

Middle East Dialogue...Glorious Past, Uncertain Future

CONSTITUTIONAL POLITICS IN TURKEY – A CIVIL WAR IN THE JUDICIARY

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Turkey's judiciary has undergone a lifetime of reform since the ruling Justice and Development Party (AKP) came into power just thirteen years ago. This paper will examine these reforms, arguing that the trajectory of human rights protections and separation of powers concerns related to the judicial enterprise may be characterized in three stages. First, the AKP instituted a near-decade of positive reforms in line with EU and UN mandates to improve access to courts, appellate forums, defendants' rights, and the independence of judges from 2003-2011. Second, the grand plans for a constitutional overhaul stymied the legislative and executive order reforms of the previous decade. Third, once ideas for the new Constitution were abandoned in 2013, the AKP's growing feud with the 'parallel state' of Gulenist civil servants controlling key parts of government and the consequent battle with the Constitutional Court led to an outright rescindment of many reforms the state had granted over the previous decade.

The paper will examine the period of reforms through three primary avenues: changes to the system of individual applications to the Constitutional Court, which widened access to the court and switched the default of appellate advocacy in human rights cases from a European-centric case brought to the European Court of Human Rights to a Turkey-centric case within the national judicial framework. Second, legislative packets of reforms that allowed for more autonomy and oversight of the courts by lawyers rather than executive officials, and greater protections of defendants' rights at stages of detention, arrest, and trial. Third, reforms in the military court system, where a desire to quash the power of the military has led to an unintentional alignment of the military courts with many of the best practices outlined by the UN special rapporteur on judicial independence.

Post-2012, the AKP has actively tried to reign in the independence of the Constitutional Court, has reshuffled judges and prosecutors and purged many of those alleged of being members of the 'parallel state' from the government, and has developed new penal courts of peace to prosecute certain cases of conspirators and other alleged anti-government actors. The motivations for these changes will be explained, and their practical effects will be analyzed. The paper will also look at one remaining outlet that has been present throughout the three phases of reforms: third-party training efforts organized by the U.S. and EU alongside the Turkish Academy of Justice. An overview of their work will be explained, and the paper will offer suggestions for how these groups might play a larger role in encouraging reforms in line with better judicial practices.