provision of justice, and increasing the quality of service. In terms of the rational structuring of the system, the document also aims to define each process in a performance-oriented manner.

In line with this main goal, the document stipulates radical systemic reforms in judicial and criminal proceedings and administrative justice. In order to simplify and increase the effectiveness of the proceedings in a concrete manner, objectives such as introducing class actions in administrative jurisdiction, limiting the time to write reasoned decisions, and enlarging the scope of cases to be resolved by a single judge are specified. Again in the field of administrative jurisdiction, legislative amendments are set forth to enable witness hearing in disciplinary cases and in full-remedy suits filed upon allegations of late service or no service.

Another goal is to improve and strengthen each type of proceedings through specific dynamics determined in accordance with the relevant material law and procedural provisions. In this respect, the document stipulates that criminal proceedings should be structured in conformity with the fundamental principles of a fair trial. Without a doubt, effective prosecution and, primarily, a well-executed judicial activity are essential to put this into practice.

Certainly, a good preparation process and effective time management

are needed for the completion of judicial processes within a reasonable time and competency. At this point, strengthening screening tools to finalize a legal proceeding ahead of prosecution is critical. Alternative methods and policies of settling disputes will also increase the effectiveness of judicial justice thereby strengthening social peace.

As will be discussed below, the document, aiming to rationalize the justice system in all its processes and aspects, is based on the view of transitivity among legal systems. It intends to establish the rationality of the system with an eclectic understanding, and advances the adaptation of the best practices found within different legal systems into the Turkish system.

Understanding of Preventive/Protective Law

Unlike the understanding of law based on the settlement of disputes, the understanding of preventive/protective law adopts the concept of settling disputes before they occur or deepen. Disputes between parties can deepen especially when the investigation and trial processes exceed a reasonable time limit.[4] The perception of impunity arising from execution practices at times also causes the further deepening of disputes. All this hurts public trust in the judiciary and the sense of justice.

As a remedy, the reform document suggests a number of strategic objectives including the development of alternative methods of dispute settlement, the expansion of the scope of crimes subject to complaint, the strengthening of pre-prosecution screening tools, and the development of simplified, fast-track procedures in criminal and civil proceedings.

Under the main goal of "Ensuring the Effective Use of the Right of Defense," the document sets out several objectives concerning the practice of protective law.[5] They include concrete steps and examples of practice to prevent the occurrence of disputes. Undoubtedly, one of the constituent elements of judicial justice is the right of defense, and effective use of this right sets precedent for practices that prevent deepening of disputes. To this end, the document sets out three objectives and 11 policy actions.

Another goal of the document is "Facilitating Access to Justice and Increasing Satisfaction from Services," which can be considered as an essential element of the right to equal access to justice. The document has set out 11 objectives and 36 actions that aim to improve the quality of the judicial service.[6] The document also envisions educational activities to increase public awareness on the idea of protective law, which enables the effective exercise of the right of access to justice.

Law and the Model of Career Training

Under the title "Increasing the Quality and Quantity of Human Resources" the reform document aims

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to increase the quality of members of the judiciary and court personnel. Seven objectives and 28 actions are introduced for the improvement of education and training before professional service. This involves a new model for legal education and admissions into judicial professions. In order to improve the quality of university-level education the document recommends against increasing student quotas in law faculties and redetermining the ranking criteria for success.[7] It also proposes the adoption of a set of principles regarding the quality of academic personnel in law faculties, the revision of the curriculum, and especially the introduction of activities that will develop analytical thinking skills.

Another proposal is developing a new model for entry into all professions in the field of justice. As is the case in many countries, graduates of law will have to take an exam in order to be eligible for admission to legal professions, namely towards judge's and prosecutor's offices, deputy notary public, and attorneyship.[8]

The strategy document includes a number of radical steps to improve the professional training of candidates after their admission. With the idea that experience is as vital as legal knowledge for judges and prosecutors, the document proposes the creation of the offices of deputy judge and deputy prosecutor, both of which exists within the judicial systems of other countries. After a certain period of duty in this office, a qualification exam for upgrading to the judgeship and prosecution is envisaged. This new system may be considered as an amelioration of the current one, which enables a bench judge to be appointed at a very early age.

In addition to the regular curriculum of the Justice Academy, which conducts the preservice training of candidate judges and prosecutors, the document introduces seminars in areas such as human rights law, legal methodology, and legal argumentation. Thus, a continuous education model is foreseen in order to ensure the competence of judges and prosecutors as career professionals. Moreover, the document also proposes training programs to allow specialization of judges within a specific field of jurisdiction.

With the aim of increasing the competency of all human resources to be employed within the judicial system, the document recommends increasing the number and student quotas of vocational schools of higher education and vocational high schools specializing on justice.[9] In this regard, it suits well towards the government's policy of strengthening vocational education. While the increase in the number of schools is inevitable due

Turkish President Recep Tayyip Erdoğan stands amongst Turkish high-level officials in support of the Judicial Reform Strategy Program on May 30, 2019.

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to Turkey's demographics, this may bring forward the danger of a decrease in the educational quality. In order to ensure a strong notion of justice, it is essential to take steps to forestall problems in the quality of legal education. In this sense, the document provides an educational perspective that draws attention to the responsibility of the two principal stakeholders, namely the Ministry of Education and the Council of Higher Education.

Trust in the Judiciary

In addition to establishing judicial justice, building legitimacy on the basis of trust is crucial for the judicial authority. As the judiciary possesses critical balancing and supervisory functions within Turkey's constitutional system, the level of trust it establishes in the society will impact on the effectiveness of the democratic political system and the functioning of public authority. Moreover, there exists a direct relationship between trust in the judicial system and economic development, since one of the main determinants of direct foreign investment in a country is the reliability of that country's judicial system.

The high level of confidence in the judiciary is directly related to the quality of judicial personnel within the justice system because the profession of being a judge or a prosecutor depends on trust above anything else. Starting from their admission toward the legal profession, judges and prosecutors are expected to have ethical virtues and to structure their professional careers based on the principle of trust. Independence, impartiality, and competence of judges and prosecutors are essential in ensuring public confidence in the judiciary.

Another precondition for establishing trust in the judiciary is the effec-

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tive realization of the right to a fair trial. As a structural obstacle to securing this right in the Turkish justice system we should note the insufficient number of personnel in courts and public prosecutors' offices, which puts them under a workload exceeding their capacities. Naturally, the work overload makes effective manifestation of judicial justice impossible and even leads to a violation of the right in question.

Facilitating citizens' access to justice without any restrictions is directly related to establishing the right to a fair trial and indirectly to trust in the judiciary. Through the establishment of information desks and front offices in courthouses and the provision of easier access to justice services, the document intends to increase the satisfaction of the beneficiaries and ultimately to build higher trust in the judiciary. It also pays special attention to improving the access for the disabled, vulnerable groups, and foreigners to justice.

There is no doubt that deprivation of rights arising from the delay of justice leads to injustice. The document's emphasis on the right to a fair trial within a reasonable timeframe[10] is therefore vital. This right, which is also regulated under Article 6, Paragraph 1 of the European Convention on Human Rights, is valid both in disputes stemming from civil rights and obligations, and criminal charges. In order to ensure the right to a fair trial within a reasonable period of time, the document envisages a holistic reformation and simplification of judicial processes. The number of first instance courts will also be increased for the same purpose.

Transitivity among Systems: The Globalizing Universe of Law

The process of globalization, which also includes the circulation and transfer of intellectual and institutional structures, has paved the way for systemic transformations and networks of interaction around the world. Today, interactions among different legal systems and their influences upon each other are manifestations of globalization in the field of justice. Platforms within global and regional political organizations facilitate interactions among national institutions. For the EU member states and candidate countries, this has become a binding relationship beyond an ordinary interaction.

The strategy document appears to acknowledge these global interactions and their influence upon legal systems on the national level. With its conceptual content and references, it favors interaction and transitivity between the modern Turkish legal system, which belongs to the Continen-

tal European legal system, and the Anglo-American legal system. In order to materialize its strategic goals, the document refers to the examples of good practice in various legal systems on the global scale, in addition to the European norms and practices. It accordingly introduces a number of new practices such as plea bargaining, simple proceedings, trial recording systems, increasing sanctions for short-term imprisonment, turning convictions into misdemeanors, class action lawsuits, non-professional judgeship, obligation to act honestly, dispute resolution without a hearing, and alternative resolution methods in criminal and civil jurisdictions." By doing so, the document displays the will to not only align the Turkish justice system with the EU law, but also transform it in accordance with global dynamics.[11]

Concluding Remarks

The Judicial Reform Strategy Document corresponds to the third phase of the Turkish government's strategic plan for structural reform in the realm of justice. It differs from earlier efforts of reform with its focus on process management. Unlike the several previous amendments in the legislation regarding the right to a fair trial, this document is concerned with reforming the functioning of the judicial system as a whole. As a matter of fact, reform perspectives involving piecemeal legislative changes are inadequate; for they cannot produce a holistic vision, they cannot fully realize the will of reform.

In democratic political systems dynamics of social change necessitates reforms to consolidate institutional structures. Public demands also make the revising of the judicial system inevitable. Some European countries like Germany,[12] Austria,[13] France,[14] and Poland[15] have recently initiated or completed their own judicial reforms. Naturally, every country's reform agenda is shaped by its own socioeconomic and sociocultural dynamics.

This document has the aim to strengthen the Turkish judicial system with a time frame and perspective compatible with Turkey's 2023 vision. It aims to strengthen the Turkish judiciary, which has constitutive and supervisory functions in the ongoing transformation of Turkey's system of government. With a vision of institutionalizing judicial justice on the basis of public trust, it presents a holistic understanding of reform encompassing various areas such as human resources, the access to justice, and the effectiveness of proceedings. It sets out a number of concrete and measurable objectives and actions to consolidate all elements and processes of the right to a fair trial.

The success of any reform document depends on whether its targets are feasible and measurable, while its implementation also requires a strong degree of will. Considering the content and preparation of this document, it can be said to be more realistic than the previous ones in terms of providing a sustainable reform perspective. Unlike its prede-

cessors, the present document does not just refer to general conceptual frameworks, but specifies concrete measures to be taken. The level of active participation in its preparation process shows the wide degree of support for judicial reform among both the relevant stakeholders and the public.

Endnotes

1. The Republic of Turkey Ministry of Justice, *Yargı Reformu Stratejisi*, (*Judicial Reform Strategy*), May 2019, Ankara.

2. Nesibe Kurt Konca, "Yargılamaya Egemen Olan İlkeler Işığında Yargı Reformu Strateji Belgesi," *SETA Analiz*, p. 286, June 2019, (İstanbul: Seta Yayınları, 2019), pp. 15-17.

3. Under the title of "The right to be heard," Article 27 of the Code of Civil Procedure (Act No. 6100, dated 2011) sets the normative content of this right as "The right to have knowledge of the proceedings," "the right of explanation and proof," "the court's assessment of the case in the light of explanations", and "tangible and explicit justification of the decisions," Muharrem Kılıç, *Türk Yargı Adaletinde Reform Perspektifi ve Politikalar*, (İstanbul: Seta Yayınları, 2019), pp. 15-16.

4. For detailed information on "reasonable time," see Sibel İnceoğlu, *Adil Yargılanma Hakkı*, Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi-4, Avrupa Konseyi Ankara Program Ofisi, Ankara 2018, p. 265.

5. The Republic of Turkey Ministry of Justice, *Yargı Reformu Stratejisi*, pp. 62-63.

6. The Republic of Turkey Ministry of Justice, *Yargı Reformu Stratejisi*, pp. 68-72.

7. The Republic of Turkey Ministry of Justice, *Yargı Reformu Stratejisi*, p. 42.

8. The Republic of Turkey Ministry of Justice, *Yargı Reformu Stratejisi*, p. 42.

9. The Republic of Turkey Ministry of Justice, *Yargı Reformu Stratejisi*, p. 44.

10. Konca, "Yargılamaya Egemen Olan İlkeler Işığında Yargı Reformu Strateji Belgesi," pp. 24-25.

11. Muharrem Kılıç, "Türk Yargı Adaletinde Reform Perspektifi ve Politikalar," *SETA Analiz*, p. 15.

12. Juergen Meyer, "Judicial Reform in Germany," retrieved from http://www.fes-korea.org/media/publications/Achives/Judicial%20Reform%20in%20Germany2001.pdf.

13. A judicial reform was carried out in Austria in the 1970s with the idea of meeting social demands in the field of criminal justice and family law. See http://www.demokratiezentrum.org/themen/demokratieentwicklung/1968ff/rechtsreform.html.

14. For the discussion of judicial reform on alternative dispute resolution methods and the extension of the method of conciliation in criminal justice in 2018 in France, see https://www.die-mediation.de/rechtsreform-in-frankreich-ein-durchbruch-fuer-die-mediation/.

15. For debates over constitutional jurisdiction reforms in Poland, see https://polandin.com/41922960/analysis-the-conflict-with-the-eu-over-judicial-reform-continues.