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Turkey Between the Ottoman Empire and the European Union: Shifting Political Authority Through the Constitutional Reform

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COMMENTS

TURKEY BETWEEN THE OTTOMAN EMPIRE AND THE EUROPEAN UNION: SHIFTING POLITICAL AUTHORITY THROUGH CONSTITUTIONAL REFORM

*A. Serra Cremer**

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INTRODUCTION

The year 1881 is memorialized in nearly every Turk’s mind, as the year when the story of Mustafa Kemal Atatürk began.¹ His life and accomplishments as the “immortal leader” of the Turkish army and as the founder and first President of the Turkish Republic are imprinted in every Turk’s mind.² Turkish

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1. See *Mustafa Kemal Atatürk—His Life*, ATATURK.COM, http://www.ataturk.com/index.php?option=com_content&task=view&id=13&Itemid=31 (last visited Feb. 9, 2011) (summarizing the life of Atatürk, the founder of the Turkish Republic, including his birth year, birth place, and information about his family members); see Soner Çağaptay, Editorial, *Erdogan’s Turn to Reshape Turkey*, WASH. POST, Aug. 15, 2011, at A17 (arguing that Atatürk is turned into a cult.).

2. See *İlköğretim Ve Ortaöğretim Kurumlarında Atatürk İnkılap Ve İlkelerinin Öğretim Esasları Yönergesi*, Tebliğler Dergisi, No: 2104, 1981–82 Academic Years (providing a guideline for teaching standards required by the Ministry of Education for primary and secondary education classes including history courses, where an emphasis is to be made on the superiority of Atatürk’s personality as well as his reforms); see also Türkiye Cumhuriyeti Anayasası [Constitution] Nov. 7, 1982, pmb. (Turk.). An English translation is available at <http://www.anayasa.gen.tr/1982Constitution-1995-1.pdf>.

children are exposed to books filled with detailed descriptions and pictures of Atatürk's life beginning in the first grade.³ These lessons are interwoven with the study of Turkish history, democracy, and nationalism.⁴ As a result, the Turkish identity, as established by Atatürk, is deeply ingrained throughout society, particularly in the lives of males, who have to complete mandatory military service.⁵ During the eighteen months they serve in the military, young Turkish men are exposed to the principle that the Turkish Armed Forces are the ultimate defenders of Turkish democracy.⁶

And, there is a strong tradition of military involvement in Turkish politics.⁷ In the past eighty-eight years, the Turkish Armed Forces, as the “guardian” of the secular republic, have

3. See TALİM VE TERBİYE KURULU BAŞKANLIĞI, İLKÖĞRETİM 1-5. SINIF PROGRAMLARI TANITIM EL KİTABI 28 (2005) (summarizing the topics covered in Turkish classes from first to fifth grade, including information about Atatürk's family, education, military service, political activism, and personality, as well as his public reforms and revolutions). See generally İsmail H. Demircioğlu, *Does the Teaching of History in Turkey Need Reform?*, 2 INT'L. J. HIST. LEARNING, TEACHING & RES. 1, 2-3 (Dec. 2001), <http://www.heirnet.org/IJHLTR/journal3/turkey.pdf> (noting the views of some scholars that education in Turkey is dominated by nationalist views, always depicting Turks as “powerful and all-conquering”).

4. See Demircioğlu, *supra* note 3, at 2 (describing the dominance of nationalist views in Turkish education); see also *The Turkish Educational System*, THE TURKISH FULBRIGHT COMMISSION, <http://www.fulbright.org.tr/en/about-turkey/turkish-educational-system> (last visited Aug. 16, 2011) (stating that basic education in Turkey includes the history of the Turkish Republic and Atatürk's reforms).

5. See Directorate for Movements of Persons, Migration and Consular Affairs, Asylum and Migration Div., U.N. High Comm'r for Refugees, Turkey/Military Service, 9-11 (July 2001), <http://www.unhcr.org/refworld/pdfid/467010bd2.pdf> (discussing relevant legislation to military service in Turkey and noting that the Turkish armed forces regard themselves as guardians of Atatürk's principles). See generally Law No. 1111 of June 21, 1927, art. 1, Resmi Gazete [R.G.] No. 631-635 (July 17, 1927) (Turk.) (providing that “every male Turkish citizen is obliged to perform his military service in accordance with this law”).

6. See Directorate for Movements of Persons, Migration and Consular Affairs, Asylum and Migration Division, *supra* note 5, at 11 (observing that the Turkish armed forces regard themselves as “guardians” of Atatürk's principles); see also Çağrı Yıldırım, *The Role of the Military in Turkish Politics and European Union Membership Negotiations*, BALKANALYSIS.COM (Dec. 2, 2010), <http://www.balkananalysis.com/turkey/2010/12/02/the-role-of-the-military-in-turkish-politics-and-european-union-membership-negotiations/> (noting that the duty of the Turkish armed forces is to protect the Turkish territory and republic as stipulated by the constitution and that this duty has justified three military interventions).

7. See Yıldırım, *supra* note 6 (discussing military involvement in Turkish politics since Ottoman times); see also *infra* Part I.B (analyzing the role of military in Turkish politics).

taken over the government three times, intervening until a new round of civilian elections could be held.⁸ The last of these three coups d'état took place on September 12, 1980, leaving Turkey with an authoritarian constitution that has been in effect since 1982 (“1982 Constitution”).⁹

Although modified several times in the last three decades, specifically within the framework of European Union (“EU”) reforms, the 1982 Constitution has allowed the military to remain highly influential in Turkish politics.¹⁰ The most significant reforms took place in 2010, when the ruling Justice and Development Party (Adalet ve Kalkınma Partisi (“AKP”)), affiliated with Islamist political ideology, announced a constitutional reform package (“Package”), aimed at democratizing the 1982 Constitution.¹¹ Due to the Islamist ideological background of many AKP members, the Package caused turmoil among some citizens who perceived the proposal as a threat to Atatürk’s secular democracy, and they demanded

8. See Yıldırım, *supra* note 6 (noting that the military is the “guardian” of the secular republic and has intervened by taking over the government three times). See, e.g., *infra* note 75 and accompanying text (giving the example of the 1983 elections, until which the military exercised power in politics).

9. See Türkiye Cumhuriyeti Anayasası Nov. 7, 1982 (Turk.); Pelin Turgut, *Turkey Braces for Key Vote over Its Future*, TIME (Sept. 11, 2010), <http://www.time.com/time/world/article/0,8599,2017448,00.html> (“The current [constitution] is an authoritarian holdover from a 1980 coup, drafted by generals and designed to enshrine the power of the state over the individual.”); see also Press Release, U.S. Dep’t of State, Background Notes: Turkey (Mar. 12, 2010) (listing the passage date of the current Turkish constitution (“1982 Constitution”) and the years it has subsequently been amended); Metin Heper, *Consolidating Turkish Democracy*, J. DEMOCRACY 105, 105 (1992) (listing the three military interventions in 1960, 1971, and 1980).

10. See MEHMET FEVZİ BİLGİN, CONSTITUTION, LEGITIMACY AND DEMOCRACY IN TURKEY, 135, 142 (Said Amir Arjomand ed., 2008) (noting that the 1982 Constitution has been modified numerous times and that the military is influential in Turkish politics); see also Türkiye Cumhuriyeti Anayasası Nov. 7, 1982 (Turk.) (amended 2010). A version of the Constitution of the Republic of Turkey, as amended since 1982, is available at <http://www.anayasa.gen.tr/1982ay.htm>.

11. See SELİN M. BÖLME & TAHA ÖZHAN, SETA FOUNDATION FOR POLITICAL, ECONOMIC AND SOCIAL RESEARCH, BRIEF NO: 47, POLICY BRIEF: CONSTITUTIONAL REFERENDUM IN TURKEY 2, 3–8 (Aug. 2010), available at <http://www.setav.org/Ups/dosya/44512.pdf> [hereinafter POLICY BRIEF] (discussing the Adalet ve Kalkınma Partisi’s (“AKP”) announcement in March 2010 of a constitutional amendment package (“Package”) aimed at democratizing Turkey’s constitution); see also *infra* notes 94–97 (providing the relationship between former Islamist parties, such as the Refah Partisi (“RP”), the Fazilet Partisi (“FP”), and the AKP).

Turkish military intervention.¹² Despite the ideological turmoil, the Turkish public voted to amend the Constitution on September 12, 2010—exactly thirty years after the military intervention, which resulted in the creation of that very document.¹³

This Comment questions whether the Package promotes a civil and more democratic constitution by weakening the military's role in politics or whether the Package actually promotes a so-called hidden Islamist agenda advocated by the AKP, threatening Atatürk's modern secular Turkey.¹⁴ Part I of this Comment examines the unique geographical and social position of Turkey as part of both Europe and the Middle East, summarizes key events in modern Turkish history, and examines the importance of the military in Turkish politics. Part II introduces the language of the Package and the referendum process. Part III analyzes the amendments considered at the national referendum and predicts their legal effects with regard to Turkey's EU candidacy and the balance of power among domestic institutions. This Comment concludes that, although the revisions to the Constitution were welcomed as a move toward a more modern and democratic state, the selective nature of the Package and the Islamist roots of some AKP politicians raise questions about the true motivation of these reforms.

12. See *infra* note 130 and accompanying text (noting that a segment of the Turkish population regards the AKP's efforts to amend the Constitution as a threat to secular democracy).

13. See Christopher Torchia, *Turks Vote for Constitutional Amendments: Approval Viewed as Boost Towards Bid to Join EU*, BOSTON GLOBE, Sept. 13, 2010, at 6 (reporting Turkish approval of the Package); see also Sebnem Arsu & Dan Bilefsky, *Turkish Constitutional Changes Pass by a Wide Margin*, N.Y. TIMES, Sept. 13, 2010, at A4 (reporting the results of the constitutional referendum that fell on the thirtieth anniversary of the military coup that sanctioned the 1982 Constitution); *Turkey Vote Boosts PM Future*, AL JAZEERA (Sept. 13, 2010), <http://english.aljazeera.net/video/europe/2010/09/201091375453805603.html> ("With nearly 80 percent turnout, poll results show that 58 percent voted in favour of the referendum.")

14. See *infra* notes 130, 225 and accompanying text (describing the segments in Turkish society that suspect a hidden Islamist agenda behind the AKP's policies); cf. *infra* note 230 (noting the view that regards the Package as an effort to democratize Turkish politics).

I. *BACKGROUND: SUMMARY OF TURKISH HISTORY AND
POLITICS, 1923–PRESENT*

This Part explores the history of the Turkish Republic beginning with its founding in 1923. Sections A and B discuss the importance of Turkey's location and history as well as their impact on Turkish politics and society. These subsections focus on the role of religion and the military. Section C presents a brief account of Turkish politics after the introduction of the multi-party regime and the three subsequent military coups d'état that occurred in the following four decades. Section D examines the historical context of the 1982 Constitution, which the Package aims to revise. Sections E and F discuss the balance between the military and political parties in the last decade, including the AKP, currently the ruling party in Turkey, and its forerunner the Welfare Party. Section G summarizes the EU application process under the AKP governments and reviews recent reforms and achievements.

A. *Turkey: A Country on Two Continents*

Modern Turkey is a Eurasian country that encompasses vast territory across the Anatolian Peninsula in southwestern Asia and in southeastern Europe.¹⁵ Turkey cannot be called either wholly European or Middle Eastern.¹⁶ It is a bridge between the West and the East, at a crossroads where the two cultures meet and interact.¹⁷ Nevertheless, along with Turkey's unique and

15. See *The World Factbook: Turkey*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html> (last visited Sept. 15, 2011) (specifying Turkey's geographic location); see also *Turkey Country Profile*, BBC NEWS, http://news.bbc.co.uk/2/hi/europe/country_profiles/1022222.stm (last visited Sept. 15, 2011) (giving an overview of Turkey, including the "strategically important" location of the country).

16. See, e.g., Owen Matthews, *Eastern Star: Turkey's Prime Minister Has Become a Hero in the Middle East for Standing Up to the West. But Islam Isn't What's Driving Him*, NEWSWEEK, Sept. 20, 2010, at 44 (observing that in recent years, Turkey has been moving eastwards); see Susanna Dokupil, *The Separation of Mosque and State: Islam and Democracy in Modern Turkey*, 105 W. VA. L. REV. 53, 60 (2002) (comparing Turkey to Janus, with two faces in opposite directions, in this case the East and the West).

17. See David J. Gottlieb et al., *Conference on Comparative Law—Recent Developments in European, American, and Turkish Law: "Team Kansas" Goes to Turkey*, 45 U. KAN. L. REV. 671, 703 (1997) ("Turkey is where Western and Eastern cultures meet [and] interact."); see also Ahmet Davutoğlu, Minister of Foreign Affairs, Republic of Turk., *The US-Turkey Relationship*, Address before the Council on Foreign Relations (Apr.

strategic location comes specific domestic and international geopolitical challenges.¹⁸ Since its founding in 1923, Turkey has experienced constant tensions between its secular-Western and conservative-Islamist citizens, manifested in violent clashes between these two ideological groups.¹⁹ These tensions have led to: student protests at universities; mass arrests of journalists, politicians, and academics for political affiliation; and numerous unsolved murders.²⁰ The basic tension between the Western-leaning, nationalist-secular Turks and the Eastern-leaning, conservative-Islamist Turks arises from the assumption that Islam and democracy are incompatible.²¹ In the case of Turkey, while ninety-nine percent of the population is Muslim, Article 2 of the 1982 Constitution states that the country is a democratic, secular, and social state, governed by the rule of law.²² In fact, Turkey is the only democracy with a Western-secularist legal

14, 2010) in FEDERAL NEWS SERVICE, Apr. 14, 2010, (emphasizing Turkey's multidimensional, geopolitical characteristic stemming from being "right at the center of Afro-Euro-Asia").

18. See *infra* notes 19–21 and accompanying text (discussing the conflicts among different cultural and ideological groups, as one of the major social challenges facing Turkey).

19. See Dokupil, *supra* note 16, at 80, 91 (exemplifying the governments' inability to control civil disorder right before the 1971 and 1980 military interventions); see also Murat Somer, *Moderate Islam and Secularist Opposition in Turkey: Implications for the World, Muslims and Secular Democracy*, 28 THIRD WORLD Q. 1271, 1274 (2007) (describing the rivalry between secular-nationalists and Islamic-conservatives).

20. See SİNA AKŞİN, KISA TÜRKİYE TARİHİ [A BRIEF HISTORY OF TURKEY] 271–72 (2007) (discussing the social chaos and violence on the streets of Turkey prior to the 1980 coup); see also Ali Necati Doğan, *12 Eylül Darbesi, Öncesi Olaylar, Gerekçeleri ve Sonuç*, MİLLİYET BLOG (Sept. 13, 2009), <http://blog.milliyet.com.tr/Blog.aspx?BlogNo=202714> (discussing events, reasons and results of the 1980 Coup including the list of unresolved political murders).

21. See, e.g., Padideh Ala'i, *Turkey: At the Crossroads of Secular West and Traditional East*, 24 AM. U. INT'L L. REV. 679, 681 (2009) (stating that the historian Feroz Ahmad maintains that Kemalists were not against Islam and that contemporary Turkish society is not in danger of becoming another Iran); see Ian Ward, *The Culture of Enlargement*, 12 COLUM. J. EUR. L. 199, 220 (indicating that the original Kemalist construction of modern Turkey "assumed a natural dichotomy between secularism and Islam," holding democracy and Islam incompatible).

22. See Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 2 (Turk.) ("Türkiye Cumhuriyeti . . . Atatürk Milliyetçiliğine bağlı, başlangıçta belirtilen temel ilkelere dayanan, demokratik, laik ve sosyal bir hukuk Devletidir."); Press Release, U.S. Dep't of State, *supra* note 9 ("The 1982 Constitution . . . proclaims Turkey's system of government as democratic, secular, and parliamentary."); see also Press Release, U.S. Dep't of State, *supra* note 9 (noting that Turkey's population is ninety-nine percent Muslim).

framework adapted to an Islamic society.²³ Turkey is a Muslim country considered to be not as Islamic as most of its eastern neighbors, but it is also a democracy considered to be not as European as its Western neighbors.²⁴ This diversity prompts questions regarding religion's role in society and politics, a subject that has dominated the Turkish public discourse since its founding.²⁵

B. The Role of Religion and the Military in Turkish Politics and Society

Secularism in Turkey has been largely supported by the Western-educated elite, who also compose the most influential segments of society, including the business and political circles.²⁶ They, along with the military and the judiciary, form the secular nationalist stronghold of Turkish society.²⁷ This select group of people resides primarily in Istanbul and Ankara, standing in great contrast to the often-less-educated citizens who reside in smaller cities and villages in Anatolia and who have been repeatedly excluded from economic and political arenas.²⁸ The

23. See Dokupil, *supra* note 16, at 55 (differentiating Turkey as the only secular Muslim state that is challenged by its incorporation of secularism and democracy in an Islamic society); see also *History of Turkey—EU Relations*, MINISTRY FOR EU AFFAIRS, REPUBLIC OF TURK., available at <http://www.abgs.gov.tr/index.php?p=111&I=2> (last updated Apr. 6, 2007) (“Turkey is the only pluralist secular democracy in the Moslem world . . .”).

24. See Ward, *supra* note 21, at 217–18 (distinguishing Turkey as a country that is not as Islamic as other Muslim countries, but still too Islamic to be accepted by the EU); Davutoğlu, *supra* note 17, (providing the views of the Turkish Minister of Foreign Affairs, Ahmet Davutoglu, on the unique geographical continuity of Turkey).

25. See Press Release, U.S. Dep’t of State, *supra* note 9 (enumerating religion’s role in Turkish society and government as one of the issues dominating public discourse). See generally Dokupil, *supra* note 16, at 55 (analyzing the role of Islam in Turkish politics).

26. See Dokupil, *supra* note 16, at 55 (indicating that Western democracy in Turkey is strongly advocated by educated elites and the military); see also Ward, *supra* note 21, at 218 (distinguishing the privileged status of the Western-educated elite in Turkish society and their views on secularism).

27. See, e.g., Ibon Villeda, *Referendum Reveals Three Faces of Turkey*, CYPRUS MAIL, Sept. 15, 2010 (revealing that Turkey’s secular establishment opposed the constitutional amendments); see Dokupil, *supra* note 16, at 55 (noting the support by the educated elite and the military for a Western-style democracy).

28. See Ahmet İnsel, *The AKP and Normalizing Democracy in Turkey*, 102 S. ATLANTIC Q. 293, 297, 306 (2003) (pointing to the discrepancy between the secular urban elite and the less-educated masses); Dokupil, *supra* note 16, at 55 (stating that Islamist policies “resonate[] with the agricultural workers, small shopkeepers, and low-skilled laborers,” and describing the contrast between the urban elite and the rural masses);

exclusion of certain citizens from political power and the tension between the educated elite and the rural populations are two significant factors leading to the polarization between those who envision an Islamic Turkey and those who hope for a European Turkey.²⁹

The origins of military influence in Turkish politics precede even the founding of the Turkish Republic.³⁰ Every Turkish constitution since 1921 has charged the military with protecting the state and has given the military the right and duty to intervene in the “name of the nation.”³¹ As such, the military has been seen as an important component of Turkey’s checks-and-balances system.³²

Turkey’s constitution establishes a separation of powers as follows: the executive power belongs to the President and the Council of Ministers; the legislative power belongs to the Parliament—Türkiye Büyük Millet Meclisi (“TBMM”), and the judiciary power belongs to the courts, with the Constitutional

see also Villeda, *supra* note 27 (“Since its establishment as a secular state in 1921 Turkey has been traditionally ruled by a Westernised elite in Istanbul and Ankara. The Anatolian masses were economically and politically excluded . . .”).

29. *See, e.g.*, İnel, *supra* note 28, at 306 (noting that the polarization in Turkey is between the republican elites and the rest of the population); *see* Ward, *supra* note 21, at 225 (employing the terms “Islamic Turkey” and “European Turkey” to describe the differing perspectives between conflicting factions in Turkey).

30. *See* David Capezza, *The Military in Politics: Turkey’s Military is a Catalyst for Reform*, MIDDLE E. Q., Summer 2009, at 13 (“The military has deep roots in society, and its influence predates the founding of the republic.”); Yıldırım, *supra* note 6 (noting that the military’s involvement in politics began in Ottoman times and that it was the military who initiated the new republic’s political modernization process).

31. Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 117 (Turk.); *see* Law No. 211 of Jan. 4, 1961, Resmi Gazete [R.G.] No. 10703 (Jan. 10, 1961) (Turk.) (“Silahlı Kuvvetlerin vazifesi; Türk yurdunu ve Anayasa ile tayin edilmiş olan Türkiye Cumhuriyetini kollamak ve korumaktır.”) Dinesh D. Banani, *Reforming History: Turkey’s Legal Regime and Its Potential Accession to the European Union*, 26 B.C. INT’L & COMP. L. REV. 113, 115 (2003) (quoting Paul J. Magnarella, *The Legal, Political and Cultural Structures of Human Rights Protections and Abuses in Turkey*, 3 INT’L L. & PRAC. 439, 448 (1994)) (noting that the Constitution gives “the military the right and duty to intervene in Turkish politics in the ‘name of the nation’”); *see* Capezza, *supra* note 30, at 13 (emphasizing that from Turkey’s founding, the military has assumed the role of guarantors of the Constitution).

32. *See* Capezza, *supra* note 30, at 13 (indicating that the Turkish military remains an important component of the checks-and-balances system); *c.f.* Arsu & Bilefsky, *supra* note 13, at A5 (quoting a Turkish columnist who fears the package of constitutional reforms passed in September 2010 would leave a system lacking checks and balances).

Court acting as the highest court responsible for judicial review.³³

Within this structure, the military guarantees and supervises secular democracy.³⁴ To better understand the role of the military in Turkey today, it is useful to become familiar with the Ottoman-Turkish constitutional history and the founding principles of modern Turkey, as created by Atatürk.

Turkish dynasties controlled Muslim territories in Central Asia, the Middle East, and Anatolia from the eleventh century until the founding of the Ottoman Empire in 1301.³⁵ The Ottomans established their empire on “the principle of military conquest infused with religious fervor” and relied on a legal system based on the principles of Sharia—Islamic Law.³⁶ After the defeat of the Ottoman Empire in World War I, a revolutionary political force, led by General Mustafa Kemal (later named Atatürk, “father of the Turks”), and independent from the Ottoman Empire’s political elite, emerged in eastern Anatolia.³⁷ With the support of Anatolian Turks, these revolutionaries fought the Turkish War of Independence and established the TBMM in 1920.³⁸ While the Turkish army battled

33. See Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, arts. 7–9 (Turk.) (enumerating the executive, legislative, and judiciary powers of the Turkish Constitution); see also Press Release, U.S. Dep’t of State, *supra* note 9, (noting the separation of powers in Turkey).

34. See Capezza, *supra* note 30, at 13 (noting the supervisory role of the military); see, e.g., ERGUN ÖZBUDUN & ÖMER F. GENÇKAYA, *DEMOCRATIZATION AND THE POLITICS OF CONSTITUTION-MAKING IN TURKEY* 21 (2009) (asserting that the 1982 Constitution stipulates the military’s role as the guardian of the state).

35. See Dokupil, *supra* note 16, at 59 (stating that Ottomans controlled Islamic territories from the eleventh century to the fourteenth century); see also *Ottoman Empire*, BBC RELIGIONS (Sept. 4, 2009), http://www.bbc.co.uk/religion/religions/islam/history/ottomanempire_1.shtml (describing the origins of the Ottoman Empire).

36. Dokupil, *supra* note 16, at 56–57, 59 (arguing that the law of the Ottomans was Sharia, a legal code based on the Qur’an and the Sunna, laws informed by the sayings and practices of Muhammad, the Prophet); Christian Rumpf, *The Importance of Legislative History Materials in the Interpretation of Statutes in Turkey*, 19 N.C. J. INT’L L. & COM. REG. 267, 269 (1994) (noting that the Ottoman legal system was based on Islamic law (Sharia)).

37. See Rumpf, *supra* note 36, at 270 (explaining the creation of a sovereign Turkish government under Atatürk); see also Dokupil, *supra* note 16, at 65 (noting Atatürk’s leadership and the organization of a nationalist movement in central Turkey).

38. See Dokupil, *supra* note 16, at 65–66 (summarizing the Republic’s founding including the creation of the Türkiye Büyük Millet Meclisi (“TBMM”), the Parliament); see also Press Release, U.S. Dep’t of State, *supra* note 9, (noting that Atatürk led the

Western imperialists, the TBMM abolished the sultanate, expelled the Sultan, and officially declared the Republic of Turkey in 1923.³⁹ During the next few years, the TBMM, under the leadership of Atatürk, transitioned Turkey from a monarchy into a liberal democracy by realizing reforms such as the adoption of the Turkish Civil Code, thus ending the rule of Sharia.⁴⁰

These liberal reforms reoriented the role of religion by removing it from the public sphere.⁴¹ Turkish society was now free from traditionally Islamic societal norms; science and reason formed the infrastructure of Turkey's new, Western-style secular civil society.⁴² The collapse of the Islamic legal tradition

Turkish Republic's founding after the three-year War of Independence); Dankwart A. Rustow, *Atatürk as Founder of a State*, PHILOSOPHERS AND KINGS: STUDIES IN LEADERSHIP, 793, 795–96 (1968) (describing Anatolia as Atatürk's stronghold and the location from where he initiated the nationalist movement against the Allies and the Sultan); *Founding of the Turkish Grand National Assembly*, TÜRKİYE BÜYÜK MİLLET MECLİSİ, http://www.tbmm.gov.tr/english/about_tgna.htm#FOUNDING%20OF%20THE%20TURKISH%20GRAND%20NATIONAL%20ASSEMBLY (last visited Oct. 2, 2011) (“The Turkish Grand National Assembly, established on national sovereignty, held its first opening session . . . on 23 April 1920.”).

39. See Dokupil, *supra* note 16, at 66 (summarizing the events leading to and following the proclamation of the Republic, including the separation of the sultanate from the caliphate and the abolishment of the sultan); see also Press Release, U.S. Dep't of State, *supra* note 9 (noting that Atatürk led the founding of the Turkish Republic in 1923).

40. See, e.g., Law No. 671 of Nov. 25, 1925, Resmi Gazete [R.G.] No. 230 (Nov. 28, 1925) (Turk.) (Hat Law of 1925) (restricting the use of religious headgear of citizens, without permission from the government). An English description of the Hat Law of 1925 is available at <http://www.kultur.gov.tr/EN/belge/2-15009/1925.html>. See, e.g., Law No. 2596 of Dec. 3, 1934 Resmi Gazete [R.G.] No. 2879 (Dec. 13, 1934) (Turk.) (Clothing Reform of 1934) (prohibiting religious functionaries to appear in religious clothing outside of their place of worship or during religious services). An English description of the Clothing Reform of 1934 is available at <http://www.kultur.gov.tr/EN/belge/2-15022/1934.html>. See Dokupil, *supra* note 16, at 68–70 (listing Atatürk's reforms including the replacement of Sharia with a European Civil Code).

41. See Dokupil, *supra* note 16, at 68–69 (analyzing some of Atatürk's reforms as changing the relationship between religion and the state and banning vestiges of religion from the public sphere); see also Press Release, U.S. Dep't of State, *supra* note 9 (indicating that the reforms between 1924 and 1934 formed the ideological base of the republic).

42. See Dokupil, *supra* note 16, at 70–71 (quoting Ali Kazancıgil, *Democracy in Muslim Lands: Turkey in Comparative Perspective*, 43 INT'L SOC. SCI. J. 343, 350 (1991)) (describing the newly identified Turkish society as one that is in “a cultural arena no longer structured by religious faith, but by reason and science” (internal quotation marks omitted)).

was a major part of this redefinition.⁴³ Initiated with the newly-adopted Turkish Civil Code, the radical modernization and westernization of Turkish society was solidified by the transformation of the legal system from faith-based to secular.⁴⁴ The Six Arrows of Kemalism, the symbol for the Cumhuriyet Halk Partisi (“CHP”) [Republican People’s Party] represent the Western-political values Atatürk intended the new Turkish republic to embrace: republicanism, nationalism, populism, reformism, étatism, and secularism.⁴⁵ Manifested in Atatürk’s reforms, these six principles constituted the ideological foundation of modern Turkey.⁴⁶ The military and the judiciary in particular, which regard themselves as the guardians of Kemalism, have often clashed with Islamist political parties that gained influence throughout the 1960s and reopened the discourse on Islam’s role in Turkish politics.⁴⁷ In response to the increasing popularity of such faith-based political ideologies, the military, in accordance with its constitutional powers, has intervened in Turkish politics three times in the past five

43. See Arzu Oğuz, *The Role of Comparative Law in the Development of Turkish Civil Law*, 17 *PACE INT’L L. REV.* 373, 382–85 (2005) (describing how the elimination of Sharia and adoption of the Swiss Code transformed the Turkish legal system); see also Dokupil, *supra* note 16, at 70 (discussing some of the legal reforms initiated by Atatürk as redefining Turkish society).

44. See Oğuz, *supra* note 43, at 380, 383 (discussing the adoption of the new civil code in Turkey, allowing the country’s legal system to transition from a faith-based Islamic one into a secular-western one); see also *supra* notes 39–42 and accompanying text (underlining Atatürk’s objective of creating a new Turkish identity detached from the old Islamic Ottoman one).

45. See Dokupil, *supra* note 16, at 65 (identifying the Six Arrows of Kemalism); see also Ward, *supra* note 21, at 220 (outlining the six political values encouraged by Kemalism). CHP was founded by Atatürk and is currently the main opposition party in the TBMM. See Press Release, U.S. Dep’t of State, *supra* note 9 (listing the number of TBMM members each political party has in the government, with the AKP holding 337 seats and CHP holding ninety-seven seats in 2010).

46. See Press Release, U.S. Dep’t of State, *supra* note 9 (noting that the principles of Kemalism constitute the ideological base of modern Turkey); see also *supra* note 40 and accompanying text (stating some of the reforms implemented under Atatürk).

47. See *Has Turkey’s Referendum Granted More Power to Erdogan?*, DAILY TIMES (Pak.) (Sept. 15, 2010), http://www.dailytimes.com.pk/default.asp?page=2010/09/15%story_15-9-2010_pg4_9 (noting that the military and the courts, as guardians of secular Turkey, have often clashed with current ruling party, the AKP); see also Dokupil, *supra* note 16, at 54 (discussing the steady proliferation of Islamist political ideologies since the 1960s).

decades to restore the founding principles of Kemalism.⁴⁸ In order to better understand the present dynamics between today's "conservative globalists" and the "defensive nationalists," the military coups of 1960, 1971, and 1980, along with their respective constitutions, are summarized below.⁴⁹

C. *Coups d'État of 1960, 1971, and 1980*

Although Turkey remained neutral during most of World War II, with the implementation of the Truman Doctrine in 1947 and the Marshall Plan in 1948, Turkey strengthened its political ties with the West, particularly the United States.⁵⁰ In the midst of these international developments, and after twenty-seven years of single-party rule, President İsmet İnönü initiated the implementation of a multi-party system in Turkey.⁵¹

The newcomer Democratic Party ("DP") introduced a religious revival by liberalizing Atatürk's secularism and reformulating the Kemalist principles and their application to Turkish politics.⁵² The anti-liberal activism against the DP, along

48. See *supra* note 8 and accompanying text; see also Kivanc Ulusoy, *The "Democratic Opening" in Turkey: A Historical/Comparative Perspective*, INSIGHT TURKEY, Apr.–June 2010, at 20 (noting the three coups in 1960, 1971, and 1980); Capezza, *supra* note 30, at 17–19 (summarizing the military interventions triggered by the rise of Islamist political parties).

49. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 94 (identifying the tension and rift between the "conservative globalists" and the "defensive nationalists"); see also Capezza, *supra* note 30, at 13 (noting the three constitutions of Turkey).

50. See STUART E. EIZENSTAT, ALLIED RELATIONS AND NEGOTIATIONS WITH TURKEY 1–2, available at http://www.state.gov/www/regions/eur/rpt_9806_ng_turkey.pdf (discussing Turkey's Neutrality in World War II); see also AKŞİN, *supra* note 20, at 240 (summarizing events, such as the Truman Doctrine, the Marshall Plan, and Turkey's entry into NATO as examples of the strengthening of its international ties); Press Release, U.S. Dep't of State, *supra* note 9 (describing the Truman Doctrine and the Marshall Plan as US policies supporting Greece and Turkey and other European countries with economic and military aid to prevent Soviet influence).

51. See AKŞİN, *supra* note 20, at 240 (stating that President İsmet İnönü believed that to place Turkey on the same footing as Europe, the political pluralism dominating Europe at the time had to be enforced in Turkey); see also Irina A. Danilkina, *Turkey: The Party System from 1963 to 2000*, INTERNATIONAL COMPARATIVE POLITICAL PARTIES PROJECT, <http://janda.org/ICPP/ICPP2000/Countries/7-MiddleEastNorthAfrica/78-Turkey/Turkey63-00.htm> (last visited Nov. 3, 2011) (noting that between 1923 and 1946, Atatürk's Republican People's Party was the only party in the country).

52. See Dokupil, *supra* note 16, at 72–76 (describing the Democratic Party's ("DP") ten-year rule between 1950 and 1960); see also AKŞİN, *supra* note 20, at 245 (explaining that the DP won sixty-six seats in the 465-seated TBMM in 1946).

with the worsening economy toward the end of the 1950s, exacerbated the clash between the secularists and Islamists.⁵³ To restore social and political order, the military intervened on May 27, 1960, which ended with the execution of Prime Minister Adnan Menderes, along with two other members of the cabinet.⁵⁴ Unlike concurrent military interventions in Egypt, Greece, Iraq, and Syria, where the military refused to hand over power to the civilians for many years, in Turkey, the military created the Constituent Assembly, drafted a new constitution, and restored civilian politics eighteen months after the takeover.⁵⁵ The concepts of a social state, political pluralism, parliamentary bicameralism, and the introduction of democratic institutions, such as the Constitutional Court, were some of the developments facilitated by the 1960 coup and the constitution it produced.⁵⁶

While the 1961 Constitution expanded civil liberties and social rights, it also demonstrated the military's distrust in political parties.⁵⁷ The 1961 Constitution institutionalized

53. See AKŞİN, *supra* note 20, at 260 (citing poor management of the economy as one of the reasons for the 1960 Coup); see also Capezza, *supra* note 30, at 17 ("In April 1960, amidst student protests and unrest between the government and the opposition parties, the military launched a coup . . .").

54. See Capezza, *supra* note 30, at 17 (discussing the arrests and executions of prominent politicians after the 1960 coup); see also Danilkina, *supra* note 51 (noting that the 1960 military coup led to the termination of the DP).

55. See Capezza, *supra* note 30, at 17 (differentiating between military interventions in neighboring nations); see also AKŞİN, *supra* note 20, at 260 (noting the establishment of the Constituent Assembly by military officials in early 1961); Danilkina, *supra* note 51 (describing the 1961 Constitution as one drafted to ensure liberalism and democracy). The phrase civilian politics refers to officials who are elected by the people, as opposed to members of the military who may intervene in and control Turkish politics. For an analysis of the civil-military relations in Turkey, see ŞULE TOKTAŞ & ÜMIT KURT, SETA FOUND. FOR POLITICAL, ECON. AND SOC. RESEARCH, BRIEF NO: 26, POLICY BRIEF: THE IMPACT OF EU REFORM PROCESS ON CIVIL-MILITARY RELATIONS IN TURKEY 1-2 (Nov. 2008), available at <http://www.setav.org/ups/dosya/7460.pdf>.

56. See Danilkina, *supra* note 51 (describing the 1961 Constitution as the most liberal constitution Turkey ever had); see also Dokupil, *supra* note 16, at 77 (enumerating the most significant achievements of the 1961 Constitution, including the guarantee of certain civil liberties, the institution of judicial review by the newly established Constitutional Court, and the freedoms of religious faith and worship). See generally Türkiye Cumhuriyeti Anayasası July 20, 1961 (Turk.). An English translation is available at <http://www.anayasa.gen.tr/1961constitution-amended.pdf>.

57. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 16 (indicating that the 1961 Constitution expanded social and political rights, but also reflected the military's

judicial review and the complete independence of the judiciary, thus creating a checks and balances system in Turkish politics.⁵⁸ The establishment of an advisory board called the National Security Council (Milli Güvenlik Kurulu, “MGK”), composed of ministers and the highest chief officers in the Turkish army, provided the military a forum to voice its perspective, especially in matters concerning national security.⁵⁹ In addition, Article 141 of the 1961 Constitution established the Military Court of Cassation to review the decisions of military courts and those involving military officials.⁶⁰

After the 1960 coup d’etat, a new era began in Turkish politics.⁶¹ This new political period reflected an increase in the popularity of Islamist political ideologies, which, in opposition to the socialist and leftist movement, acquired an “anti-liberal, anti-socialist dimension” and resulted in the polarization of society between the conservative extreme right and the socialist

distrust in elected civilian politicians); *see also* Danilkina, *supra* note 51 (noting that the 1961 Constitution prohibited communist and religious parties and approved adversarial politics only if compatible with Atatürk’s mandated secular and republican state).

58. *See* Türkiye Cumhuriyeti Anayasası July 20, 1961, art. 7 (Turk.) (“Judicial power shall be exercised by the independent courts on behalf of the Turkish nation.”); *see also* İsmet Giritli, *Some Aspects of the New Turkish Constitution*, MIDDLE E. J., Winter 1962, at 9 (“One of the other fundamental principles embodied in the Constitution is that judges and courts of law shall be absolutely independent and free from interference in the performance of their duties.”).

59. *See* ÖZBUDUN & GENÇKAYA, *supra* note 34, at 18 (introducing the Milli Güvenlik Kurulu (“MGK”) or the National Security Council); *see also* Yıldırım, *supra* note 6 (observing that the MGK was established to legitimize the military’s involvement in politics).

60. *See* Türkiye Cumhuriyeti Anayasası July 20, 1961, art. 141 (Turk.) (providing the original language of Article 141 relating to the establishment of Military Court of Cassation); *see also* YILMAZ ENSAROĞLU, SETA FOUND. FOR POLITICAL, ECON., AND SOC. RESEARCH, SETA ANALİZ, İNSAN HAKLARI VE DEMOKRATİKLEŞME BAĞLAMINDA YENİ ANAYASA PAKETİ [SETA ANALYSIS, THE NEW CONSTITUTIONAL PACKAGE IN THE CONTEXT OF HUMAN RIGHTS AND DEMOCRATIZATION] 42 (2010), *available at* <http://www.setav.org/Ups/dosya/45997.pdf> (discussing the expansion of the authority of military justice with each constitution).

61. *See* Dokupil, *supra* note 16, at 77 (noting that Kemalist principles were adhered to in rhetoric but in practice were no longer being interpreted consistently with Atatürk’s original intent); *see also* Danilkina, *supra* note 51 (explaining that the Communist and the Islamist parties were banned after the coup because they were considered to be dangerous and did not comport with Atatürk’s secular and republican state).

left.⁶² Around 1970, this polarization escalated into street demonstrations, student protests, and economic unrest, all of which prompted the Turkish military to intervene in politics for a second time and decree the memorandum of March 12, 1971.⁶³

The Memorandum of 1971 held the government responsible for not enacting the reforms envisaged by Atatürk and the Constitution of 1961.⁶⁴ The government's failure to enact these reforms critically affected the military because, as referenced above, the 1961 Constitution emphasized the significance of the military in Turkish politics as the constitutionally-authorized guardian of the secular state.⁶⁵ While neither the Constitution of 1924, nor the Constitution of 1961, specifically endorse coups or give instructions explaining the circumstances under which the military should intervene, military intervention in politics has generally been supported throughout modern Turkish history by the public, who inherently distrust politicians.⁶⁶ Following the 1971 Coup,

62. See Dokupil, *supra* note 16, at 77–79 (describing the political developments and the social polarization between 1961 and 1970); see also Aira Chtena, *The Military in Modern Turkey: A Lasting Political Force*, J. STUDY PEACE & CONFLICT, 1998–99, available at <http://jspc.library.wisc.edu/issues/1998-1999/article5.html>, (noting that the 1971 coup took place because the government had failed to assuage the conflict between the Marxist and ultra-right forces).

63. See AKŞİN, *supra* note 20, at 267–68 (describing the social and economic unrest in Turkey which led to the military memorandum and stating that the Memorandum of March 12th held the President and the Prime Minister responsible for not enacting necessary reforms); see also Chtena, *supra* note 62 (indicating that, as a result of the “terrorism and disorder” in the country, the military issued a memorandum addressed to the President and the Prime Minister).

64. See AKŞİN, *supra* note 20, at 268 (noting that the Memorandum of 1971 held the government responsible for political failures made out of line from the reforms of Atatürk and the 1961 Constitution); see also Dokupil, *supra* note 16, at 80 (reasoning that the government's inability to govern, along with the social tensions and economical difficulties, led to the second military intervention in Turkish politics).

65. See Türkiye Cumhuriyeti Anayasası July 20, 1961, art. 66 (Turk.) (introducing the article regarding the authority to permit the use of armed forces); see also *supra* notes 57–60 and accompanying text (discussing the novelties introduced to Turkish politics by the 1961 Constitution). Both the 1960 Coup and the 1971 Intervention were justified by the constitutional authorization bestowed on the Turkish army to interfere in the political realm. See also *supra* note 8 and accompanying text (explaining the role of the military as guardians of the secular Turkish Republic).

66. See Capezza, *supra* note 30, at 13–14 (“While the Turkish Constitution certainly does not endorse coups, Turkish popular distrust of politicians has generally led the public to support military action.”); see also Chtena, *supra* note 62 (arguing that

instead of implementing a completely new constitution, the military carried out constitutional amendments in a closed process by implementing changes that strongly favored the military's political ideology.⁶⁷ In the aftermath of the 1971 Memorandum, Turkey experienced the continuing presence of Islamic ideologies in the political arena.⁶⁸ Toward the end of the decade, the country witnessed a resurrection of terrorism and political violence, universities controlled by ideological groups, and public areas as crime scenes of hundreds of unsolved murders.⁶⁹ Aggravated by the economic crisis, continuing terrorism, and the political instability, which resulted in eleven successive governments in only nine years, the social polarization was exacerbated to the point where even the police force was divided along ideological lines.⁷⁰

In this unstable and violent environment, the military once again elected to invoke its constitutional power to protect the Turkish Republic. On September 12, 1980, the military carried out a non-violent coup that resulted in the arrest of over 100,000

the military was actually ambivalent as to whether the Prime Minister resigned or not in the 1971 coup which reflects the military's preference to remain insulated from politics).

67. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 113–14 (describing the 1971 amendment process as less democratic than the 1961 Constitution). These amendments can be grouped in three categories: a) those restricting some of the civil liberties and those limiting the review power of the courts, both of which were granted in the 1961 Constitution; b) those strengthening the Executive by bestowing on it legislative powers; and c) those advancing the autonomy of the military by exempting it from civilian judiciary review. *See id.* at 18. Unlike in the coups d'état of 1960 and 1980, in the 1971 intervention, the Parliament was not dissolved, political parties were not banned, and the Constitution was not replaced nor suspended. *See Capezza supra* note 30, at 18. The military acted as a guide in re-establishing order. *See id.*

68. *See* Dokupil, *supra* note 16, at 81 (stating that the Islamist ideology was represented by the Milli Selamet Partisi ("MSP") [National Salvation Party] participation in coalition governments between 1973 and 1977); *see also* Chtena, *supra* note 62 (noting that the MSP participated in a coalition government with the CHP).

69. *See* AKŞİN, *supra* note 20, at 271–72 (summarizing the social unrest prior to the coup, including the murders of well-known members of the police, unionists, judges, professors, and journalists); *see also* Dokupil, *supra* note 16, at 91 (giving an account of the civil disorder and violence between 1977 and 1980).

70. *See* Capezza, *supra* note 30, at 18 (exemplifying the civil violence and political instability in the 1970s); Dokupil, *supra* note 16, at 91 ("In this polarized environment, even the police were divided along political lines, making enforcement of the law difficult and keeping terrorists under control impossible."); *see also* Doğan, *supra* note 20 (listing some of the political assassinations that took place before 1980).

people and the imprisonment of over 40,000 people.⁷¹ In contrast to the intervention in 1971, the military used a “heavy hand” to reestablish social and political order.⁷² The generals not only drafted a completely new constitution, but they also issued restrictive laws regulating political demonstrations and strikes, established curfew orders, and imposed martial law.⁷³

The extensiveness and radicalism of the 1980 military intervention is evident in both its duration and nature of reforms.⁷⁴ Not only has the constitution it produced, albeit significantly amended, been in place for almost three decades, but, as evident in the fact that the next elections were not held until 1983, the military in 1980 was also much more reluctant to hand over the government to civilian politics.⁷⁵ In order to comprehend the developments in Turkish politics over the last three decades, especially the rise and rule of the AKP since 2002 and the dynamics of the 2010 referendum, the 1982 Constitution and its historical context must be analyzed

71. See Gareth Jenkins, *Continuity and Change: Prospects for Civil-Military Relations in Turkey*, INT'L AFF. 342 (2007) (“On 12 September 1980, as street fighting between leftist and rightist extremists brought the country to the brink of civil war, the military staged a third coup.”); see also Capezza, *supra* note 30, at 18 (discussing the results and impact of the 1980 coup); Chtena, *supra* note 62 (stating that the 1980 coup occurred only after law and order in the country collapsed and the memorandum issued by the military was “welcomed with relief”).

72. See, e.g., *supra* note 67 and accompanying text (showing how military’s role in the 1971 Intervention was moderate); see Capezza, *supra* note 30, at 18 (noting that the military used a “heavy hand” to establish order).

73. See *The Turkish Army: Coups Away*, ECONOMIST, Feb. 13, 2010 [hereinafter *Coups Away*] (characterizing the 1982 Constitution enacted by the army generals as “authoritarian”); see also Capezza, *supra* note 30, at 18 (describing how military dominated most aspects of Turkish society by taking strict control of universities, dismissing academics, dissolving existing political parties, and enforcing martial law).

74. See Capezza, *supra* note 30, at 18 (noting that the 1980 military regime lasted three years and that the constitution it issued continues to apply today); see also *Coups Away*, *supra* note 73 (indicating that the 1982 Constitution, which promoted the objectives of the military, is still in force today).

75. See BİLGİN, *supra* note 10, at 141–42 (indicating that the 1982 Constitution has been amended numerous times); see also AKŞİN, *supra* note 20, at 280–81 (stating that elections were held in 1983); Capezza, *supra* note 30, at 18 (noting that primary power rested in the military leadership until Anavatan Partisi (“ANAP”) [Motherland Party] assumed office in the 1983 elections); ÖZBUDUN & GENÇKAYA, *supra* note 34, at 19 (stating that during the period between the coup and the 1983 elections, the MGK [National Security Council] wielded executive and legislative power with the intention of restructuring Turkish democracy).

thoroughly and the objectives of its drafters must be examined in detail.⁷⁶

D. *The 1982 Constitution*

The drafters of the 1982 Constitution aimed to create an executive unaccountable to the TBMM (Turkish Grand National Assembly) and therefore civilian politics, with the expectation that the President would be heavily influenced by the military.⁷⁷ The 1982 Constitution accordingly provided the President with numerous powers, including the appointment of personnel in the judiciary and military, specifically in institutions including the Yüksek Öğretim Kurulu (“YÖK”) [Council of Higher Education], Hakimler Savcılar Yüksek Kurulu (“HSYK”) [Supreme Council of Judges and Public Prosecutors], the Constitutional Court, and the Turkish Armed Forces.⁷⁸ Once again, the Constitution was drafted by Turkish elites, in contrast to the democratic process of negotiating, bargaining, and compromising among political parties.⁷⁹ The changes implemented with the new constitution included the strengthening of the military’s presence in existing institutions, as well as in the creation of new institutions.⁸⁰ These new institutions included YÖK, which oversees universities and appoints their rectors, and HSYK, which accepts judges and

76. See *infra* note 77 and accompanying text (introducing the objectives of the 1982 Constitution).

77. See Chtena, *supra* note 62 (explaining that the 1982 Constitution guaranteed military prominence and influence with the executive). Moreover, the first president after the coup was the general who led it, Kenan Evren. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 21 (noting that Evren, the general who led the 1980 coup served as president until November 1989); see also Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, arts. 7–9 (Turk.) (outlining the separation of powers).

78. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 20, 22–23 (noting the rights provided to the MGK by the 1982 Constitution); see also AKŞİN, *supra* note 20, at 276 (enumerating some of the powers granted to the President by the 1982 Constitution).

79. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 21 (discussing the drafting process of the 1982 Constitution); see also BİLGİN, *supra* note 10, at 141 (describing the creation phase of the 1982 Constitution as a closed process with no public participation).

80. See Yıldırım, *supra* note 6 (observing that the changes adopted following the 1980 military intervention allowed the military to be more active and effective politically); see, e.g., Capezza, *supra* note 30, at 13 (“The constitution of 1982 . . . prohibited contestation or constitutional review of the laws or decrees passed by the military when the republic was under its rule from 1980 until 1983.”).

public prosecutors into the legal profession and orders their appointments, transfers, authorizations, and dismissals.⁸¹

Another critical change introduced by the 1982 Constitution, which is still debated today, involves the constitutional powers and immunities granted to the military and the MGK [National Security Council].⁸² The 1982 Constitution exempts from judicial review by the Constitutional Court decisions of the Supreme Military Council involving high-level military appointments, promotions, and expulsions as well as laws and decrees passed by the MGK regime during and after the coup d'état.⁸³ The 1982 Constitution also established the Devlet Güvenlik Mahkemesi ("DGM") [State Security Courts], in order to prosecute crimes against ideological and philosophical constitutional principles.⁸⁴ These courts were

81. See, e.g., Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 130, 159 (Turk.) (establishing and discussing the functions of YÖK and HSYK); see ÖZBUDUN & GENÇKAYA, *supra* note 34, at 22 (discussing the new institutions established by the 1982 Constitution).

82. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 23 (discussing the privileges military personnel were provided with by the 1982 Constitution which were named "exit guarantees" such as exemption from the review of Court of Accounts, the High Board of Supervision, and the decisions of the Supreme Military Council); POLICY BRIEF, *supra* note 11, at 4 (noting that in the past thirty years, these privileges prevented the military officers, including the generals behind the 1980 Coup, from being prosecuted for the wrongdoings that took place during and after the coups); see, e.g., Tarık Işık, *Darbecilere Son Darbe*, RADİKAL (Aug. 7, 2011, 9:15), <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1059118&CategoryID=77> (illustrating that amendments to one of the constitutional articles that provided the military with a legal exit guarantee for their actions in the coups is currently being debated); see also Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 15 (Turk.) (limiting the exercise of fundamental rights and freedoms during times of war, mobilization, and martial law). The immunities that prevented members of the military from being prosecuted for their actions related to the coups was a highly controversial issue debated during the 2010 referendum. See, e.g., Işık, *supra* (illustrating that amendments to one of the constitutional articles that provided the military with a legal exit guarantee for their actions in the coups is currently being debated).

83. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 23 (noting the exemptions the 1982 Constitution provided); see also Türkiye Cumhuriyeti Anayasası July 20, 1961 art. 136 (Turk.) (noting that following the 1971 Intervention, the 1973 amendments to Article 136 of the 1961 Constitution established the DGMs [State Security Courts]). The DGMs were established to try cases involving crimes against the security of the state and organized crime. See William Hale, *Turkish Democracy in Travail: The Case of the State Security Courts*, THE WORLD TODAY, 186–94 (1977) (discussing the establishment of DGMs).

84. See BİLGİN, *supra* note 10, at 140 (discussing the creation of DGMs); see also Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 143 (Turk.) (establishing the DGMs).

granted special rules of criminal procedure that weakened due process protection, and, therefore, allowed the military to silence anti-secular voices in the society.⁸⁵

E. *Military Intervention of 1997*

From 1983 to the mid-1990s, Prime Minister Turgut Özal led Turkey in a period of increased international engagement, applying for EU membership in 1987 and re-establishing diplomatic connections with Turkic nations and former Soviet states.⁸⁶ The first amendments to the 1982 Constitution (“1987 amendments”) were passed in this period, resulting in increased constitutional flexibility and greater public control over future constitutional amendments.⁸⁷

During the 1990s, Turkey suffered from political instability caused by short-lived coalition governments, and resulting in high inflation rates and the re-proliferation of Islamist voices in politics.⁸⁸ A second wave of constitutional reforms was initiated

85. See Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 143 (Turk.) (outlining the functions and composition of DGMs); see also Banani, *supra* note 31, at 123 (explaining that because of State Security Courts’ special rules of procedure, the EU has pressured Turkey to either abolish the courts or to harmonize their procedures with other state and federal courts as well as with the European Convention on Human Rights); Hale, *supra* note 83, at 187 (noting that the DGMs exercised special jurisdiction over crimes covered by ninety-nine different articles of the Penal Code, which have been used mainly against the Islamist right wing, but also against leftists in order to protect Atatürk’s secularist reforms).

86. See AKŞİN, *supra* note 20, at 287–88 (discussing the political changes under Prime Minister Turgut Özal, which included opening up Turkey’s international relations); see also Chtena, *supra* note 62 (noting that Özal was the first civilian to be elected as president); Sedat Laçiner, *Turgut Özal Period in Turkish Foreign Policy: Özalism*, 2 USAK Y.B. INT’L POLS. & L. 14 (2009), available at <http://www.turkishweekly.net/article/333/turgut-ozal-period-in-turkish-foreign-policy-ozalism.html> (“The most important development for Turkey in the post-Cold War was the emergence of the Turkic world . . . [These Turkic peoples] were freed from 150 years of Russian rule . . .”).

87. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 32–33 (discussing the 1987 amendments to the 1982 Constitution, which eased the process for making future constitutional changes). See generally Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, amend. I (Turk.) (amended through 2010) (marking the first amendments to the 1982 Constitution as those made in 1987).

88. See Press Release, U.S. Dep’t of State, *supra* note 9 (noting the political instability during the 1990s); see also BİLGİN, *supra* note 10, at 142–43 (examining the setbacks in Turkish politics in the late 1990s, which led to the victory of an Islamist party).

in 1995.⁸⁹ In the same year, the Islamist Refah Partisi (“RP”) [Welfare Party] received twenty-one percent of the votes, sufficient to allow its leader to form a coalition government and become the first Islamist prime minister of Turkey.⁹⁰ The RP’s success shifted the political focus from constitutional democratization to the preservation of secularism, triggering a heightened military influence in Turkish politics, which culminated in another military intervention in February 1997.⁹¹ Unlike the three previous coups d’état, the military did not take over the government, but rather conducted a “post-modern coup” by proposing an eighteen-article precaution package.⁹² Under heavy military pressure, the RP’s leader, Necmettin Erbakan, peacefully resigned from his post, manifesting the progress of Turkish democratic forces since the last coup d’état.⁹³ A few months later the RP was banned for its anti-secular activities.⁹⁴ This intervention, however, did not slow down the political Islamists, who had formed a new party, Fazilet

89. See BİLGİN, *supra* note 10, at 142 (noting the second wave of amendments); *see also* Türkiye Cumhuriyeti Anayasası Nov. 7, 1982 (Turk.) (amended 1995) (listing amendments to fourteen articles in 1995: Articles 33, 52, 53, 67, 68, 69, 75, 84, 85, 93, 127, 135, 149, and 171).

90. See AKŞİN, *supra* note 20, at 296 (discussing Refah Partisi’s (“RP”) success); *see also* Dokupil, *supra* note 16, at 109 (marking Erbakan as Turkey’s first Islamic prime minister).

91. See AKŞİN, *supra* note 20, at 301 (noting the intervention that took place on February 28, 1997); *see also* BİLGİN, *supra* note 10, at 143 (noting the greater military influence on politics in 1997).

92. See AKŞİN, *supra* note 20, at 301 (noting the eighteen-article precaution package proposed by the military to prevent against the fundamental Islamist government); *see also* Chtena, *supra* note 62 (quoting Stephen Kinzer, *Pro-Islamic Premier Steps Down in Turkey Under Army Pressure*, N.Y. TIMES, June 19, 1997 (characterizing the 1997 military intervention as a “soft coup”).

93. See Dokupil, *supra* note 16, at 117–19 (stating that the intervention resulted in the political ban in 1998 of RP and six of its deputies, including Erbakan, for carrying out anti-secular, pro-Islamist policies and, therefore, violating the Constitution); *see also* Chtena, *supra* note 62 (noting that Erbakan complied with the army directives by resigning). *But cf.* *supra* note 54 and accompanying text (stating that the 1960 Coup had ended with the execution of Prime Minister Menderes and other prominent politicians).

94. See AKŞİN, *supra* note 20, at 303 (noting the decision to ban the RP on January 16, 1998); *see also* ANAYASA MAHKEMESİ GEREKÇELİ KARAR REFAH PARTİSİ’NİN KAPATILMASI [Reasoned Decision of the Turkish Constitutional Court: Closing of the Welfare Party], Decision No. 1998/1, 1998, *available at* http://www.belgenet.com/dava/rpdava_g01.html (indicating the RP closure decision by the Constitutional Court).

Partisi (“FP”) [Virtue Party], months before the ban.⁹⁵ Yet, the FP joined its political party predecessors when the Constitutional Court held its Islamist agenda to be against the principle of secularism.⁹⁶ Once again, this decision proved to be no obstacle for advocates of RP and FP, who shortly thereafter formed a new political party, the Adalet ve Kalkınma Partisi (“AKP”) [Justice and Development Party], under the leadership of Recep Tayyip Erdoğan.⁹⁷

F. *Justice and Development Party, 2002–Present*

In November 2002, the AKP received over thirty-four percent of the total votes and formed the first single-party government, headed by an Islamist political party, in Turkish history.⁹⁸ Unlike the RP or the FP, the AKP abandoned the anti-secular Islamic framework, and embraced a moderate “conservative” position.⁹⁹ From his party’s inception, to its rise to power, Erdoğan proclaimed the AKP’s commitment to the EU accession process, the development and stabilization of

95. See Capezza, *supra* note 30, at 20 (marking when Fazilet Partisi (“FP”) was formed as prior to the date the Welfare Party (“RP”) was banned); see also Dokupil, *supra* note 16, at 119 (arguing that the ban was anticipated, allowing the RP members to establish a new Islamic party in advance of the decision).

96. See Dokupil, *supra* note 16, at 124 (discussing the banning of the FP); see also Capezza, *supra* note 30, at 20 (explaining that the FP was banned for having an unconstitutionally Islamist platform); see also ANAYASA MAHKEMESİ GEREKÇELİ KARAR FAZİLET PARTİSİ’NİN KAPATILMASI [Reasoned Decision of the Turkish Constitutional Court: Closing of the Virtue Party], Decision No. 2001/2, 2001, available at <http://www.belgenet.com/arsiv/fazilet.html> (reporting the FP closure decision by the Constitutional Court).

97. See Capezza, *supra* note 30, at 20 (noting the founding of the AKP under Erdoğan); see, e.g., Dokupil, *supra* note 16, at 106 (exemplifying the new mayor Erdoğan’s anti-Kemalist acts, including a reading of the Quran at the opening of a city council meeting).

98. See Press Release, U.S. Dep’t of State, *supra* note 9 (reporting the votes the AKP received in 2002); *supra* note 90 and accompanying text (designating Erbakan as the first Islamic prime minister in a coalition government).

99. See Capezza, *supra* note 30, at 20 (describing Erdoğan as a skilled politician who moderated his party’s image); see also Dokupil, *supra* note 16, at 127 (stating that Erdoğan abandoned his former hard-line Islamist rhetoric in support of a secular Turkey); Menderes Çınar, *The Militarization of Secular Opposition in Turkey; Report*, INSIGHT TURKEY, Apr.–June 2010, at 109 (noting however that the AKP does not endorse Islamic modernism, the idea that Islam is a form of life that is compatible with modernity as well as democracy).

Turkey's foreign relations, and economic reform.¹⁰⁰ The AKP was able to attract voters from a broader political spectrum than the RP or the FP by drawing on the similarity between the EU membership requirements and the AKP's democratization goals.¹⁰¹ Both agendas advocate the reduction of military influence in Turkish politics.¹⁰² Consequently, immediately after its rise to power in 2002, the AKP implemented a significant push toward Europeanization and democratization by passing numerous constitutional amendments.¹⁰³ Following its second victory in general elections, the AKP engaged in the process of re-defining the notions of national identity and secularism.¹⁰⁴ The AKP's democratic initiative allowed the party to downgrade the role of the military, which was further weakened by the *Ergenekon* cases, named after an alleged secret network that included academics, businessmen, journalists, military officers, and politicians who were accused of plotting a coup d'état to overthrow the AKP government.¹⁰⁵ Although it is argued that the

100. See Ulusoy, *supra* note 48 (noting the AKP's commitment to the EU-accession process).

101. See Capezza, *supra* note 30, at 20 (noting that the AKP aimed to appeal to an audience larger than the "Islamist base"); Ulusoy, *supra* note 48 (stating that the AKP viewed the EU accession process and the EU's priority of increasing the democratization of Turkey as being in line with their efforts to weaken military control in Turkish politics).

102. See Ulusoy, *supra* note 48 (noting that the EU accession requirements gave the AKP the opportunity to weaken military control in Turkish politics); Ward, *supra* note 21, at 222 ("[T]he AKP has, in opposing Kemalism, actually assumed the essential plank of Atatürk's European policy, to identify with it, and join it.").

103. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 73 (summarizing the AKP's efforts to harmonize Turkish law with the 2001 and 2004 constitutional amendments as well as with EU legislation); see also Çınar, *supra* note 99, at 110 (emphasizing the democratization process the AKP implemented in its early years).

104. See Ulusoy, *supra* note 48 (discussing the AKP's victory for a second consecutive term); see also Çınar, *supra* note 99, at 2 (observing that the AKP represents "a very loose redefinition of secularism . . . that accommodates Islamic public visibility in Turkey").

105. See, e.g., General Işık Koşaner, Chief of the Turkish General Staff, Resignation Statement (July 29, 2011), available at <http://online.wsj.com/article/SB10001424053111903520204576480440105206166.html> (noting the extent of the arrests in a speech, observing that "[a]t the moment, 250 generals and admirals, officers, non-commissioned officers and special Gendarmerie sergeants, 173 of them on active duty and 77 of them about to be retired, are in detention deprived of their freedom"); Rosemary Righter, *Erdoğan 1, Atatürk 0*, NEWSWEEK, Aug. 15, 2011, available at <http://www.thedailybeast.com/newsweek/2011/08/07/turkey-s-military-resignations-make-erdogan-even-stronger.html> ("Turkey now tops the world in jailing its journalists, surpassing China and Iran. Nearly 70 are in prison, thousands more are under

evidence was insufficient to prove a widespread plot, *Ergenekon* prosecutions resulted in the arrest of numerous retired and active duty officers, severely damaging the prestigious role of the military as the protectors of the Turkish state.¹⁰⁶ The *Ergenekon* cases allowed the AKP to gradually marginalize the military's role in the political sphere, thus clearing a strong obstacle from its path toward enhanced democratization of political society.¹⁰⁷ Several months prior to the *Ergenekon* trials, in March 2008, Turkey's chief prosecutor had initiated a case against the AKP seeking to ban the party for its "anti-secular" activities.¹⁰⁸ This ban case was supported by the military.¹⁰⁹ Some segments of Turkish society began to view the *Ergenekon* trials as the AKP's response to this ban case.¹¹⁰ Unlike the RP and FP, the AKP was not banned.¹¹¹ However, due to the fact that the party was a focal

interrogation . . ."); see Ulusoy, *supra* note 48 (noting that a number of retired and active duty officer were arrested under the *Ergenekon* case); see also *Coups Away*, *supra* note 73, at 2 (stating that the case is named after an alleged network of "rogue security officers, academics, journalists, and businessmen").

106. See Capezza, *supra* note 30, at 22 (noting that the *Ergenekon* prosecutions led to the arrest of hundreds of people); see also Ulusoy, *supra* note 48 (explaining how the *Ergenekon* cases damaged the prestigious role of the military in Turkey); Compare *Coups Away*, *supra* note 73 (arguing that the network was accused of conspiring to commit political violence and chaos in the country to justify a coup against the AKP), with Çınar, *supra* note 99 (distinguishing the *Ergenekon* case as an event that declared military interventions an illegal process that must be submitted to the rule of law).

107. See Ulusoy, *supra* note 48 (describing the marginalization process of the military); see also BİLGİN, *supra* note 10, at 143–44 (noting that the reforms implemented between 2001 and 2004 were focused on eliminating military influence over politics).

108. See ANAYASA MAHKEMESİ KARARI [Decision of the Turkish Constitutional Court:], Decision No. 2008/2, 2008, available at http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2611&content (indicating the Constitutional Court decision dismissing the ban case against the AKP initiated by the Chief Prosecutor, which resulted in a warning). See generally SETA FOUND. POL., ECON., & SOC. RES., THE CASE AGAINST THE JUSTICE AND DEVELOPMENT PARTY, (AKP PARTY) (2008), available at <http://www.setav.org/ups/dosya/10343.pdf> (summarizing the closure case against the AKP).

109. See *Coups Away*, *supra* note 73 (arguing that the military implicitly supported the chief prosecutor initiating the ban of the AKP). See *supra* notes 26–27 and accompanying text (describing the business circles, the military and the judiciary as forming the secular nationalist stronghold of Turkish society).

110. See *Coups Away*, *supra* note 73 (arguing that the AKP fought back after the military implicitly supported the ban case against the AKP); see also Ulusoy, *supra* note 48 (considering the *Ergenekon* case as a "bold step[]" taken by the AKP in the realm of civilian-military relations after the closure case against the party).

111. See ANAYASA MAHKEMESİ KARARI [Decision of the Turkish Constitutional Court:], Decision No. 2008/2, 2008, available at <http://www.anayasa.gov.tr/>

point of anti-secular activities, the Court issued a warning and fined the AKP in the amount of US\$29 million.¹¹²

Despite increasing criticism from some segments of society, the AKP's victory in the July 2007 elections, with almost forty-seven percent of the total votes, reaffirmed that a significant portion of Turkish society might favor the reevaluation of the secularist/Kemalist and pro-Western/pro-EU policies.¹¹³ Nonetheless, the AKP further consolidated its power when its presidential nominee, Abdullah Gül, Erdoğan's long-term comrade, was elected by an AKP-dominated TBMM in August 2007.¹¹⁴ With this election, any possibility of presidential vetoes regarding the constitutionality of future AKP legislation, seemed to have been removed.¹¹⁵ Considering that almost all of the EU harmonization packages have been implemented under the AKP governments in the past nine years, a further study of recent Turkey-EU history is necessary to understand the AKP's proposed changes and partially employed, including the constitutional reform package ("Package") that led to the constitutional referendum of 2010.¹¹⁶

[index.php?l=manage_karar&ref=show&action=karar&id=2611&content](http://www.setav.org/public/HaberDetay.aspx?Dil=tr&hid=7376&q=ak-party-survives-closure-case-what-is-next) (noting the Constitutional Court decision dismissing the ban case against the AKP); *see also* İHSAN DAĞI, SETA FOUND. FOR POLITICAL, ECON. AND SOC. RESEARCH, BRIEF NO: 19, POLICY BRIEF: AK PARTY SURVIVES CLOSURE CASE: WHAT IS NEXT? 1, 5–6 (Aug. 2008), *available at* <http://www.setav.org/public/HaberDetay.aspx?Dil=tr&hid=7376&q=ak-party-survives-closure-case-what-is-next> (analyzing the closure case against the AKP and explaining the verdict).

112. *See* Press Release, U.S. Dep't of State, *supra* note 9 (noting the Constitutional Court's decision to cut state funding for the AKP in half); *see also* Ulusoy, *supra* note 48 (noting that this amount corresponds to half of the AKP's state funding).

113. *See* Dokupil, *supra* note 16, at 55 (arguing that the success of Islamist parties suggests that many Turks favor a reevaluation of secularism in Turkey); *see* Ulusoy, *supra* note 48 (stating that the AKP received 46.7% of the votes in the 2007 elections).

114. *See* Capezza, *supra* note 30, at 22 (noting Gül's appointment as the 2007 presidential candidate for Erdoğan's AKP party); *see also* Press Release, U.S. Dep't of State, *supra* note 9 (describing Gül's election).

115. *See* Capezza, *supra* note 30, at 22 (noting that the creation of a strong unaccountable presidency is a common objective stipulated by the military in the 1982 Constitution and the AKP in the reform package, both of which contemplated that the position would be filled with someone favorable, enabling each to influence the policies of the country); *see, e.g.,* *Late Reflections on Referendum*, *TURKISH DAILY NEWS*, Oct. 17, 2007 (giving the example that, after Gül assumed office, the question of direct election of the president was submitted to popular vote).

116. *See supra* note 100–02 and accompanying text (illustrating the congruence of EU requirements and AKP reform proposals); *see also* TOKTAŞ & KURT, *supra* note 55, at 3 ("Turkey has already adopted nine EU harmonization packages . . . [m]ost of the

G. Turkey's EU Application Process and Reforms under the AKP

Turkey is the longest-standing candidate for membership in the EU.¹¹⁷ Its initial application to the European Economic Community (“EEC”), the first economic organization of European states, dates back to the 1950s.¹¹⁸ Turkey entered into a customs union agreement with the EEC in 1995 and was finally considered eligible for EU membership in 1999.¹¹⁹ This Section focuses on the most recent period of Turkish-European relations starting in 1999.

After the EU formally declared Turkey's candidacy, Turkey attempted to accelerate its efforts to meet the Copenhagen Criteria, the formal name for EU membership criteria.¹²⁰ Beginning with the Turkish National Programme for the Adoption of the Acquis (“NPAA”), in 2001, Turkey witnessed the most radical changes to its constitution since 1982.¹²¹ As a result of these reform efforts, the EU commenced formal

reforms that have been implemented to date were initiated and conducted by the AKP government in the 2000s.”). *See generally* ÖZBUDUN & GENÇKAYA, *supra* note 34, at 49–79 (listing the contents of constitutional amendments implemented between 2001 and 2006).

117. *See* Ward, *supra* note 21, at 208 (noting that Turkey is the longest-standing applicant to the EU); *see also* ÖZBUDUN & GENÇKAYA, *supra* note 34, at 81 (noting the historical character of Turkey's application to join the EU).

118. *See* Ward, *supra* note 21, at 208 (stating that the initial application for “association” with the European Economic Community was made in the early 1950s); *see also* AKŞİN, *supra* note 20, at 287 (noting that the official application for membership was made by Ozal in 1987).

119. *See* AKŞİN, *supra* note 20, at 296 (noting that the customs agreement with the European Union was signed on March 6, 1995); *see also* Ward, *supra* note 21, at 208–09 (summarizing the history of Turkey's attempts at EU accession); ÖZBUDUN & GENÇKAYA, *supra* note 34, at 82 (discussing the development of Turkey's EU candidacy during the 1990s).

120. *See* ÖZBUDUN & GENÇKAYA, *supra* note 34, at 85 (discussing reforms needed for Turkey to meet the Copenhagen Criteria); *see also* Glossary Definition of *Accession Criteria (Copenhagen Criteria)*, EUROPA.COM (Nov. 22, 2010), http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm (last visited Jan. 30, 2011) (listing the three criteria a new member state must meet to join the EU).

121. *See* Banani, *supra* note 31, at 124 (discussing the adoption of the Turkish National Programme for the Adoption of the Acquis (“NPAA”)); *see also* BİLGİN, *supra* note 10, at 143–44 (noting the radical political and economic reforms adopted by Turkey after 2001 including the abolishment of the death penalty, adoption of equality of spouses, abolishment of DGMs and increase of civilian members of MGKS, prevention of torture and mistreatment, and restrictions on party closures).

accession negotiations with Turkey in October 2005.¹²² While Turkey's military had divided sentiments toward the EU accession process and questioned its consistency with the Kemalist ideology, the progress toward meeting the EU membership criteria during the first three years of AKP rule proved that the party was committed to joining the EU and had adopted the cause of European integration as its primary goal.¹²³ Nonetheless, the commonality between the reforms implemented for the EU accession process and for the AKP's Anti-Kemalist, Islamist agenda raised suspicions in some segments of Turkish society regarding the AKP's motivations.¹²⁴ While the AKP had initially presented itself as a moderate conservative party, with a heavily Islamist background, aiming to reinterpret Kemalism in Turkey, it has nonetheless proven itself to be the first party to achieve success in advancing Turkey's path to joining the EU.¹²⁵ Some scholars have noted the irony that the AKP has now subsumed Atatürk's original intention of creating a European Turkey.¹²⁶

122. See Press Release, U.S. Dep't of State, *supra* note 9 (listing key events in the history of Turkey's attempted accession to the EU); see also Ward, *supra* note 21, at 210 (noting that the projections of the Copenhagen Council in 2002 were that accession negotiations would commence with Turkey in December 2004, if the country met the Copenhagen Criteria).

123. See, e.g., ÖZBUDUN & GENÇKAYA, *supra* note 34, at 73 (noting that six of the nine harmonization packages were promulgated under the AKP government); see Capezza, *supra* note 30, at 20 (observing that the AKP embraced the EU accession process).

124. See Ward, *supra* note 21, at 222 (stating that the case for the EU is aligned with the anti-Kemalist case); see also Adrien Katherine Wing, *International Law, Secularism, and the Islamic World*, 24 AM. U. INT'L L. REV. 407, 421 (2009) (defining the AKP as a group of politicians that are heavily Islamist, causing some secular Turks to fear a change in laws under the AKP government).

125. See Ward, *supra* note 21, at 222 (discussing the AKP's pursuit of toward the EU accession process); see, e.g., ÖZBUDUN & GENÇKAYA, *supra* note 34, at 73 (noting two thirds of the harmonization packages were affected under the AKP government).

126. See Ward, *supra* note 21, at 222 (arguing that the AKP, by standing in opposition to Kemalism, in reality embraced Atatürk's European policy); Press Release, U.S. Dep't of State, *supra* note 9, at 3 (suggesting that the current is rooted in a tradition of challenge to Kemalist principles).

II. REFERENDUM PROCESS, THE AMENDMENT PACKAGE, AND SEPTEMBER 12, 2010, RESULTS

The AKP's efforts to reform Turkish politics continued after 2005 when the party pushed for more radical changes to revise, if not replace, the amended 1982 Constitution with the 2010 Reform Package, marking the latest reform attempt.¹²⁷ Part II of this Comment introduces the articles amended in the Package, examines the referendum process and its results, and discusses the reactions to the results by Turkish society, domestic and foreign politicians, and the media. Specifically, Section A observes the developments with regard to constitutional amendments between 2007 and 2010, including the failed AKP attempt to draft a completely new constitution in 2007. Section B discusses the six-month period immediately prior to the referendum, beginning in March 2010, when the AKP announced its decision to propose an amendment package. Section C examines the amended articles and distinguishes the revisions made to the constitutional text. Finally, Section D presents the referendum results and the different statements and reviews made by Turkish and non-Turkish politicians and media.

A. Amendments, 2007–2010

Amending the 1982 Constitution is not a novel topic in Turkish politics.¹²⁸ Following this propensity, a new constitution

127. See Law No. 5982 of May 7, 2010, Resmi Gazete [R.G.] No. 27580 (May 13, 2010) (Turk.) (providing the 2010 Reform Package ("Package") with proposed amendments to the Turkish Constitution). An English translation of the Package is available at http://www.abgs.gov.tr/files/BasinMusavirlik/haberler/constituional_amendments.pdf. See generally *Anayasa Değişiklik Paketini Anlama Kilavuzu* [A Guide to Understanding the Constitutional Amendment Package] TURKISH ASIAN CTR. FOR STRATEGIC STUDIES (Aug. 2010) [hereinafter TASAM], available at <http://www.tasam.org/Files/PDF/referandumkilavuz.pdf> (listing and analyzing all of the changes proposed in the 2010 reform package and their consequences).

128. See SETA FOUND. FOR POLITICAL, ECON., AND SOC. RESEARCH, SETA ANALİZ, 2010'DA TÜRKİYE [SETA ANALYSIS, TURKEY IN 2010] 6, 48 (Jan. 2011), available at <http://setav.org/ups/dosya/59657.pdf> (noting that the Turkish public is not a stranger to referendum and constitutional changes and that there has been a consensus among the political parties and the public in support of a new, civil, and democratic constitution). See generally *Türkiye Cumhuriyeti Anayasası* Nov. 7, 1982 (Turk.) (amended 2010) (indicating that between 1982 and 2010, the 1982 Constitution was amended seventeen times in total). A version of the Constitution of

had long been on the AKP's agenda and even more so after its re-election in 2007.¹²⁹ Almost all of the propositions brought to the table by the AKP prior to the Package had been opposed by the former President, the military, the Constitutional Court, the main opposition party, the CHP, and certain segments of the public, who suspected that the AKP was motivated by a "hidden Islamist agenda" incompatible with the secular character of the Turkish state.¹³⁰ The prospects of a new or amended constitution proposed by the AKP improved with the election of Abdullah Gül as the President of the Republic, an office that had been regarded as an instrument of checks and balances (in addition to the military) by the secular elite.¹³¹ In light of the Turkish president's broad governmental appointment powers, the election of an AKP ally as President was viewed by this group as signifying the fall of a fundamental stronghold of the secularists and the rise of an even greater threat to Kemalist principles.¹³²

the Republic of Turkey, as amended since 1982, is available at <http://www.anayasa.gen.tr/1982ay.htm>.

129. See Jonathan Head, *Why Turkey's Constitutional Referendum Matters*, BBC NEWS (Sep. 10, 2010, 10:42 PM), <http://www.bbc.co.uk/news/world-europe-11263302?print=true> (noting that the AKP talked about amending the Constitution for a number of years, but, until the Package in 2010, it had not taken action); see also *Erdogan Says to Start Work on New Constitution*, ALARABIYA.NET (Sept. 12, 2010), <http://www.alarabiya.net/articles/2010/09/13/119168.html> (reporting Erdoğan's statement of his party's intent to start drafting a new constitution after the AKP was re-elected in 2007).

130. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 103 (indicating the secularists' fear that an Islamist presidency would threaten the secular foundations of the country); see also Head, *supra* note 129 (discussing the uneasy sentiment of many secular Turks regarding Erdoğan's government and handling of the Package). Turkish secularists consist mainly of elites and the well-educated upper classes in metropolitan areas. See *supra* note 28 and accompanying text.

131. See *Playing Safe*, ECONOMIST, Apr. 25, 2007 (noting that Abdullah Gül is the AKP's candidate for presidency and if elected, Gül can be expected to endorse the AKP government's strategies); ÖZBUDUN & GENÇKAYA, *supra* note 34, at 103 (describing the Office of the President as a mechanism of checks and balances that state elites may exercise over the President). See generally *supra* note 114 and accompanying text (discussing Gül's appointment to the presidency).

132. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 103 (indicating that, in the past, the presidential powers granted by the Constitution, similar to those granted to the military, enabled the President to interfere and prevent an Islamist party from implementing laws that would strip away the secularist character of the Constitution, the judicial system, and the universities); see, e.g., Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, amend. XVI (Turk.) (stipulating that all Constitutional Court members be elected by the president).

In early 2007, the AKP began the process of drafting a new constitution.¹³³ Although the proposed constitution seemed to serve democracy and liberalism far more than the 1982 Constitution, it was heavily criticized by the same segments of the Turkish public.¹³⁴ Before the draft constitution was announced, it was leaked to the media, leading to a firm opposition from members of the military-civilian bureaucracy and, therefore, the postponement of the campaign to reform the Constitution.¹³⁵

B. Referendum Process, March–September 2010

In late March 2010, the AKP announced the reform Package.¹³⁶ Twenty-six amendments were approved by the TBMM on May 7, 2010, clearing the Package's path to the president's signature and popular vote.¹³⁷ Yet the two opposition parties contested the constitutionality of the Package, requesting its annulment for violating the secularism principle in the

133. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 104–05 (indicating that in June 2007, Erdoğan requested that several constitutional law professors draft a new constitution); see also POLICY BRIEF, *supra* note 11, at 3 (noting that Erdoğan asked a group of law professors, headed by Ergun Özbudun, to prepare a new draft constitution).

134. See POLICY BRIEF, *supra* note 11, at 3 (“[T]he draft constitution was more democratic and liberal than the present Turkish Constitution.”); see also ÖZBUDUN & GENÇKAYA, *supra* note 34, at 105 (noting that the draft was not welcomed by those fearing the AKP's hidden Islamist agenda); *supra* note 130 and accompanying text (describing the secularist groups opposing the AKP).

135. See ÖZBUDUN & GENÇKAYA, *supra* note 34, at 105 (noting that the AKP's original intent had been to foster a broad public debate before the draft would be presented to the TBMM, followed by a referendum); see also POLICY BRIEF, *supra* note 11, at 3 (noting that the draft of the Constitution was leaked to the media prior to it becoming public and that strict public opposition formed immediately thereafter).

136. See Law No. 5982 of May 7, 2010, Resmi Gazete [R.G.] No. 27580 (May 13, 2010) (Turk.) (presenting the twenty-six article reform package); see also *Paşalara Yüce Divan Yolu*, MILLİYET.COM.TR (Mar. 30, 2010), <http://www.milliyet.com.tr/Siyaset/HaberDetay.aspx?aType=HaberDetay&ArticleID=1218095&Date=29.01.2011&Kategori=siyaset&b=Pasalara%20Yuce%20Divan%20yolu> (discussing the content of the two articles added to the package at the last minute).

137. See *Turkey's Parliament Clears Way for Constitution Referendum*, EURACTIV.COM (May 7, 2010) [hereinafter *Turkey's Parliament*], <http://www.euractiv.com/enlargement/turkeys-parliament-clears-way-referendum-news-493906> (reporting the TBMM voting process and approval of the amendment package); POLICY BRIEF, *supra* note 11, at 4 (stating that in order for a bill to become law in the Turkish parliament, two-thirds of the deputies, 367 out of 550 votes, must vote in the affirmative, whereas a minimum of 330 votes are sufficient to put the bill to a referendum).

Constitution.¹³⁸ In less than two months, on July 7, 2010, the Court announced its decision to approve most of the amendments, annulling only the procedures regarding the nomination of members to the Constitutional Court and to the HSYK (Supreme Council of Judges and Public Prosecutors).¹³⁹ This decision allowed the Package to move toward referendum on September 12, 2010.¹⁴⁰

C. *The Amendment Package*

The Package consisted of twenty-six amendments that can be grouped into two parts: reforms regarding fundamental rights and freedoms (Articles 1, 6, 7, 8, 9, and 23) and those concerning the reorganization of the judiciary (Articles 11 and 14–22).¹⁴¹ The following sections will discuss certain amendments proposed in the Package.

1. Article 1: Equality before the Law

Article 1 of the Package seeks to revise Article 10 of the pre-amendment 1982 Constitution concerning equality of all citizens before the law.¹⁴² This article was proposed to conform

138. See POLICY BRIEF, *supra* note 11, at 4 (noting the annulment case initiated by the two main opposition parties); see also *Court Ruling Throws Turkey into Pre-Election Mode*, THE DAILY STAR, July 9, 2010, <http://www.dailystar.com.lb/News/Middle-East/Jul/09/Court-ruling-throws-Turkey-into-pre-election-mode.ashx#axzz1cu0WwFZO> (“Opponents see the reforms as a government attempt to . . . undermine Turkey’s secular principles. . . . The opposition had asked the entire package to be thrown out.”).

139. See POLICY BRIEF, *supra* note 11, at 4 (stating that the Court amended the content of two main articles (Articles 146 and 159), and two related, provisional articles (Articles 18 and 19) regarding the organization of the Constitutional Court and HSYK); see also Dan Bilefsky & Sebnem Arsu, *Turkish Court Rejects Parts of Constitution Overhaul*, N.Y. TIMES, July 7, 2010, at A9 (announcing the Court’s partial rejection of the reform package).

140. See *Turkey’s Parliament*, *supra* note 137 (discussing the path of the Package toward a referendum); see also POLICY BRIEF, *supra* note 11, at 4 (noting the date for the referendum).

141. See POLICY BRIEF, *supra* note 11, at 5–6 (grouping the Package into two categories). See generally Law No. 5982 of May 7, 2010, Resmi Gazete [R.G.] No. 27580 (May 13, 2010) (Turk.) (listing the amendments in the Package).

142. Law No. 5982, art. 1 (noting the amendment to Article 10 in its original language); POLICY BRIEF, *supra* note 11, at 9 (explaining, in an English translation, that the following phrases were added to the text of the Constitution: “The measures to be taken to this end [equality between men and women] shall not be interpreted as against the principle of equality. The measures taken for children, elderly, disabled

Turkey's constitution with the EU's Charter on Fundamental Rights and aims to create a foundation in the Constitution for positive discrimination, favoring citizens in need of special protection, including children, the elderly, disabled people, widows, invalids, veterans, and orphans of martyrs.¹⁴³

2. Article 6: Right of Collective Bargaining

Article 6 of the Package revises Article 53 of the pre-amendment 1982 Constitution regarding the right of collective bargaining and grants union rights to civil servants allowing them to engage in collective bargaining.¹⁴⁴ The consolidated version proposes: "Civil servants and other public officials have the right to conclude collective agreement[s] . . . [and i]n case of disputes, . . . appeal to the Conciliation Board of Public Servants, [decisions of which] shall be decisive and in the force of collective agreement."¹⁴⁵ In addition, the changes allow provisions of collective agreements to be reflected on pensioners.¹⁴⁶

people, widows and orphans of martyrs as well as for invalid and veterans shall not be considered as against the principle of equality").

143. Law No. 5982, art. 1 (noting the amendment to Article 10 in its original language); see POLICY BRIEF, *supra* note 11, at 5, 9 (stating that the "article was reformulated in light of EU's Charter on Fundamental Rights;" and explaining that:

Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice. The measures to be taken for children, elderly, disabled people, widows and orphans of martyrs as well as for invalids and veterans shall not be considered as against the principle of equality.

See generally ENSAROĞLU *supra* note 60, at 8–11 (analyzing the amendment to Article 10 within the context of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights).

144. Law No. 5982, art. 6 (removing the third and fourth paragraphs from the 53rd Article of the Constitution, but adding in part that civil servants and other public officials have the right of collective bargaining); see ENSAROĞLU, *supra* note 60, at 21–22 (discussing the amendment to Article 53 within the context of international human rights and democratization).

145. Law No. 5982, art. 6 (noting the amendment to Article 53 in its original language); POLICY BRIEF, *supra* note 11, at 11 (comparing a translated version of the language of Article 53 in the 1982 Constitution to the proposed change in the Package).

146. Law No. 5982, art. 6 (noting the amendment to Article 53 in its original language); see POLICY BRIEF, *supra* note 11, at 11 (translating into English the textual changes proposed by the Package to Article 53 of the 1982 Constitution: "reflection of the provisions of collective agreement on the pensioners . . . shall be regulated by law").

3. Article 7: Right to Strike and Lockout

Article 7 of the Package repeals the third and seventh paragraphs of Article 54 of the Constitution regarding the right to strike and lockout.¹⁴⁷ The repealed portions held labor unions liable for any damage caused in a work place during strikes and prohibited “politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction.”¹⁴⁸ With this change, Article 54 brings union rights in Turkey closer to the human rights standards of developed democracies.¹⁴⁹

4. Article 8: Right to Petition, Right to Information and Appeal to the Ombudsman

Article 8 of the Package revises Article 74 of the pre-amendment 1982 Constitution regarding the right to petition.¹⁵⁰ The title of Article 74 is changed in the proposal, translated to mean “Right to Petition, Right to Information, and Appeal to

147. Law No. 5982, art. 7 (proposing changes to Article 54); *see* POLICY BRIEF, *supra* note 11, at 12 (comparing the language of Article 54 in the 1982 Constitution regarding the right to strike and lockout to the proposed language in the Package).

148. *See* Law No. 5982, art. 7 (noting the language proposed for removal in its original language); POLICY BRIEF, *supra* note 11, at 12 (comparing an English translation of the language of Article 54 in the 1982 Constitution to the proposed change in the Package); *see* ENSAROĞLU, *supra* note 60, at 23 (noting that the Package removes many of the prohibitions regarding general and politically motivated strikes and lockouts, which were introduced by the 1980 Coup in the 1982 Constitution). Go-slows, or slowdowns, are industrial actions where employees work more slowly to persuade an employer to agree to higher pay or better working conditions. CAMBRIDGE DICTIONARIES ONLINE, <http://dictionary.cambridge.org/dictionary/british/go-slow> (last visited Nov. 14, 2011).

149. *See* POLICY BRIEF, *supra* note 11, at 12 (comparing an English translation of the language of Article 54 in the 1982 Constitution regarding the right to strike and lockout to the proposed language in the Package); *see also* ENSAROĞLU, *supra* note 60, at 23 (noting that the Package removes many of the prohibitions regarding general and politically motivated strikes and lockouts, which were introduced by the 1980 Coup in the 1982 Constitution and arguing that general and politically motivated strikes and lockouts are considered part of human rights in developed democracies).

150. Law No. 5982, art. 8 (providing the four paragraphs added to Article 74 concerning the right to petition and the establishment of the Ombudsman Office); POLICY BRIEF, *supra* note 11, at 13 (comparing the language of Article 74 in the 1982 Constitution, translated into English, to the language offered by the Package, including the new language regarding the Ombudsman).

the Ombudsman,” and four paragraphs have been added.¹⁵¹ The only change regarding the right to information and appeal is in the third paragraph, which states: “Everyone has the right to information and apply to ombudsman [sic].”¹⁵² The revisions to Article 74 are especially significant because they establish an independent ombudsman to investigate and review the actions of the administration and their conformity with the law.¹⁵³ Institutions such as the Ombudsman Office, which are independent from the administrative and legislative bodies, have been welcomed and supported by the United Nations Human Rights Committee.¹⁵⁴ The additions propose that the Ombudsman’s Office be subordinate to the TBMM Presidency and that the Chief Ombudsman be elected for four year terms by the TBMM.¹⁵⁵

151. Law No. 5982, art. 8 (providing the changes made to Article 74); see POLICY BRIEF, *supra* note 11, at 13 (noting in English the differences between the Constitution and the Package proposal, including the consolidated title of the Article: “Right to Petition, Right to Information and Appeal to the Ombudsman”).

152. See Law No. 5982, art. 8 (providing the changes made to Article 74 in Turkish); POLICY BRIEF, *supra* note 11, at 13 (noting that, as translated in English, the phrase “The way of exercising this right shall be determined by law” in the Constitution is replaced by “[e]veryone has the right to information and apply to ombudsman [sic].” The remaining changes are regarding the organization and functions of the Ombudsman Office.); ENSAROĞLU, *supra* note 60, at 26 (describing the right to information as an important component of freedom of expression).

153. See Law No. 5982, art. 8 (noting the amendment to Article 74 in its original language); see also POLICY BRIEF, *supra* note 11, at 6 (“Everyone has the right to information and [to] apply to [the] Ombudsman.”); ENSAROĞLU, *supra* note 60, at 26 (discussing the benefits of the Ombudsman Office).

154. See ENSAROĞLU, *supra* note 60, at 26 (stating that the United National Human Rights Committee has been very supportive of institutions that are established by governments but function independently). See generally TASAM, *supra* note 127 (depicting the Ombudsman structure in numerous European states, which sets forth that the Ombudsman be elected by the Parliament and arguing that the term of office set forth in the Package should be twelve years).

155. See Law No. 5982, art. 8 (noting the amendment to Article 74 in its original language); see also POLICY BRIEF, *supra* note 11, at 13 (“The Ombudsman Office established subordinate to the Presidency of the Turkish Grand National Assembly investigates the complaints related with the operation of the administration.”); TASAM, *supra* note 127 (noting that the Ombudsman’s term of office is matched to the new legislative year, which constitutes an obstacle for a completely independent Ombudsman Office. In addition, unlike in European states, where the Ombudsman undertakes investigations on behalf of the Parliament, the proposed language subordinates the Ombudsman Office to the TBMM Presidency.).

5. Article 9: TBMM Membership

Article 9 of the Package removes the last paragraph of Article 84 in the pre-amendment 1982 Constitution, which effects the termination of membership of deputies in the TBMM.¹⁵⁶ The amendment repeals the deprivation of membership for deputies whose actions resulted in the closure of their parties, rendering this provision consistent with the European Convention on Human Rights (“Convention”) and the case law of the European Court of Human Rights (“ECHR”).¹⁵⁷ The deleted portion from the amended 1982 Constitution called for the termination of the “membership of a deputy whose statements and acts are cited in a final judgment by the Constitutional Court as having caused the permanent dissolution of his party.”¹⁵⁸ Even though general statements and actions by TBMM members are protected under legislative non-liability, the Constitutional Court has in the past repeatedly

156. Law No. 5982, art. 9 (indicating the amended version of Article 84, which removed a stipulation from the 1982 Constitution that rescinded a deputy’s membership in the TBMM if his statements and acts were cited in a final judgment by the Constitutional Court as having caused the permanent dissolution of his party); *see* POLICY BRIEF, *supra* note 11, at 5, 14 (comparing the pre-amendment language of Article 84 to the one proposed in the Package).

157. *See* Law No. 5982, art. 9 (indicating the language that would be repealed from Article 84 of the 1982 Constitution); *see also* POLICY BRIEF, *supra* note 11, at 6 (“The revision to Article 84 repeals the deprivation of MP status for those whose actions lead to the closure of their parties.”); ENSAROĞLU, *supra* note 60, at 32 (stating that the existing language of Article 84 is inconsistent with international human rights law). In the past, the ECHR has repeatedly decided that the regulations in the Turkish Constitution regarding political bans and loss of TBMM membership violate Article 3 of the Protocol No. 1 of the Convention concerning the right to elect and be elected. ENSAROĞLU, *supra* note 60, at 32. *See generally* Convention for the Protection of Human Rights and Fundamental Freedoms art. 11, Nov. 4, 1950, 213 U.N.T.S. 221 (depicting the standards for freedom of assembly and association); Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Mar. 20, 1952, 213 U.N.T.S. 262 (agreeing to the right to free elections that ensures the free expression of opinion in the contracting states).

158. Law No. 5982, art. 9 (providing the proposed language to be removed from Article 84); POLICY BRIEF, *supra* note 11, at 16 (comparing the language of Article 125 in the 1982 Constitution, as it would be if translated into English, to the amended one proposed in the 2010 Package). *But see* TASAM, *supra* note 127 (arguing that the revisions are pointless as Article 84 in the 1982 Constitution already avails TBMM members of the benefits of legislative non-liability for their statements and waives them of criminal and statutory prosecution).

based its ban decisions on the statements and sanctions of TBMM members of that party.¹⁵⁹

6. Article 11: Recourse to Judicial Review

Article 11 of the Package revises Article 125 of the pre-amendment 1982 Constitution.¹⁶⁰ Together with the changes made to Articles 145, 156, and 157, these changes aim to reform the military judiciary.¹⁶¹ The changes suggested in Article 11 would make the decisions of Yüksek Askeri Şura (“YAŞ”) [Supreme Military Council] regarding the expulsion of military officers from the Turkish Armed Forces subject to judicial review.¹⁶² Nevertheless, the new draft makes no exception for YAŞ decisions concerning promotion procedures and retirement due to a shortage of cadres.¹⁶³ Another change in Article 125 is in the fourth paragraph where the consolidated version adds the following: “Judicial power shall be limited to control of the lawfulness of administrative actions and

159. See TASAM, *supra* note 127 (noting that prosecuting a political party for the statements or actions of its members has been used as a basis in political party ban decisions in Turkey, a practice that is not sanctioned under international human rights law); see, e.g., *supra* note 96 (quoting the Constitutional Court decision regarding the closure of the FP [Virtue Party], which was based on the acts and statements of some of its members).

160. Law No. 5982, art. 11 (providing the language added to Article 125 in the amendment package regarding recourse to judicial review); see POLICY BRIEF, *supra* note 11, at 8 (“According to amended Article 125, judicial remedies will be available against the decisions of the Supreme Military Council regarding discharges of any kind, except for decisions regarding promotion procedures and retirement due to shortage of cadres.”).

161. See Law No. 5982, arts. 11, 15, 20, 21 (providing the changes made to Article 125, 145, 156, and 157 regarding military courts); TASAM, *supra* note 127 (analyzing each article amended in the 2010 reform package).

162. See Law No. 5982, art. 11 (providing proposed changes to Article 125 regarding judicial remedies against certain decisions made by Yüksek Askeri Şura (“YAŞ”)); POLICY BRIEF, *supra* note 11, at 16 (noting the contrast between the language of Article 125 in the 1982 Constitution and the reform offered regarding this article in the Package).

163. See Law No. 5982, art. 11 (noting the language of amended Article 125, which makes an exception for YAŞ decisions concerning certain promotions and retirements); POLICY BRIEF, *supra* note 11, at 16 (translating into English and providing a comparison between the language in the 1982 Constitution and the Package).

procedures and shall under no circumstance be used as the control of expediency.”¹⁶⁴

7. Article 14: Judicial Oversight

Article 14 of the Package completely modifies Article 144 of the pre-amendment 1982 Constitution regarding the supervision of judges and public prosecutors.¹⁶⁵ It renames Article 144 “The Inspection of the Judicial Services” and proposes that the public prosecutors proceed in the following way: “The inspection of judicial services and the administrative duties of public prosecutors by the Ministry of Justice shall be conducted by judicial inspectors and internal auditors, who should be a judge or a prosecutor by profession. Whereas examination, inquiry, and investigation procedures shall be conducted by judicial inspectors.”¹⁶⁶

8. Article 15: Military Justice

Article 15 of the Package revises Article 145 of the pre-amendment 1982 Constitution regarding military justice.¹⁶⁷ The powers granted to military justice have been modified by each Turkish Constitution.¹⁶⁸ Under the 1961 Constitution the jurisdiction of military justice was broadened and the Military Court of Cassation was established as the final reviewing

164. Law No. 5982, art. 11 (reflecting the amended language of Article 125); *see also* POLICY BRIEF, *supra* note 11, at 16 (illustrating the English translation of Article 125’s original and amended version).

165. Law No. 5982, art. 14 (providing a completely revised Article 144 of the 1982 Constitution); *see* POLICY BRIEF, *supra* note 11, at 7 (translating Article 14 of the Package into English: “With the proposals on Article 144 and 159, the composition and the expansion of the HCJP [High Council for Judges and Public Prosecutors] are restructured to include a broader representation of judicial officials”).

166. Law No. 5982, art. 14 (reflecting the amended language of Article 144); *see also* POLICY BRIEF, *supra* note 11, at 18 (illustrating the English translation of Article 144’s original and amended version).

167. Law No. 5982, art. 15 (stating the language of amended Article 145 including the three revised paragraphs regarding the jurisdiction of military justice); *see* POLICY BRIEF, *supra* note 11, at 7 (summarizing the revisions to military justice, which included amendments to Articles 125, 145, 156, and 157).

168. *See* Türkiye Cumhuriyeti Anayasası July 20, 1961, art. 141 (Turk.) (providing the Turkish version of Article 141, which established the Military Court of Cassation and noting that it was amended in 1971); *see also* ENSAROĞLU, *supra* note 60, at 42 (noting that the Military Court of Cassation was established by Article 141 in the 1961 Constitution, which was amended in 1971 after the second coup).

authority for decisions made by military courts and certain decisions in state courts rendered against military officials.¹⁶⁹ The 1971 amendments added the High Military Administrative Court of Appeals to military courts as a parallel to the civilian Council of State, which created a dual court system inconsistent with the principles of a democratic constitutional state.¹⁷⁰ The 1982 Constitution strengthened the authority of military courts and expanded the jurisdiction of the High Military Administrative Court of Appeals.¹⁷¹

The revision to Article 145, envisages limitations on the expanded jurisdiction of military courts to try military personnel only for military offenses.¹⁷² The new draft, while continuing to grant jurisdiction to military courts to “handle cases regarding military offences committed by military personnel and offences committed by military personnel against military personnel or related to their military services or duties,” stipulates that military personnel’s “offences against the security of the state, constitutional order and the functioning of this order shall be handled in judicial courts.”¹⁷³ In addition, the new draft removes

169. See *supra* note 60 and accompanying text (discussing the establishment of the Military Court of Cassation in the 1961 Constitution and the increasing power of military justice in the following constitutions); see also ENSAROĞLU, *supra* note 60, at 42 (stating that the 1971 amendments established the High Military Administrative Court of Appeals).

170. See ENSAROĞLU, *supra* note 60, at 42 (providing the historical context of military justice, specifically the dual court system created by the 1961 Constitution and 1971 amendments and noting that the expansion of military jurisdiction to the detriment of the judiciary led to the adjudication of military personnel and civilians in different court systems.); see also POLICY BRIEF, *supra* note 11, at 7 (comparing the pre-amendment language of Article 145 to the revised text).

171. See Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, arts. 145, 156–157 (Turk.) (showing how the 1982 Constitution amended the articles regarding military justice); see also ENSAROĞLU, *supra* note 60, at 42 (providing the constitutional context of military justice in the 1961 and 1982 Constitutions and 1971 amendments). The existence of a military justice system is problematic in terms of human rights and democracy. In constitutional states (states of law), civilians cannot be heard in military courts and military court decisions must be reviewed by civilian high courts. See ENSAROĞLU, *supra* note 60, at 42.

172. See Law No. 5982, art. 15 (noting the language of amended Article 145); see also POLICY BRIEF, *supra* note 11, at 7 (“The amended Article 145 limits the competence of the military judiciary to the handling of military offences.”).

173. Law No. 5982, art. 15 (reflecting the amended language of Article 145); POLICY BRIEF, *supra* note 11, at 18 (illustrating the English translation of Article 145’s original and amended version); see ENSAROĞLU, *supra* note 60, at 43 (stating that the

the term, “in military places.”¹⁷⁴ Finally, the last sentence in the article concerning the “[r]elations between military judges and the office of commander . . . regarding the requirements of military service apart from judicial functions, shall also be prescribed by law” is no longer in the text.¹⁷⁵

The new draft removes the term, “or under martial law” from the list in the second paragraph, which stipulates that the organization of “offenses and persons falling within the jurisdiction of military courts in time of war” and “the appointment of judges and public prosecutors from judicial courts to military courts shall be regulated by law.”¹⁷⁶ Whereas the pre-amendment 1982 Constitution allowed non-military persons to be tried in military courts in times of war or under martial law, the consolidated version of the article limits this only to times of war.¹⁷⁷

9. Article 16: Organization of the Constitutional Court

Article 16 of the Package revises Article 146 of the pre-amendment 1982 Constitution regarding the size and

amendments in Article 145 provide the adjudication in state courts for offences against the security of the state, constitutional order and the functioning of this order).

174. Law No. 5982, art. 15 (noting the language of amended Article 145 in Turkish); POLICY BRIEF, *supra* note 11, at 18 (delineating the differences between Article 145 of the 1982 Constitution and the Package in an English translation); *see* ENSAROĞLU, *supra* note 60, at 43 (arguing that by removing “in military places” the revisions further restrict the military courts’ jurisdiction).

175. Law No. 5982, art. 15 (noting the language of amended Article 145 in Turkish); POLICY BRIEF, *supra* note 11, at 18 (illustrating the English translation of Article 145’s original and amended version. “The amended Article 145 limits the competence of the military judiciary to the handling of military offences.”).

176. Law No. 5982, art. 15 (noting the language of amended Article 145 in Turkish); POLICY BRIEF, *supra* note 11, at 18 (providing the language that has been removed from the 1982 Constitution); *see* ENSAROĞLU, *supra* note 60, at 42 (stating that the amended Article 145 as proposed in the Package limits the jurisdiction of military courts); TASAM, *supra* note 127 (noting the consequences of martial law with regards to shift in powers from civilian to military bureaucracy and the adjudication of offenses in relation to the reasons of martial law by military courts).

177. *See* Law No. 5982, art. 15 (noting the language of amended Article 145 in Turkish); POLICY BRIEF, *supra* note 11, at 18 (“Non-military persons shall not be tried in military courts excluding the state of war.”). According to the pre-amendment constitution, civilians can be tried in military courts in times of martial law. *See* TASAM, *supra* note 127.

membership of the Constitutional Court.¹⁷⁸ The 1982 Constitution stipulated an eleven-member Constitutional Court, whose membership would be decided directly or indirectly by presidential appointment.¹⁷⁹ The revisions put forward in Article 16 of the Package would increase the membership of the Constitutional Court to seventeen members, and permit the TBMM to elect three of those members.¹⁸⁰ Furthermore, the proposal regulates the appointments to the Court made by the President, while requiring two such appointments to be made from among military court judges.¹⁸¹ Moreover, Article 16 sets the minimum age requirement for Constitutional Court members at forty-five, increases the experience requirement for category one judges and prosecutors from fifteen to twenty years and makes way for court rapporteurs to become Constitutional Court members.¹⁸²

10. Article 17: Constitutional Court Membership

Article 17 of the Package amends Article 147 of the pre-amendment 1982 Constitution, which discusses the termination

178. Law No. 5982, art. 16 (stipulating the five paragraphs added to amended Article 146 in the Package); POLICY BRIEF, *supra* note 11, at 19 (comparing the language of Article 146 in the 1982 Constitution to the one in the Package).

179. Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 146 (Turk.) (stipulating an eleven-member Constitutional Court); *see* Law No. 5982, art. 16 (providing the consolidated version of Article 146 in the Package, which requires a [seventeen]-member Constitutional Court).

180. Law No. 5982, art. 16 (providing the consolidated version of Article 146 which requires a seventeen-member Constitutional Court); POLICY BRIEF, *supra* note 11, at 19 (“The Constitutional Court shall be composed of seventeen members.”); ENSAROĞLU, *supra* note 60, at 45 (arguing that in democratic states political powers and parliaments play a significant role in the election of Constitutional Court members). The 1961 Constitution allowed the TBMM to elect Constitutional Court members, an authority that was taken away by the changes implemented after the 1971 Coup. *See* ENSAROĞLU, *supra* note 60, at 45.

181. *See* Law No. 5982, art. 16 (providing the consolidated version of Article 146 which sets forth the organization of the Constitutional Court); POLICY BRIEF, *supra* note 11, at 19 (providing in English the newly added language regarding the appointment of Constitutional Court members by the TBMM and the President).

182. Law No. 5982, art. 16 (providing the consolidated version of Article 146 which sets forth the age and experience requirements for the Court members); *see* ENSAROĞLU, *supra* note 60, at 44 (noting the radical changes to the organization of the Constitutional Court).

of Constitutional Court membership.¹⁸³ The additions to Article 147 introduce a limited term of office for the Constitutional Court: “[t]he members of the Constitutional Court . . . [shall] be elected for a term of twelve years. A member shall not be re-elected.”¹⁸⁴ In addition, the proposed version maintains the retirement age of sixty-five as stipulated in the pre-amendment 1982 Constitution.¹⁸⁵ “The appointment of the members to another office whose term of office expires prior to their mandatory age of retirement and matters regarding their personal rights shall be laid down in law.”¹⁸⁶

11. Article 18: Functions and Powers of the Constitutional Court

Article 18 of the Package revises Article 148 of the pre-amendment 1982 Constitution regarding the functions and powers of the Constitutional Court.¹⁸⁷ The revisions to Article 148 introduce the right of individuals to apply to the Constitutional Court, allow the Court to act as the Supreme Court, and pave the way for appeals of decisions made by the Court while acting in its capacity as the Supreme Court.¹⁸⁸

183. Law No. 5982, art. 17 (noting the additions to amended Article 147 including the language regarding the term of office of Constitutional Court members); POLICY BRIEF, *supra* note 11, at 20 (comparing, in an English translation, Article 147 of the 1982 Constitution to the suggested language in Article 17 of the Package).

184. Law No. 5982, art. 17 (providing the consolidated version of Article 147 which sets forth the term of office of Constitutional Court members and the termination of their memberships); POLICY BRIEF, *supra* note 11, at 20 (comparing Article 147 of the pre-amendment 1982 Constitution to the suggested language in Article 17 of the Package); *see* TASAM, *supra* note 127 (arguing that twelve years are sufficient for a judge to gain experience and at the same time allow the Court to reflect social changes in its profile and stipulating that in many European courts the term of office for judges is between nine to twelve years).

185. Law No. 5982, art. 17 (reflecting the suggested language of Article 147 as proposed in the Package, in Turkish); POLICY BRIEF, *supra* note 11, at 20 (stating in English the suggested change to Article 147 of the 1982 Constitution: “[t]he members of the Constitutional Court shall retire on reaching the age of sixty-five”).

186. Law No. 5982, art. 17 (providing the consolidated version of Article 147, which sets forth the term of office of Constitutional Court members); POLICY BRIEF, *supra* note 11, at 20 (comparing, in English, Article 147 of the pre-amendment 1982 Constitution to the suggested language in Article 17 of the Package).

187. Law No. 5982, art. 18 (noting the additions to amended Article 148 regarding the functions and powers of the Constitutional Court); POLICY BRIEF, *supra* note 11, at 20–21 (comparing the language of Article 148 in the 1982 Constitution to the amended language, as translated).

188. *See* Law No. 5982, art. 18 (noting the revisions made to Article 148 of the 1982 Constitution including applications to the Constitutional Court); POLICY BRIEF,

According to the third paragraph of the amended version of Article 148, “[a]nyone, who claims that any of their fundamental rights and freedoms guaranteed under the Constitution and falling under the European Convention of Human Rights has been violated by the public authorities, can apply to the Constitutional Court.”¹⁸⁹ Nevertheless, the consolidated version requires the individual to have exhausted “all ordinary legal remedies” prior to bringing his claim before the Court.¹⁹⁰ A critical change in the new version of the article allows “[t]he Chief of Staff, the commanders of the Land, Air, Naval and Gendarmerie Forces . . . [to] be tried before the Supreme Court for their offences related to their duties.”¹⁹¹ In such an event, the Constitutional Court shall act in its capacity as the Supreme Court.¹⁹² Prior to the Package such cases were adjudicated in Military Court of Cassation.¹⁹³

Another revision introduced under the revised version of Article 148 pertains to the judicial review of the decisions made

supra note 11, at 6 (providing a translation of the proposal in Article 18 of the Package: “With the amendment to Article 148, the rights of individual recourse to the Constitutional Court is introduced. . . . [Military commanders] can be tried for offences related to their duties by the Constitutional Court in its capacity as the Supreme Court”).

189. Law No. 5982, art. 18 (indicating the addition to Article 148); POLICY BRIEF, *supra* note 11, at 20 (comparing the pre-amendment language of Article 148 to the suggested version in the Package, in English).

190. Law No. 5982, art. 18 (reflecting the changes to Article 148 in Turkish); POLICY BRIEF, *supra* note 11, at 20 (comparing in English the pre-amendment language of Article 148 to the suggested version in the Package).

191. Law No. 5982, art. 18 (stipulating amendments to Article 148); POLICY BRIEF, *supra* note 11, at 20 (reflecting a translation of the additional paragraph suggested in the Package regarding the trial of military commanders for offences related to their duties); *see* ENSAROĞLU, *supra* note 60, at 47 (stating that the existing legislation lacked to regulate the adjudication of the TBMM President, the Chief of Staff, the commanders of Land, Air, Naval, and Gendarmerie Forces for their offences related to their duties). This Article removes the uncertainty and grants the Constitutional Court acting as the Supreme Court the authority to adjudicate such cases. ENSAROĞLU, *supra* note 60, at 47.

192. *See* Law No. 5982, art. 18 (noting the functions of the Constitutional Court as proposed under the Package); POLICY BRIEF, *supra* note 11, at 21 (providing an English translation of the 1982 Constitution in contrast with the Package proposal: “[B]y the Constitutional Court in its capacity as the Supreme Court”).

193. *See* TASAM, *supra* note 127 (stating that normally, cases against the TBMM President, the Chief of Staff, the commanders of Land, Air, Naval and Gendarmerie Forces for their offences related to their duties have been brought to Military Court of Cassation); *see also* ENSAROĞLU, *supra* note 60, at 47 (stating that the existing legislation lacked to regulate such cases).

by the Constitutional Court acting as the Supreme Court.¹⁹⁴ The amended 1982 Constitution holds the judgments of the Supreme Court to be final decisions for the matter in question, whereas the consolidated version of the article allows for “[a]pplications for judicial review . . . against the decisions of the Supreme Court.”¹⁹⁵ The new draft perceives the “[d]ecisions taken by the plenary assembly regarding th[e] application . . . [to] be final.”¹⁹⁶

12. Article 19: Functioning and Trial Procedure of the Constitutional Court

Article 19 of the reform Package is the last amended article regarding the organization of the Constitutional Court.¹⁹⁷ It revises Article 149 of the pre-amendment 1982 Constitution regarding the functioning and trial procedure of the Court.¹⁹⁸ The consolidated version introduces a quorum for the Constitutional Court to convene and increases the minimum number of votes required to close a political party, deprive it from government aid, or annul constitutional amendments, to two-thirds of the total number of parliamentary members.¹⁹⁹ In

194. See Law No. 5982, art. 18 (noting the changes made to the eighth paragraph of the amended Article 148 regarding applications for judicial review against the decisions of the Supreme Court); see also POLICY BRIEF, *supra* note 11, at 21 (comparing Article 148 in the 1982 Constitution to the amended language of Article 148).

195. Law No. 5982, art. 18 (noting the language of the proposed Article 148 in Turkish); POLICY BRIEF, *supra* note 11, at 21 (comparing Article 148 in the 1982 Constitution, as it would appear in English, to the amended language of Article 148 proposed by Article 18 in the Package).

196. Law No. 5982, art. 18 (reflecting the amended language of Article 148 in Turkish); POLICY BRIEF, *supra* note 10, at 21 (comparing an English version of Article 148 of the 1982 Constitution to the suggested language proposed by Article 19 of the Package).

197. See Law No. 5982, art. 19 (noting the five paragraphs added to amended Article 149 regarding the functions and powers of the Constitutional Court); POLICY BRIEF, *supra* note 11, at 21–22 (comparing Article 149 in the 1982 Constitution to the amended language proposed in the Package—as translated into English).

198. Law No. 5982, art. 19 (noting the revisions made to Article 149 regarding the functions and powers of the Constitutional Court); POLICY BRIEF, *supra* note 11, at 21–22 (comparing Article 149 in the 1982 Constitution to the amended language proposed in Article 19 of the Package).

199. Law No. 5982, art. 19 (noting the revisions made to Article 149 by the Package, including those regarding the General Assembly conventions, political party closure and deprivation cases, and the organization of the Constitutional Court); see

the 1982 Constitution, a three-fifths majority was required to make those decisions.²⁰⁰ The amended article also stipulates task sharing within the Constitutional Court by requiring the General Assembly of the Court to carry out “[c]ases and applications, annulment and appeal cases related with political parties, as well as trials where it acts as the Supreme Court,” and providing that the Chambers of the Court handle the individual applications.²⁰¹

13. Article 20: Military Court of Cassation

Article 20 of the Package amends Article 156 of the pre-amendment 1982 Constitution, which regulates the Military Court of Cassation.²⁰² The organization and functioning of the Military Court of Cassation remains to be regulated by law, yet, the requirement that the regulation be in accordance “with the requirements of military service” is removed in the new draft.²⁰³

14. Article 21: High Military Administrative Court

Article 21 of the Package reforms Article 157 of the pre-amendment 1982 Constitution regarding the High Military Administrative Court of Appeals.²⁰⁴ The new draft removes the

POLICY BRIEF, *supra* note 11, at 21 (comparing Article 149 in the 1982 Constitution to the amended language suggested in Article 19 of the Package).

200. Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 149 (Turk.) (indicating the voting requirement for decisions of Constitutional amendments and closure or deprivation of political parties in the 1982 Constitution); *see also* Law No. 5982, art. 19 (noting the amended language of Article 149 in Turkish); Policy Brief, *supra* note 11, at 21 (quoting Article 19 of the Package proposal in English: “The decision of annulment of Constitutional amendments and closure or the deprivation of the political parties from Government aid shall be taken by two-thirds of the total number of members.”).

201. Law No. 5982, art. 19 (reflecting the amended language of Article 149 in Turkish); POLICY BRIEF, *supra* note 11, at 21 (comparing Article 149 in the 1982 Constitution, in English, to the amended language proposed by Article 19).

202. Law No. 5982, art. 20 (noting the final paragraph added to Article 156 of the amended 1982 Constitution regarding the regulation of the organization and functioning of the Military High Court of Appeals); POLICY BRIEF, *supra* note 11, at 22 (comparing the language of Article 156 in the 1982 Constitution to the amended language proposed in Article 20 of the Package).

203. Law No. 5982, art. 20 (reflecting the amended language of Article 156 in Turkish); POLICY BRIEF, *supra* note 11, at 22 (quoting the language of amended Article 156 in English).

204. Law No. 5982, art. 21 (noting the final paragraph added to Article 157 regarding the regulation of the organization and functioning of the High Military

requirement that the organization and functioning of the Court “be regulated by law in accordance with . . . the security of tenure of judges *within the requirements of military service*.”²⁰⁵

15. Article 22: Organization of the HSYK

Article 22 of the draft revises Article 159 of the pre-amendment 1982 Constitution regarding the restructuring of the HSYK.²⁰⁶ It is the most extensively edited article and makes one of the most controversial changes to the 1982 Constitution.²⁰⁷ It proposes a significant increase in the number of HSYK members from seven to twenty-two regular members and twelve substitute members, who are to perform their duties in three chambers.²⁰⁸ According to the amended language of Article 159, the president of the HSYK continues to be the Minister of Justice, while the Undersecretary to the Minister of Justice continues to serve as an ex-officio member.²⁰⁹ While

Administrative Court); POLICY BRIEF, *supra* note 11, at 23 (comparing the language of Article 157 in the 1982 Constitution to the language in Article 21 of the Package).

205. Law No. 5982, art. 21 (emphasis added); *see* POLICY BRIEF, *supra* note 11, at 23 (comparing the language of Article 157 in the 1982 Constitution, as translated, to the language suggested by Article 21 of the Package); ENSAROĞLU, *supra* note 60, at 42 (stating that the amended language of Article 157 in the Package limits the jurisdiction of military courts).

206. Law No. 5982, art. 22 (noting the eleven paragraphs added to Article 159 regarding the HSYK); POLICY BRIEF, *supra* note 11, at 24–25 (comparing the language of Article 159 in the 1982 Constitution to the recommended language in Article 22 of the Package).

207. *See* Law No. 5982, art. 22 (illustrating the eleven newly-added paragraphs recommended to supplant Article 159 of the 1982 Constitution regarding the HSYK); *see also* POLICY BRIEF, *supra* note 11, at 24–25 (comparing the language of Article 159 in the 1982 Constitution to the amended language in Article 22 of the Package); Pelin Turgut, *Turkey: A Referendum for Democracy or a Strongman?*, TIME, Sept. 13, 2010, <http://www.time.com/time/world/article/0,8599,2018862,00.html#ixzz1ZmJI4bab> (“The most controversial of the approved reforms paves the way for political appointments by parliament and the President to Turkey’s highest court, the Constitutional Court and the Supreme Board of Prosecutors and Judges.”).

208. Law No. 5982, art. 22 (reflecting the amended language of Article 159 regarding the organization of the HSYK in Turkish); *see also* ENSAROĞLU, *supra* note 60, at 50 (noting that the number of permanent HSYK members is increased from seven to twenty-two).

209. Law No. 5982, art. 22 (reflecting the language of Article 159 in the Package); *see* POLICY BRIEF, *supra* note 11, at 24 (“The President of the Council is the Minister of Justice. The Undersecretary to the Minister of Justice shall be an ex-officio member of the Council.”). This language remains the same in the amended Article 159. POLICY BRIEF, *supra* note 11, at 24.

having a member of the government in councils similar to the HSYK is globally enforced, the lack of changes to the structure is regarded by some legal professionals as causing a dual representation problem.²¹⁰

In the context of appointing the HSYK members, the revised language of Article 159 sets forth that four of the twenty-two regular members “shall be appointed by the [p]resident . . . for a term of four years from among . . . [professors of] law . . . and lawyers.”²¹¹ The majority of the members of HSYK shall be selected by the judges and prosecutors themselves.²¹² “The members may be re-elected at the end of their term of office.”²¹³ In addition, the consolidated version of Article 159 calls for the establishment of a General Secretariat under the HSYK, which shall be appointed by the President of the HSYK “from among the three candidates, who are first category judges and public prosecutors, proposed by the Council.”²¹⁴

210. See Law No. 5982, art. 22 (reflecting the language of Article 159 in the Package); see also ENSAROĞLU, *supra* note 60, at 51 (noting that while a member of the political power acting as the head of institutions such as the HSYK is consistent with the global enforcement, the existence of a dual representation by both the Minister of Justice and the his Undersecretary in the HSYK is viewed as problematic by some in legal circles); see POLICY BRIEF, *supra* note 11, at 24 (depicting the preserved language regarding the Minister of Justice and the Undersecretary in the Package).

211. Law No. 5982, art. 22 (noting the language of Article 159 in the Package); POLICY BRIEF, *supra* note 11, at 24 (quoting the amended language (in English) of Article 159 in the Package).

212. Law No. 5982, art. 22. The amendment proposes the following institutions to appoint members to the HSYK from among their own members: three regular and three substitute members by the Plenary Assembly of the Court of Cassation, two regular and two substitute members by the Plenary Assembly of the Council of State and one regular and one substitute members by the Plenary Assembly of the Justice Academy of Turkey. See *id.*

213. Law No. 5982, art. 22 (reflecting the language of amended Article 159 in Turkish); POLICY BRIEF, *supra* note 11, at 24 (translating into English a comparison of the changes recommended by the Package regarding the Supreme Council of Judges and Public Prosecutors, and the original text of the 1982 Constitution).

214. Law No. 5982, art. 22; POLICY BRIEF, *supra* note 11, at 24 (translating into English a comparison of the changes recommended by the Package regarding the Supreme Council of Judges and Public Prosecutors, and the original text of the 1982 Constitution); see also *HSYK Kanunu Tasarısı Kabul Edildi*, HÜRRİYET (Dec. 11, 2010), <http://hursiv.hurriyet.com.tr/goster/ShowNew.aspx?id=16506921> [hereinafter HSYK Kanun Tasarısı] (stating that the HSYK Draft Law, which was prepared in accordance with the amendments to Article 159 as accepted in the referendum, passed in the TBMM on December 11, 2010).

The revisions to Article 159 also propose new duties for the HSYK to carry out, such as “[t]he supervision of whether the judges and public prosecutors . . . undertak[e] their duties in accordance with the laws.”²¹⁵ Moreover, while the pre-amendment 1982 Constitution holds the decisions made by the Council as final, the Package paves the way for judicial review of decisions regarding the removal of judges and prosecutors from office, while continuing to prohibit appeals to other HSYK decisions.²¹⁶

16. Article 23: Economic and Social Council

Article 23 of the Package revises Article 166 of the pre-amendment 1982 Constitution regarding the planning of economic development.²¹⁷ This amendment establishes the Economic and Social Council as a constitutional institution “to provide consultative opinions to the government in the design of economic and social policies” and guarantees its exercise, efficiency, and participation.²¹⁸ NGOs, professional chambers, and government representatives shall gather within the Council structure and issue consultative opinions regarding economic and social issues.²¹⁹

215. Law No. 5982, art. 22 (reflecting the language of Article 159 in the Package); POLICY BRIEF, *supra* note 11, at 25 (comparing the English translations of pre-amendment language of the 1982 Constitution and the proposed language).

216. *See* Türkiye Cumhuriyeti Anayasası Nov. 7, 1982, art. 149 (Turk.); *see also* POLICY BRIEF, *supra* note 11, at 25 (providing an English translation of proposed Article 22 of the Package: “The decisions of the Council, except for those concerning dismissal from profession, can not be appealed at judicial bodies”).

217. Law No. 5982, art. 23 (noting the amended language of Article 166 of the 1982 Constitution regarding the Planning, Economic and Social Council); POLICY BRIEF, *supra* note 11, at 26 (comparing the language of Article 166 in the 1982 Constitution, titled Planning, Economic and Social Council, to the Package).

218. Law No. 5982, art. 23 (noting the Turkish version of the proposed language of Article 166); POLICY BRIEF, *supra* note 10, at 26 (reflecting the English translations of the pre-amendment language of Article 166 and the language proposed in the Package); *see* ENSAROĞLU, *supra* note 60, at 52 (arguing that although an existing institution, the Economic and Social Council is now granted constitutional guarantee and underlining the importance of organizing the Council as an independent review mechanism that promotes domestic peace and dialog).

219. *See* Law No. 5982, art. 23 (noting the Turkish version of the proposed language of Article 166); *see also* TASAM, *supra* note 127 (noting that within the constitutional structure of the Council, different segments of the society including NGOs, professional chambers, and government representatives, shall come together to consult each other and issue opinions).

17. September 12, 2010: Results and Reactions

With nearly eighty percent of the population participating in the referendum, and fifty-eight percent voting in favor of the Package, the AKP's Erdoğan proclaimed victory on the evening of September 12, 2010.²²⁰ The results signaled a three-way split within the Turkish public; the western and southern coastal areas voted against the Package, a majority in central Anatolia voted for the proposal, and the Kurdish southeastern region boycotted the referendum, with an average participation rate of thirty-five percent.²²¹ Prior to September 12, 2010, the main opposition party, CHP, expressed its skepticism of the law out of fear that the changes would undermine the independence of the judiciary and create a “modern-day sultan” out of Erdoğan.²²² Following the referendum, one of CHP's leaders, Berhan Şimsek, stated that by fusing the constitutional changes in one reform package instead of allowing the public to vote each amendment separately, the AKP had “coated a poisonous pill with chocolate.”²²³ The second opposition party, MHP, opined that Turkey had entered into “a dark era filled with

220. See *Turkey Vote Boosts PM Future*, *supra* note 13 (indicating the referendum results); see also Marc Champion & Joe Parkinson, *Turks Pass Constitutional Changes*, WALL ST. J. (Sept. 13, 2010), <http://online.wsj.com/article/SB10001424052748703897204575487281815955878.html> (reporting Erdoğan's statements at the AKP's Istanbul headquarters after preliminary vote counts: “[o]nce more it has been seen that transformation is possible within democracy”).

221. See Villedabeitia, *supra* note 27 (explaining the division of votes in the 2010 Referendum); *Referandum Türkiye'nin Üç Yüzünü Gösterdi*, HÜRRIYET (Sept. 15, 2010, 11:37PM), <http://www.hurriyet.com.tr/planet/15777404.asp> (arguing that the results have split Turkey into three).

222. *Turkey Needs More Reform, European Union Says after Vote*, CNN (Sept. 13, 2010) (internal quotation marks omitted), http://articles.cnn.com/2010-09-13/world/turkey.referendum_1_erdogan-turkish-voters-reform-package?_s=PM:WORLD (reporting CHP's concerns regarding the referendum as it would affect the prime minister's power over the judiciary); see also Ömer Taşpınar, *Judicial Independence and Democracy in Turkey*, TODAY'S ZAMAN (Oct. 10, 2010), available at http://www.brookings.edu/opinions/2010/0712_turkey_democracy_taspinar.aspx (reporting that those in opposition to the referendum perceived the Package as a step toward undermining the independence of the judiciary).

223. *Turkey Needs More Reform, European Union Says after Vote*, *supra* note 222 (“Berhan Simsek . . . told CNN that by packaging the judicial changes with less controversial proposals, the AKP had ‘coated a poisonous pill with chocolate.’”); see also *Turkey's Top Court Accepts Main Opposition's Appeal for Cancellation of Gov-Backed Constitutional Amendment*, TURKISHPRESS.COM (June 9, 2010) [hereinafter *Turkey's Top Court*], <http://www.turkishpress.com/news.asp?id=352716> (reporting CHP's skepticism of the reform package).

critical risks and dangers” where the accepted amendments might foster instability, possibly leading to rebellions among Kurdish citizens seeking their autonomy in the southeastern regions of the country.²²⁴

Some journalists critical of the AKP’s motives compared contemporary Turkey to revolutionary Iran of 1979, pointing to what they saw as the AKP’s “Islamist agenda” concealed under its liberal reform efforts.²²⁵ These journalists highlighted to the public “early signs in the AKP’s visceral anti-American rhetoric and its banishment of women from top posts, as well as the arrests and firings of political rivals.”²²⁶ The consensus among these journalists seemed to be that the majority of the voters supporting the referendum had not read and comprehended the articles, and voted according to their political affiliations.²²⁷

224. See Torchia, *supra* note 13 (quoting MHP leader, Devlet Bahçeli who voiced his concerns about the amendment package); see also HATEM ETE, NUH YILMAZ & KADİR ÜSTÜN, SETA FOUND. FOR POLITICAL, ECON. AND SOC. RESEARCH, REPORT NO: 5, POLICY REPORT: TURKEY’S CONSTITUTIONAL REFERENDUM OF 2010 AND INSIGHTS FOR THE GENERAL ELECTIONS OF 2011, 11 (Feb. 2011) [hereinafter POLICY REPORT], available at <http://setav.org/public/HaberDetay.aspx?Dil=tr&hid=66186&q=turkey-constitutional-referendum-of-2010> (reporting that prior to the referendum, the MHP had “claimed that the referendum was part of the ‘destruction project’ the AK Party had started . . . and that the country would be divided if the referendum obtained a majority favorable vote”).

225. See Soner Yalçın, *İran’a Şeriat ‘Demokrasi’ ve ‘Özgürlük’ Vaatleriyle Geldi*, HÜRRİYET (Sept. 23, 2007), <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=7341410&yazarid=218> (comparing Turkey to pre-1979 Iran); see also Arsu & Bilefsky, *supra* note 13, at A4 (observing the pro-democracy activists’ concerns about potential power-shifting in one political direction); *Turkey PM to Hold Talks on Charter Reform with Rivals*, TIMES OF OMAN, Mar. 20, 2010 (reporting some journalists’ view that the AKP uses “liberal reform as a cover for the encroachment of religious rule”).

226. Soner Çağaptay & David Pollock, *The Scary European Model: It’s Not Modern, Liberal, or Western*, NEWSWEEK (Aug. 2, 2010, 4:00AM), available at <http://www.thedailybeast.com/newsweek/2010/08/02/the-scary-european-model.html>; see Arsu & Bilefsky, *supra* note 13, at A4 (noting that “opponents of the changes describe them as an orchestrated power grab aimed at undermining the secular order established by . . . Atatürk”); see also Barry Rubin, *Turkey’s Referendum Doesn’t Mean Popular Support for a Regime Aligning with Iran*, THE RUBIN REPORT (Sept. 25, 2010, 8:27 PM), <http://rubinreports.blogspot.com/2010/09/word-on-turkish-referendum-dont-assume.html> (listing the contradictory decisions of the AKP and asserting that if it weren’t for the fear of “the provisions strengthening the regime—90 percent of Turks would have supported the proposed changes instead of just 58 percent”).

227. See Cüneyt Ülsever, Column, *Ağır Mağlubiyet*, HÜRRİYET (Sept. 14, 2010), <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=15777182&yazarid=3> (expressing the author’s disappointment, a day after the referendum, that it is impossible for any voter to have detailed knowledge on all of the twenty-six articles and

The view in academia seems to be divided.²²⁸ On the one hand, those who question the amendments proposed by the AKP, worry that it will fill the courts and the HSYK with judges and members who stand close to the party.²²⁹ On the other hand, some interpret the results as an indicator of a Turkish majority opposing “the influence of the military and judiciary in active politics,” believing that the reforms would make Turkey more democratic and increase government accountability to the general public.²³⁰

Journalists who sympathize with the AKP, including columnists of the Turkish newspaper *Zaman*, believe that the tension between the military and the government is not caused by the Islamist background of the AKP, but rather by the party’s intention to enter political areas that traditionally have been only theoretically under governmental authority.²³¹ In actuality, these areas were supervised by the military.²³² Therefore, as in the case of past political parties that had been eliminated by a coup d’état, the AKP’s interference in institutions under military control instills a fear among secularist state elites of losing their

either completely embrace or completely reject all of them); *see also* note 221 and accompanying text (discussing the three-way split among Turks in the referendum votes).

228. *See infra* notes 229–30 (discussing the split within academia over the referendum).

229. *See* Sabrina Tavernise & Sebnem Arsu, *In Turkey, Proposed Amendments would Marginalize Old Guard*, N.Y. TIMES, Apr. 3, 2010, at A4 (reporting a professor’s fear that the AKP will fill spots with allies). *See generally* HSYK Ak Parti’nin Politikaları İçin Aparat Haline Geldi, RADIKAL, Aug. 28, 2011 (discussing that the opposition party CHP accused the AKP of turning the HSYK into a device for its political ideology).

230. *See* Arsu & Bilefsky, *supra* note 13, at A4 (reporting the view that the amendments will democratize Turkish politics); *see also* POLICY REPORT, *supra* note 224 (stating that the referendum serves as the Turkish public’s “final say” on the issue of democracy and paves the way for a new civilian constitution).

231. *See* Emre Uslu, Column, *Basics of the Turkish Political System: Politics*, TODAY’S ZAMAN (July 17, 2010), http://www.sundayszaman.com/sunday/columnistDetail_getNewsById.action?newsId=216242 (taking the view that the AKP’s delving into certain political areas led to a civilian-military crisis); *cf.* Head, *supra* note 129 (quoting Yavuz Baydar, a pro-AKP columnist: “[the AKP’s] very loud, aggressive, pushy . . . combative style” caused Erdoğan to gradually lose support and face a “profound mistrust from certain segments of the republic”).

232. *See* Uslu, *supra* note 231 (“The civilian-military crisis during the term of the AKP government is not about their Islamist past but about their intention to influence political areas that are under the responsibility of the government on paper but not in practice.”); *supra* notes 30–34 and accompanying text (explaining the military’s historical supervisory role over civilian politics with constitutional examples)

privileged position in the Turkish political system.²³³ In sum, the AKP supporters in the media have welcomed the referendum results as a manifestation of a request by Turkish society for a substantial change in the system, and they have interpreted the AKP's victory as a vote of confidence foreshadowing a third victory in nationwide polls.²³⁴

Following the referendum, Turkey's European Affairs Minister, Egemen Bağış, stated that passing the amendments showed the Turkish people's determination for democracy, human rights and a market economy.²³⁵ He further analyzed that the referendum would lead to accelerated negotiations with the EU regarding Turkey's application for membership.²³⁶

The majority of foreign media organizations and politicians have welcomed the results of the referendum, while simultaneously calling attention to the imbalance in Turkish politics caused by the ten percent minimum popular vote threshold that parties must receive to sit in parliament.²³⁷ In an

233. See Emre Uslu, *Basics of the Turkish Political System*, TODAY'S ZAMAN, July 12, 2010 (discussing the the republican elite's fear of losing the state against their political rivals in domestic politics); see also Uslu, *supra* note 231 ("The major policy decisions are not made in the Cabinet meetings but in meetings between generals and some members of the cabinet at the National Security Council (MGK). Military generals consider this system a useful way of influencing politics. . . . The opposition parties treat the MGK's decisions as if it were divine rule."); see, e.g., Yalçın, *supra* note 225 (comparing the constitutional efforts of the AKP to the Islamic Revolution of Iran in 1979 which was feared by Iranian leftists, republicans, democrats and liberals).

234. See Mümtaz'er Türköne, "Değişim" Hep Kazanacak, ZAMAN ONLINE (Sept. 16, 2010), <http://www.zaman.com.tr/yazar.do?yazino=1028128> (suggesting that the referendum results indicate the society's strong desire for change); see also *Erdogan Says to Start Work on New Constitution*, ALARABIYA.NET (Sept. 12, 2010), <http://www.alarabiya.net/articles/2010/09/13/119168.html> (reporting predictions from pundits that the affirmative votes at the referendum signal that the AKP will win a third term in government). *But cf.* Arsu & Bilefsky, *supra* note 13, at A4 (reporting analysts' opinions that while the margin of affirmative votes indicates the AKP's high chances of winning re-election, the margin is also likely to polarize the country further entrenching ideological divides). See generally Taşpınar, *supra* note 222 (stating that the results would indicate political parties' success in the general elections of 2011).

235. See Interview by Aydın Ali İhsan with Egemen Bağış, European Affairs Minister, Republic of Turk., EURONEWS (Sept. 13, 2010) (reporting Turkey's European Affairs Minister's reaction in the aftermath of the referendum).

236. See *id.* (noting Egemen Bağış's analysis of how the referendum results would affect Turkey's bid to enter the EU).

237. See *Coups Away*, *supra* note 73 (discussing the reactions by non-Turkish media and politicians to the referendum); see also *Türkische Verfassungsreform International Begrüßt*, DIE PRESSE (Sept. 13, 2010), <http://diepresse.com/home/politik/aussenpolitik/594039/Tuerkische-Verfassungsreform-international-begruesst?from=>

article published in July 2010, *Newsweek* drew attention to a new Turkey as the political and economic center of its own region, “forging a new foreign policy, with itself at the very center.”²³⁸ The article alerted its readers to the mistake of seeing Turkey either “‘with’ the EU and U.S., or ‘with’ the Muslim world or Russia” since the “new, strongly Turkey-centered policy” of the country encompasses all of these positions.²³⁹ In a second *Newsweek* article, it was acknowledged that the results of the referendum could lead to a remaking of Turkey in Erdoğan’s image, turning away from the country’s traditional Western allies and joining “forces . . . with anti-US hardliners in the Middle East,” a development that gives the US government the “jitters.”²⁴⁰

Overall, however, spectators outside of Turkey have welcomingly received the referendum results as progress toward a more democratic Turkey in line with EU expectations.²⁴¹ A statement from US President Barack Obama, acknowledged the referendum outcome as illustrative of the “vibrancy of Turkey’s democracy.”²⁴² Joost Lagendijk, a former European MP, stated that Europeans, “despite sharing some of the criticism on the details,” backed the Package.²⁴³ EU Commissioner Stefan Fuele agreed with his colleague’s comments by applauding the amendments as “a step in the right direction” and a

suche.intern.portal (reporting that the referendum results in Turkey were welcomed internationally); Press Release, U.S. Dep’t of State, *supra* note 9 (“To participate in the distribution of seats, a party must obtain at least 10% of the votes cast at the national level . . .”).

238. Owen Matthews, *Ankara in the Middle*, NEWSWEEK, Aug. 2, 2010.

239. *Id.*

240. Matthews, *supra* note 16 (explaining US concerns regarding the effects of the referendum).

241. *See infra* note 242–47 and accompanying text (summarizing the reactions by non-Turkish media and political circles); *see also Türkische Verfassungsreform International Begrüßt*, *supra* note 237 (discussing the international response to the referendum results, including statements made by the US President, the German Foreign Minister, and EU officials).

242. *Referendum in Turkey*, BUSINESS RECORDER (Pak.), Sept. 15, 2010 (quoting President Barack Obama in his reaction to Turkey’s referendum results); Arsu & Bilefsky, *supra* note 13, at A4 (reporting a statement released by US President Barack Obama referring to the 2010 referendum as an illustration of “the vibrancy of Turkey’s democracy”).

243. Turgut, *supra* note 9 (quoting a statement made by Joost Lagendijk in the *Radikal*).

manifestation of Turkey's commitment to join the EU.²⁴⁴ Nevertheless, Fuele added that Turkey had a long path in front of it and needed to implement further reforms "to address the remaining priorities [such as those] in the area of fundamental rights."²⁴⁵ Foreign Ministers of Finland, Germany, and the United Kingdom have also remarked on the constitutional referendum results and called for more momentum.²⁴⁶ While Germany and France have been long-term opponents of Turkey's EU membership, the Finnish foreign minister made highly supportive statements: "Only by having a seat at the table will Turkey be able to contribute fully to the security and prosperity of the EU's member states."²⁴⁷

III. ANALYSIS OF THE AMENDMENT PACKAGE

Part III examines the Package in two sections. Section A encompasses articles that revise the fundamental rights and freedoms and economic rights and duties of citizens, and Section B discusses the articles that amend the structure and organization of the judiciary. This Part analyzes only those revisions that pose significant consequences to the EU accession process or the balancing of certain powers in Turkish politics.

A. *Fundamental Rights and Freedoms & Economic Rights and Duties*

By emphasizing the importance of the individual, the amendments regarding fundamental rights and freedoms seek to produce a more liberal and rights-based approach in the

244. *EU Welcomes Turkey Referendum Victory*, FINANCIAL MIRROR, Sept. 13, 2010.

245. *Id.*

246. Joanna Sopinska, *EU/Turkey: EU Welcomes Constitutional Reforms, Urges Ankara to Go Further*, EUROPOLITICS, Sept. 13, 2010 ("While the UK and Finland argued for the acceleration of the accession talks, others led by Germany advocated building closer ties outside the framework of Ankara's EU membership bid."); *see also German Minister Urges 'Fair Treatment' of Turkey in EU Accession Process*, BBC, Sept. 14, 2010 (quoting German Foreign Minister Guido Westerwelle: "[The referendum] showed that Turkey [is] orienting itself towards Europe.").

247. Sopinska, *supra* note 246 (quoting Finland's Foreign Minister); *see also German, French Leaders Stand United against Turkey*, TODAY'S ZAMAN (May 12, 2009) (reporting that as longtime opponents to Turkey's EU bid, leaders of Germany and France reiterated their stance against Turkey's EU membership).

relationship between Turkish citizens and the state.²⁴⁸ These portions in the Package particularly provide greater freedom and opportunity for women and minorities in Turkish society and improve the protection of constitutional rights and liberties.²⁴⁹

For example, the amendment to Article 10 broadens the group of citizens that can benefit from the principle of equality by including children, elderly, disabled, and widows and orphans of martyrs as well as for invalid and veterans in the list.²⁵⁰ By adding these individuals to the group of protected citizens, the Package broadens the scope of the meaning of equality, which constitutes the foundational element of human rights.²⁵¹

The changes made to Article 53 of the amended 1982 Constitution entitle civil servants and other government officials to collective bargaining and collective agreement rights, but fall short of granting them the right to strike.²⁵² As such, the amended Constitution presents civil servants and public officials as a party vis-à-vis the state, instead of treating them as part of the state.²⁵³ The amendments in the Package fail to define the content and the scope of the right to collective agreement; while they benefit pensioners by allowing them to take advantage of collective agreement provisions.²⁵⁴ Even though the proposed language falls short of effecting a dramatic change in the Constitution, these shortcoming may be remedied with a public

248. *See supra* note 141 and accompanying text (discussing how the amendments are grouped throughout this Comment).

249. *See supra* note 141 and accompanying text (noting that the first group of amendments relate to fundamental rights and freedoms).

250. *See supra* note 142 and accompanying text (citing the language of the Article 1 of the Package, proposed to reform Article 10 of the 1982 Constitution, and affecting equality for women and minority groups).

251. *See supra* note 142 and accompanying text (reflecting the changes in the language including the list of protected citizens added to the revised Article 10).

252. *See supra* notes 144–46 and accompanying text (discussing Article 6 of the Package, which revises Article 53 of the amended 1982 Constitution).

253. *See supra* notes 144–46 and accompanying text (introducing the revised language that grants civil servants and public officials the right to conclude collective agreements with the government).

254. *See supra* note 145 and accompanying text (discussing Article 6 of the Package, which introduces collective agreement rights to public officials and pensioners).

administration reform that will be drafted in accordance with the Package and include the right to strike.²⁵⁵

Changes made to Article 54 regarding the right to strike and lockout remove the third paragraph concerning union liability for any damages caused during strikes.²⁵⁶ Previously, Article 54 guaranteed secure workplaces in response to union efforts to keep the premises damage-free.²⁵⁷ The Package lifts the unions' responsibility, which may lead to an incentive for unions to utilize their right to strike or it may render individual employees liable and thus severely weaken the effective use of the right to strike.²⁵⁸ In addition, the deletion of the seventh paragraph regarding the prohibition of political strikes, lockouts, and go-slows must be viewed as a step toward a more liberal constitution.²⁵⁹ By removing the list of actions that have been identified with the events leading to the 1980 Coup, the proponents of the Package aim to obliterate the traces of a period many Turks regret.²⁶⁰

The changes to Article 74 broaden the right to legal remedies by introducing a constitutional right to information and to petition to the Ombudsman Office, which shall be established to review the operations of the administration.²⁶¹ Although the revised Article 74 is a step supported by the global human rights organization, there remain concerns regarding some aspects of the Ombudsman Office as introduced in the

255. *See supra* notes 144–46 and accompanying text (noting the changes introduced in the consolidated version of Article 53 that allows parties to appeal to the Conciliation Board of Public Servants).

256. *See supra* notes 147–48 and accompanying text (discussing Article 7 of the Package, which revises Article 54 of the amended 1982 Constitution).

257. *See supra* note 148 and accompanying text (reflecting the repealed portion of Article 54 that held labor unions liable for any damage caused in work places during strikes).

258. *See supra* note 147 and accompanying text (noting that the deleted language removed strike and lockout prohibitions introduced by the 1980 Coup).

259. *See supra* notes 148–49 and accompanying text (noting that general and politically motivated strikes are considered human rights in developed countries).

260. *See supra* notes 64–71 and accompanying text (summarizing the social and political events in Turkey between 1971 and 1980).

261. *See supra* notes 150–53 and accompanying text (stating the changes the Package introduces with the revised language of Article 74).

Package.²⁶² One of those concerns is the length of the Ombudsman's term of office, which coincides with the new legislative session and, therefore, does not fully guarantee the independence of the Ombudsman Office.²⁶³ A structure that allows for a twelve-year term, which is also the length of Constitutional Court memberships, may guarantee a more autonomous institution.²⁶⁴ In addition, the Ombudsman Office is organized as subordinate to the TBMM Presidency which is a structure inconsistent with EU procedures.²⁶⁵ In order for it to serve as an autonomous institution and to avoid future legal issues, the Ombudsman Office, the term of office, and its relations with other human rights institutions must be structured carefully.²⁶⁶ The independence and goodwill of the Chief Ombudsman will remain as two vital factors in electing a person to the office.

Moreover, the right to information, instead of existing as an absolute constitutional right embodied in its own article, which would allow the public to enjoy a higher degree of transparency in government, is squeezed into Article 74.²⁶⁷ Constraining the language about the right to information and petition to one sentence, may lead to its exercise only in matters and proceedings undertaken by government entities. In order to provide an absolute right to information, the right to

262. *See supra* note 154 and accompanying text (discussing the international standards for the Ombudsman Office and concerns about its structure as set forth in the Package).

263. *See supra* note 155 and accompanying text (discussing the language of and changes to Article 74 which set forth a four year term for the Ombudsman and depicting the concerns regarding the term of office).

264. *See supra* note 155 and accompanying text (illustrating the four year term of office for the Ombudsman which coincides with the new legislative year and therefore, renders the independence of the Ombudsman questionable); *see also supra* note 186 and accompanying text (stating that Article 147 in the Package limits the Constitutional Court membership to twelve years).

265. *See supra* note 155 and accompanying text (noting the revisions made in the proposed language of Article 74 and stating that the Ombudsman Office in European countries is independent of the Parliament, even though it works on behalf of the Parliament).

266. *See supra* notes 150–53 and accompanying text (stating that the Package sets forth an independent Ombudsman Office that is subordinate to the TBMM Presidency).

267. *See supra* notes 151–52 and accompanying text (stating that the revision to the right to information and appeal constitutes one phrase only, while there are three paragraphs added to the revised Article 74 regarding the Ombudsman Office).

information should be drafted in a separate article in the Constitution.

In relation to TBMM membership, the revisions to Article 84 as stipulated in the Package generated some criticism among those who believe that the 1982 constitutional provisions are sufficient protection for deputies.²⁶⁸ There is some room for discussion as to why the new draft permits the retaining TBMM membership for a deputy, whose party has been banned for being unconstitutional and whose statements and actions have caused the closure of his party.²⁶⁹ Nevertheless, this amendment is another significant step in bringing the Turkish Constitution closer to its European counterparts, as the changes to Article 84 are in line with the conventional democratic principles of the EU.²⁷⁰

Finally, the amendments to Article 166, regarding the Planning, Economic and Social Council, lack substantive information regarding what type of constitutional guarantee this council is granted.²⁷¹ While there are concerns regarding the use of the Council as a tool for the government to regulate economic and social policies, it is nonetheless a democratic insertion to the 1982 Constitution and valuable for strengthening social dialogue channels.²⁷² The consolidated version of Article 166 enables NGOs to express their views and participate in the planning of policies.²⁷³ The amendment is a major step toward a participatory system, in which various segments of society, such as NGOs, professional chambers, and government representatives, can discuss various topics and

268. *See supra* notes 158–59 (noting that the pre-amendment language of Article 84 is sufficient as it grants TBMM members legislative non-liability for their statements).

269. *See supra* note 158 and accompanying text (noting the changes in the language of the article).

270. *See supra* note 158 and accompanying text (noting that in the past, the ECHR has repeatedly decided that the regulations in the Turkish Constitution regarding political bans and loss of TBMM membership violate Article 3 of the Protocol No. 1 of the Convention concerning the right to elect and be elected).

271. *See supra* notes 217–18 and accompanying text (discussing the Package's amendments to Article 166 of the 1982 Constitution).

272. *See supra* note 219 and accompanying text (discussing how different segments of society can gather and consult each other within the Council).

273. *See supra* notes 217–19 and accompanying text (describing the importance of organizing the Council as an independent review mechanism that promotes domestic peace and dialog).

contribute to the solution-finding process for economic and social issues in Turkey.²⁷⁴

B. *Reorganization of the Judiciary*

The second part of the Package aims to reorganize the judiciary by restructuring the composition and scope of the HSYK and restricting the judicial power of military courts.²⁷⁵ The changes can be categorized under three groups: those regarding the Constitutional Court (Articles 16 through 19); those concerning the HSYK (Articles 14 and 22); and those relating to the military justice (Articles 11, 15, 20, and 21).

Articles 16 through 19 of the Package, which amend Articles 146 through 149 of the amended 1982 Constitution, address the changes made to the Constitutional Court. The revisions made to Article 146, regarding the organization of the Constitutional Court, introduce greater diversity among the institutions from which the members of the Constitutional Court are selected.²⁷⁶ The amended Article 146 also takes away the broad appointment power of the President.²⁷⁷ With these amendments, the President now has the power to appoint fourteen of the seventeen Constitutional Court members, four of which he will select directly from certain categories and ten of which he will select from the list of names submitted to him.²⁷⁸ The presence of two military judges in the Constitutional Court, to be appointed by the President, is questionable if the goal of the Package is to create a more democratic structure.²⁷⁹

274. *See supra* note 219 and accompanying text (discussing how different segments of society can gather and consult each other within the Council).

275. *See supra* note 141 and accompanying text (dividing the amendment package into two categories).

276. *See supra* notes 178–81 and accompanying text (summarizing the revisions made by Article 16).

277. *See supra* notes 178–81 and accompanying text (summarizing the revisions made by Article 16 including the reduced appointment powers of the President). *Cf. supra* note 78 and accompanying text (stating that the 1982 Constitution grants the President broad powers).

278. *See supra* note 181 and accompanying text (distinguishing the requirement of two military judges in the court as stipulated in the consolidated version of Article 146).

279. *See supra* notes 180–81 and accompanying text (arguing that in democratic states political powers and parliaments, therefore civilians, play a significant role in the election of Constitutional Court members); *see also supra* notes 30–32 and

Moreover, amended Article 146 introduces a minimum age requirement of forty-five for judges, while the changes to Article 147 propose a twelve-year term of office for members of the Constitutional Court.²⁸⁰ These two changes are necessary to ensure the constant transformation, evolution, and modernization of the Court as well as accommodation of change.²⁸¹ Twelve years are sufficient for members to gain experience and reflect these experiences in their work, and it is also likely sufficient for the social developments in Turkey to be manifested in the composition of the Court. Moreover, the changes bring the Constitutional Court closer to the courts of Europe, most of which have non-renewable terms of nine to twelve years and a retirement age of seventy years.²⁸²

One peculiar change to note is the number of non-lawyers in the Constitutional Court, which the Package raised from five members to nine members.²⁸³ This revision increases the group of persons who do not hold a law degree in an institution that serves as the highest legal body of the country.

On the one hand, this composition of the Court allows for flexibility and reflects social changes in the country.²⁸⁴ Overall, the changes fall short of attaining the level of independent judiciary set forth in the 1961 Constitution terms of an and should be supplemented with further reforms in this branch.²⁸⁵

accompanying text (summarizing the history of military role in Turkish politics and society).

280. *See supra* notes 182, 184 and accompanying text (providing the amended language of Article 146 and 147 which incorporate the limitations on the term of office and minimum age for Constitutional Court membership).

281. *See supra* note 184 and accompanying text (noting the twelve year limitation for Constitutional Court memberships and arguing that this period is sufficient for a judge to gain experience and at the same time allow the Court to reflect social changes in its profile).

282. *See supra* note 184 and accompanying text (noting that in many European courts, the term of office for judges are set to be non-renewable terms of nine to twelve years); *see also supra* note 157 (stating that Article 23 of the Charter stipulates the term of office and dismissal for judges in the ECHR).

283. *See supra* notes 178–81 and accompanying text (reflecting the changes made to the organization of the Constitutional Court).

284. *See supra* notes 187–96 and accompanying text (discussing revisions to Article 148 of the Constitution).

285. *See supra* note 58 and accompanying text (noting that the 1961 Constitution institutionalized judicial review and the complete independence of the judiciary); *see also supra* note 180 (stating that the election power granted to the TBMM by the 1961 Constitution were terminated after the military coup in 1971).

The Package introduces the right of individual recourse in the amended language of Article 148, regarding the functions and powers of the Constitutional Court.²⁸⁶ By allowing an individual citizen to bring his case before the highest court in the country, the Package may relieve the European Court of Human Rights from numerous cases brought by Turkish citizens dissatisfied with the legal remedies presented in their country.²⁸⁷

Another critical change in Article 148 allows the trial of generals and commanders before the Supreme Court for offenses related to their duties.²⁸⁸ These individuals are added to the list of officials who can be tried before the Constitutional Court acting as the Supreme Court, which in the pre-amendment 1982 Constitution already includes the President, Prime Minister, members of the Council of Ministers, members, and presidents of higher courts, members of the HSYK, and members of the Court of Accounts.²⁸⁹ The consolidated version of Article 148 no longer renders the aforementioned commanders and the Chief of Staff subject to military courts, thus, moving them away from the burdens of the military hierarchy.²⁹⁰

The functioning and trial procedure of the Constitutional Court is addressed in amended Article 149, which revises the structure of the Constitutional Court according to the amendments made in Articles 146–148 and divides the work

286. *See supra* note 189 and accompanying text (providing the amended language of Article 148 regarding the right to individual application to the Constitutional Court).

287. *See supra* note 189 and accompanying text (noting the additions to Article 148 that allow anyone, who claims that any of their fundamental rights and freedoms guaranteed under the Constitution and ECHR have been violated by the public authorities, to apply to the Constitutional Court).

288. *See supra* notes 191–93 and accompanying text (noting the revised language regarding the trial of certain officials before the Constitutional Court).

289. *See supra* notes 191–93 and accompanying text (indicating that the Constitutional Court shall act in its capacity as the Supreme Court when trying certain military official for their offences related to their duties).

290. *See supra* notes 191–92 and accompanying text (noting the revisions to Article 148 regarding the trial of certain officials before the Constitutional Court acting as the Supreme Court and adding that the Package fills a gap in regulation regarding the adjudication of such cases which had been normally brought to the Military Court of Cassation).

between the General Assembly and the Chambers.²⁹¹ While it may seem that most of the work has been given to the General Assembly, considering the high number of individual applications, in contrast to the more substantive but smaller number of closures, annulments, and appeals cases indicates that the workload of the General Assembly will likely be comparable to that of the Chambers.²⁹²

Articles 14 and 22, which affect changes in Articles 144 and 159 of the amended 1982 Constitution, address the changes made to the HSYK. The 1982 Constitution assigns the duty to supervise and investigate the performance of judges and public prosecutors to judiciary inspectors with the permission of the Ministry of Justice.²⁹³ The chief supervisor of these inspectors at the highest level is the Ministry of Justice, a structure inconsistent with the principle of judicial independence.²⁹⁴ The amended Article 144 introduces a two-fold inspection structure by providing the HSYK with the duty of inspection of judicial services and the administrative duties of public prosecutors and keeping the inspection of judicial services not related to the judicial duties in the realm of the judicial inspectors subordinated to the Ministry of Justice.²⁹⁵ This structure allows the HSYK a basis for carrying out its work without the risk of political interference. Nevertheless, the Minister of Justice continues to chair the council and, accordingly, the investigative authority of the HSYK remains subject to his approval.

In addition, this revision may also result in the appointment of judicial inspectors who are neither judges nor public prosecutors, because the qualification to “be a judge or a prosecutor by profession” is required only in the case of internal auditors and a similar requirement is not stated for judicial

291. *See supra* note 201 and accompanying text (discussing the task sharing stipulated in the revised version of Article 149).

292. *See supra* notes 197–201 and accompanying text (discussing Article 149 and the Constitutional Courts).

293. *See supra* notes 165–66 and accompanying text (discussing the changes to Article 144).

294. *See supra* notes 209–10 and accompanying text (noting that the dual representation problem caused by the presidency of the Minister of Justice and the membership of the Undersecretariat to the Minister of Justice in the HSYK).

295. *See supra* notes 165–66 and accompanying text (discussing the changes to Article 144).

inspectors.²⁹⁶ Aside from the background constraints, the new draft fails to define the content, scope of authority, and requisite qualifications of an internal auditor. If left as is, this revision does not constitute a reform in the judiciary.

The second article regarding the HSYK, Article 159, addresses the organization of Council. The HSYK was established by the 1982 Constitution to admit judges and public prosecutors into professions, appointments, transfers, and promotions, and to impose disciplinary penalties, and the removal of judges and prosecutors from office.²⁹⁷ Unfortunately, the HSYK today constitutes a hindrance to the Turkish state of law as it is headed by the Minister of Justice and comprised of members, including the Undersecretary to the Minister of Justice, the Court of Cassation, and the Council of State.²⁹⁸ The removal of the Minister of Justice or at least the Undersecretary to the Minister of Justice from the HSYK would remove the dual representation problem and result in the highest level of independence of the HSYK.²⁹⁹ Nevertheless, by increasing the number of HSYK members, and prohibiting the Minister of Justice from voting in the Chambers and participating in their meetings, the new draft significantly weakens the influence of these three institutions within the HSYK.³⁰⁰

Articles 11, 15, 20, and 21, which amend Articles 125, 145, 156, and 157 of the 1982 Constitution address the changes made to the military justice system. The consolidated version of Article 125 stands in great contrast to the 1982 language of Article 125 that rules out any type of judicial review for the acts of the

296. *See supra* notes 165–66 and accompanying text (differentiating between the qualifications required for internal auditors and those required for judicial inspectors as amended in the Package).

297. *See supra* note 81 and accompanying text (listing the HSYK as one of the newly established institutions under the 1982 Constitution).

298. *See supra* note 78 and accompanying text (noting the influence the executive could exert in the judiciary through the structure of the HSYK according to the original 1982 Constitution).

299. *See supra* notes 209–10 and accompanying text (noting that the dual representation problem caused by the presidency of the Minister of Justice and the membership of the Undersecretary to the Minister of Justice in the HSYK).

300. *See supra* notes 206–16 (noting the changes to Article 159); *see also* notes 209–10 and accompanying text (noting that the presidency of the Minister of Justice in the HSYK, while enforced in other democracies, hinders the absolute independence of the HSYK).

President and the decisions of YAŞ.³⁰¹ Aside from these two types of decisions, the 1982 Constitution denies judicial review of decisions made by the HSYK, the Court of Accounts, and the Supreme Election Board, as well those decisions made under emergency laws and disciplinary penalties against public servants.³⁰² By allowing judicial review of at least some HSYK decisions, the Package establishes an effective remedy against such judgments, signifying a move in the direction of a more democratic constitution. Yet, because it qualifies the decisions that can be appealed, the Package does not achieve the liberalism that a constitution of a state of law requires.³⁰³ In order to provide an efficient remedy, reform of legal regulations and military justice are necessary.

Finally, the consolidated Article 125 stipulates that judicial power shall be limited to control of the lawfulness of administrative actions and procedures and that under no circumstance be used as the control of expediency.³⁰⁴ Judicial bodies are not institutions that take administrative actions; but rather they have the duty of conducting judicial review. Adding a specific sentence regarding this established principle in the Package is unnecessary, as it does not provide any legal conclusions, but most likely has the purpose of suggesting that in the past, judicial power was used as the control of expediency.³⁰⁵

The original text of Article 145 regarding military justice was the product of the 1980 Coup.³⁰⁶ The pre-amendment language grants military courts extensive jurisdiction by allowing them to hear cases of military personnel who have committed

301. *See supra* notes 161–62 and accompanying text (discussing the right of appeal to certain YAŞ decisions under the amended version Article 125).

302. *See supra* notes 162–63 and accompanying text (noting that judicial remedies shall be available against the decisions of the Supreme Military Council).

303. *See supra* notes 160–64 and accompanying text (providing proposed changes to Article 125 regarding judicial remedies against certain decisions made by YAŞ).

304. *See supra* note 164 and accompanying text (stating the limitation of judicial power of HSYK as stipulated in the consolidated version of Article 125).

305. *See supra* note 164 and accompanying text (discussing the addition to Article 125, which reiterates the established principle that judicial power shall “under no circumstance be used as the control of expediency”).

306. *See supra* notes 78–81 and accompanying text (providing a summary of the drafting process for the 1982 Constitution that involved almost no public participation and heavy influence by the military).

military offenses, regular offenses committed by military personnel against other military personnel or in military places, and offenses connected with military service and duties.³⁰⁷ Overall, the 1982 language of Article 145 creates a duality in the justice system, under which a civilian and a military officer can be tried in different courts.³⁰⁸ These courts are regulated by different laws and, therefore, receive different sentences for the same offense.³⁰⁹ The revisions to Article 145 do not eliminate this dual mechanism, but do limit military courts' jurisdiction in some situations.³¹⁰ Removing from the text "offenses committed in military places" in and of itself suffices to significantly restrict military courts' jurisdiction under the 1982 Constitution.³¹¹

The Package limits military courts' jurisdiction over military offenses and stipulates that criminal offenses by military personnel against state security, the constitutional order, or its functioning shall be under the jurisdiction of civilian courts.³¹² The Package proposes equal treatment of civilian offenses against the existing 1982 constitutional order and a military general's offense against the order, which in the latter case can be identified as a coup d'état. Although the limitations imposed on military courts' jurisdiction are necessary democratic steps, in view of the recent *Ergenekon* case, this amendment to Article 145 does not amount to a reform and remains nothing more than a symbolic change in the Constitution.³¹³ In order to achieve a

307. See *supra* notes 172–77 and accompanying text (comparing the pre-amendment language of Article 145 that grants military courts extensive jurisdiction with the revised language).

308. See *supra* notes 172–77 and accompanying text (providing the 1982 language of Article 145 that preserved the dual justice system for military personnel and civilians created by earlier constitutions and amendments).

309. See *supra* notes 172–77 and accompanying text (discussing the effects of a dual justice system as established by the 1982 Constitution).

310. See *supra* notes 172–77 and accompanying text (providing the revisions made to Article 145).

311. See *supra* notes 172–75 and accompanying text (noting the changes made to Article 145 regarding the limitations on military court's jurisdiction); see also Part I.D (discussing the 1982 Constitution).

312. See *supra* notes 172–73 and accompanying text (providing the revised language of Article 145 which stipulates that military courts shall have jurisdiction only in relation to military offenses committed by military personnel or related to their military services or duties).

313. See *supra* notes 110 and accompanying text (discussing the *Ergenekon* case and how it is viewed by the public).

more than symbolic reform in military justice, high military courts must be completely eliminated or at least, judicial remedies against their decision must be enabled by the Constitution.³¹⁴

The revisions in the second paragraph, relating to offenses of non-military persons in time of war, bring an end to the adjudication of civilians in military court at times of martial law as stipulated in the pre-amendment 1982 Constitution.³¹⁵ Under martial law, fundamental rights are withheld, certain powers are shifted from civilian bureaucracy to military bureaucracy, and offenses in relation to the factors that led to the declaration of martial law are handled by martial law military courts.³¹⁶ The Package reduces martial law by closing the door to military trials for civilian offenders.³¹⁷ By removing the final phrase from Article 145 regarding the protection of military judges and the office of commander in relation to the requirements of military service, the Package leaves the issues of military ranking, such as promotion and progress of ranks, ambiguous, as they are not set forth in the text.³¹⁸ In sum, the changes proposed in the new draft of Article 145 prove to be insufficient in establishing a truly democratic state of law.

The changes introduced in the revised Article 156 regarding the Military Court of Cassation, are carried out to harmonize the language of this article with that of revised Article 145, concerning the organization of Military Justice.³¹⁹

314. *See supra* note 171 (stating that the existence of a military justice system is problematic in terms of human rights and democracy and that, in constitutional states, civilians cannot be heard in military courts and military court decisions must be reviewed by civilian high courts).

315. *See supra* notes 172–77 and accompanying text (illustrating the changes made to the second paragraph of Article 145 regarding offenses of non-military persons at times of war).

316. *See supra* notes 172–77 and accompanying text (reflecting the revisions in the second paragraph of Article 145 regarding offenses and persons falling within the jurisdiction of military courts in time of war).

317. *See supra* notes 172–77 and accompanying text (illustrating the amendments in the second paragraph of Article 145 regarding persons and offenses falling within the jurisdiction of military courts in time of war).

318. *See supra* notes 172–77 and accompanying text (illustrating the changes made to the second paragraph of Article 145 regarding offenses of non-military persons at times of war).

319. *See supra* notes 172–77, 202–03 and accompanying text (providing the revisions made to Articles 145 and 156 in the Package).

The revisions made to these two articles intend to fulfill the same objective of strengthening the independence and impartiality of the judiciary.³²⁰

Serving the same purpose as the changes made to Article 156, the revisions to Article 157, concerning the High Military Administrative Court of Appeals, aim to harmonize the language with Article 145 regarding Military Justice.³²¹ In this case, the revisions apply to the functioning of the High Military Administrative Court.³²² This change does not carry any reforming value because it does not introduce a change in the court system that was established under the 1982 Constitution.³²³ The Package could have taken a further step by abolishing the High Military Administrative Court and transferring its duties to a civilian counterpart.³²⁴

The revisions to articles analyzed in Part A of this Section regarding human rights issues, and the articles analyzed in Part B regarding the organization of the judiciary, the HSYK, and the military justice system, constitute common goals for the AKP and the EU.³²⁵ As such, EU representatives welcomed the 2010 referendum results as a step toward the modernization of the state in line with Western principles.³²⁶ At the same time, the political pasts of the AKP deputies and the motivations of the political forerunners of the party have raised eyebrows not only

320. *See supra* notes 172–77, 202–03 and accompanying text (depicting the changes made to Article 145 and 156 regarding the military justice and the Military Court of Cassation).

321. *See supra* notes 202–05 and accompanying text (illustrating the amendments in the revised language of Article 156 and 157 that contain changes to the organization and functioning of military high courts).

322. *See supra* notes 186–87 and accompanying text (illustrating the revisions in the Package regarding the High Military Administrative Court).

323. *See supra* notes 179–80 (discussing Article 156 in the 1982 Constitution prior to the Package); *see also* Part I.D (summarizing the drafting process of the 1982 Constitution and changes it introduced).

324. *See supra* notes 171 and 313 (stating in constitutional states, civilians cannot be heard in military courts and military court decisions must be reviewed by civilian high courts). In order to achieve this standard in Turkey, high military courts must be eliminated or, at the minimum, their decisions must be reviewed by civilian high courts. *See supra* notes 171 and 313.

325. *See supra* notes 123–26 and accompanying text (discussing the commonality between the reforms necessary for the EU membership and those implemented by the AKP).

326. *See supra* notes 241–49 (reflecting the statements by foreign media and politicians, some of which were EU representatives).

among EU officials but also among Turkish citizens, precisely forty-two percent of the electorate as measured on September 12, 2010.³²⁷

The Package as a whole introduces changes that are necessary in a constitutional state. While the improvement of human rights issues such as the equality of citizens before the law and the protection of the privacy are noteworthy developments, many revisions proposed in the Package fail to fully carry out the reforms to an extent necessary to identify them as part of a truly reformist approach.³²⁸ This Package contains shortcomings and is certainly not expected to solve all of the issues in the Turkish Constitution, but it paves the way for a new, civil, and democratic Constitution in the future.³²⁹ The revisions in the Package remove many of the barriers in front of Turkey's democratization and the guarantee of constitutional rights and freedoms for all.³³⁰ Nevertheless, democratic standards need to be taken into account in the AKP's attempt to implement the Package and later during the drafting process of a new Constitution in order to ensure an open, transparent, and inclusive process.³³¹

Finally, attention must be paid to the unique political and social picture Turkey portrays. Although general consensus deems military influence in politics and society a serious impediment to the development of democracy, Turkey presents a unique case based on a complex history that dates back to the

327. *See supra* notes 220–22 and accompanying text (indicating the referendum results, with fifty-eight percent approval of the referendum and noting the skepticism stated by some Turks).

328. *See supra* notes 248–74 and accompanying text (analyzing the revisions made to the Constitution that broadened fundamental rights and freedoms); *see, e.g., supra* notes 301–02 and accompanying text (noting that the restriction placed on the type of YAŞ, HSYK, and Court of Accounts decisions that can be appealed is a setback to achieving a more democratic Constitution).

329. *See supra* notes 133–35 and 139–40 and accompanying text (detailing the AKP's efforts to draft a new constitution in 2007).

330. *See supra* notes 248–74 and accompanying text (analyzing the revision made to the 1982 Constitution that expand fundamental rights and freedoms); *see, e.g., supra* note 285 and accompanying text (listing the articles that amend the organization of the judiciary and therefore eliminate many of the provisions implemented by military coups).

331. *See supra* notes 67, 79 and accompanying text (noting that both the 1971 amendments to the 1961 Constitution and the drafting process of the 1982 Constitution were completed with almost no public participation).

transition from the Ottoman Empire to the modern Turkish nation-state; Turkish Armed Forces have, for decades, constituted a critical part of the checks-and-balances system thereby trying to maintain the society and legal system based on secular Western foundations. In the context of this unique structure, the weakening of the military's central role in Turkish politics and society may cause some instability in the country, or at least significant and unprecedented changes in the fundamental defining principles of the modern republic. It is in this context that the 2010 constitutional amendment reform package and the September 12, 2010, referendum results must be evaluated.

CONCLUSION

Ever since the founding of the Turkish Republic, the military, high-level diplomats, judges, and academics have exercised nearly absolute power in shaping Turkish domestic and foreign policy. Empowered as the guards of Kemalist ideology and further supported by military-drafted constitutions, the Turkish military has historically carried on a supervisory role by pressuring the government during different periods to execute the policies of its own design. The rise of the AKP government is significant in this regard as it seeks to limit the traditional role held by the military and to expand the influence of the judiciary through constitutional reform, specifically through the amendment of twenty-six constitutional articles. Given that the majority of the Turkish public increasingly supports the AKP's policies, as is evident in the last two general elections, it is very likely that the AKP will continue to succeed in its constitutional reform efforts with the goal of democratizing Turkish politics and accelerating Turkey's EU membership process.

Note: The commentary provided in this work on constitutional reform in Turkey is up-to-date as of early June 2011. Since the completion of this Comment, the AKP has achieved its third consecutive victory in the general elections on June 12, 2011 and has become the first political party in the era of Turkish democracy to increase its margin of votes in three

consecutive elections.³³² According to many Turks, under the AKP regime Turkey is witnessing its most politically and economically stable periods since its founding.³³³ This success, however, did not suffice for the AKP to amend the constitution alone as the party won 326 seats in the parliament, four seats short of the number necessary for the AKP to implement constitutional changes on its own.³³⁴ Instead of a second amendment package, in this new term, the AKP hopes to draft a completely new Turkish Constitution.³³⁵ In addition to the Constitution, the AKP has also begun to revise the Turkish Armed Forces Internal Service Code, which served as a legal cover for the military in the 1980 Intervention.³³⁶ According to this change, Article 35 of the Code will continue to provide the

332. See *Erdogan's Hat-Trick*, *ECONOMIST*, June 13, 2011 (“The country’s charismatic prime minister, Recep Tayyip Erdoğan, becomes the first Turkish leader not only to win three consecutive elections, but to increase his party’s share of the vote each time.”). The votes the AKP received were: thirty-four percent in 2002, forty-seven percent in 2007, and fifty percent in 2011. *Id.*; see also *Erdogan I, Ataturk 0*, *supra* note 105 (“[P]olling shows that more than half of the 50 percent of Turks . . . cast their votes for the piously Islamic ruling Freedom and Justice Party (AKP) last month . . .”).

333. See Simon Cameron-Moore & Daren Butler, *Special Report: Erdogan: The Strongest Man in Turkey*, *REUTERS* (Aug. 8, 2011, 12:30 PM), <http://www.reuters.com/article/2011/08/08/us-turkey-erdogan-idUSTRE7773X420110808> (“Over the past decade, [Erdoğan has] transformed Turkey from a basket case dependent on IMF loans to the 16th largest economy in the world. He wants Turkey to be in the top 10 by 2023.”); see also *Profile: Recep Tayyip Erdogan*, *AL JAZEERA*, May 27, 2011 (“[Erdoğan’s] popularity has been boosted further by Turkey’s near-decade of economic and political stability under AKP stewardship.”).

334. See *supra* note 137 and accompanying text (providing that the minimum number of votes necessary to make constitutional changes is 330 votes); see also *Turkey Ruling Party Wins Election with Reduced Majority*, *BBC NEWS*, June 12, 2011 (“AKP had 50% of the vote, which . . . translated to 326 seats in parliament.”).

335. See Cameron-Moore & Butler, *supra* note 332 (“Erdoğan has been very open about his plans for a new constitution that could open the way for him to become president.”); see also *Erdogan to Work with Others on Turkish Constitution*, *EURONEWS* (June 13, 2011, 10:25), <http://www.euronews.net/2011/06/13/erdogan-to-work-with-others-on-constitution/> (quoting Erdoğan as saying: “We will write a civilian, free constitution which brings all parts of society together. Everyone will find themselves in this constitution, east will be represented, west will be represented.”).

336. See Law No. 211 of Jan. 4, 1961, *Resmi Gazete* [R.G.] No. 10703 (Jan. 10, 1961) (Turk.); see also Abdülhamit Bilici, *Gul Urges Change to Article 35 of TSK Internal Service Code*, *TODAY'S ZAMAN* (Apr. 28, 2011), <http://www.todayszaman.com/news-242310-gul-urges-change-to-article-35-of-tsk-internal-service-code.html> (“In order to fully put a stop to attempts by the military to interfere in politics, President Abdullah Gül has made a call for change to Article 35 of the Turkish Armed Forces (TSK) Internal Service Code, which is believed to be the main reason behind the military’s readiness to stage coups d’état.”).

military with the duty to protect the Turkish Republic, but in the new language of the Code, this duty will now adhere to the parliamentary system, bringing Turkish politics a step closer to liberal democracy.³³⁷

337. See Law No. 211, art. 35 (stating the responsibility of the army to safeguard Turkish territory and the Turkish Republic); see also Işık, *supra* note 82 (noting the prospective amendments to Article 35 of the Code, which served General Evren as his legal reasoning for the 1982 Coup).