

***Restoring Balance in the U.S.-Turkey Relationship on Rule of Law***

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**Commission on Security and Cooperation in Europe**  
**Prisoners of the Purge: The Victims of Turkey's Failing Rule of Law**  
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We have heard today already about some of the ways in which the erosion of the rule of law in Turkey has entrapped and endangered Americans. I will speak today about the state of the rule of law in Turkey, what to expect in the next few years, and how the U.S. can rebalance its relationship with Turkey around the rule of law.

Modern Turkey's institutions have always been weak in terms of democratic accountability and the protection of human rights. Modern Turkey's legal and constitutional tradition places greater priority on the unity of the nation and the integrity of the state than on the rights of the individual and the separation of powers. There was a brief window in the 2000s when Turkey sought to align with European Union standards, during which Turkey made a number of cardinal reforms to strengthen the independence of institutions and protect human rights, but that was followed by a sustained attack on the rule of law and democratic institutions for much of the last decade.

The partnership between the ruling AKP and the Gülen movement that became entrenched during the 2000s did severe damage to the judiciary through instrumentalized trials of Kurdish activists, the military, media, and secular elites. After the AKP and the Gülen movement fell out in late 2013, the government turned on the judiciary in order to eliminate its former allies. Two changes stand out:

- In February 2014, the government amended the law on the High Council of Judges and Prosecutors (HSYK), which controls appointments to the judiciary, to strengthen the Minister of Justice's role in the Council, including by reassigning members of the Council. This reversed key reforms to ensure the independence of the judiciary that the government had supported in 2010.
- In June 2014, the government established a new institution called "peace judgeships" (*Sulh Ceza Hakimlikleri*) with responsibility for so-called "protective measures," including approving pretrial detentions, and removing content from the internet and closing internet websites. These new peace judgeships lack appropriate mechanisms for appeal and oversight, and have been a major factor in the increased use of pretrial detention and internet blocking in the period after 2014.

Following the coup attempt of July 2016, the government has used the state of emergency to eradicate what it perceives as sources of opposition, to subordinate the judiciary even further, and to dismantle rule of law protections.

Turkey has been under emergency rule for 16 months. During this time:

- Some 150,000 people have passed through police custody on the basis of terrorist offenses, membership of armed groups, or involvement in the attempted coup. Of those, at least 62,000 have been arrested.

- 153 journalists are in prison.
- More than 111,000 people have been fired from public service through emergency decrees without adequate due process protections. They are effectively blacklisted, which means they will be unable to find public employment and are evicted from public housing; many if not most will not be able to find private employment, either.
- The state has also closed and seized institutions around the country:
  - 1,412 associations have been closed
  - 15 universities run by foundations have been closed
  - 162 media outlets have been closed, including 6 news agencies, 48 newspapers, 20 magazines, 31 radio stations, 28 TV stations, and 29 publishing houses
  - 2,271 private educational institutions have been closed
  - 19 unions have been closed
  - 969 companies valued at approximately \$11 billion have been seized
  - 94 mayors have been removed and replaced by “trustees” appointed by Ankara
  - 10 members of parliament are in prison, including the co-leaders of the second-largest opposition party
- 2 members of the Constitutional Court were removed from their positions and arrested, along with 37 personnel of the court.
- 183 staff were dismissed from the Supreme Court; 91 from the Council of State; and 153 from the General Accounting Bureau
- 4,240 judges and prosecutors have been dismissed (2956 judges and 1284 prosecutors).
- 28 lawyers’ associations or law societies have been closed
- 550 lawyers have been arrested; 1,398 lawyers are facing criminal prosecution.
- At least 39 lawyers have already been sentenced to prison

I give this long list in order to underscore the scale of the transformation that is taking place in Turkey through the post-coup attempt purge. The media, civic sector, legal profession, and judiciary have been massively weakened, crippled even, in these purges. This is a generational event. These firings, arrests, and closures have largely been done on the basis of guilt by association, without due process or appropriate legal remedies.

Emergency decrees under the state of emergency also significantly changed important protections for individuals subject to investigation:

- Suspects could be held for up to 30 days without access to a lawyer. A later emergency decree reduced this length of time to 14 days.
- The right to confidential conversations with a lawyer and family members was suspended.
- The prosecution was empowered reject the defendant’s choice of lawyer.
- A suspect’s lawyer may have restricted access to the case file.

These and other serious derogations from due process protections have contributed to an environment in which there are increasing reports of torture and forced disappearances in detention.

In April 2017, Turkey approved in a referendum changes to the constitution that will strengthen the presidency at the expense of other branches of government, including the judiciary. The referendum, held under a state of emergency

with media seized by the government, and journalists and opposition leaders in prison, was neither free nor fair. There are reasonable grounds to suspect that the government used fraud to get it barely above the 50 percent threshold.

The referendum changes increased the president's control over the judiciary by giving him power to appoint almost half (6 out of 13) of the members of the Council of Judges and Prosecutors. Others will be appointed by the parliament, which currently is under control of the president's party, the AKP. The oversight role of the Constitutional Court (*Anayasa Mahkemesi*) has been downgraded, as has that of the Council of State (*Danıştay*). Other changes in the referendum strengthened the president's powers over other branches, including through powers to appoint and dismiss ministers, to dissolve parliament, and to issue decrees with the force of law. This has turned Turkey's system of governance into a "super-presidential" system that is alien to democratic traditions.

It is within this context that we should understand the ordeal that Pastor Brunson and his family have suffered, as well as the treatment of tens of thousands of others under arrest, including people like the arrested civil society leader Osman Kavala and America's two detained foreign service nationals, Metin Topuz and Hamza Uluçay. Having eliminated due process protections and the separation of powers, the executive branch is constrained neither by the balance of powers nor by the rights of individuals.

### **Looking ahead**

Turkey will hold three major elections in 2019: nationwide local elections, scheduled for March, and the parliamentary and presidential elections, both scheduled for November. Each of these is extremely important for President Erdoğan's goal of remaining in power and retaining or even better strengthening his control over the levers of the state. Erdoğan and his AKP no longer command the dominant big tent coalition of the 2000s that combined business, Islamists, Kurds, and liberals. The big tent has shrunk, and Erdoğan's appeal is based now more on patronage and appeals to Turkish nationalism, Islamic identity, and Eurasianism. Regardless of what the U.S. and the EU do or don't do, President Erdoğan and the AKP need anti-Western and nationalist appeals to keep his coalition together. Where the appeals fail, repression and instrumentalization of the judicial system will fill in the gaps.

For this reason, we should not expect an improvement in the rule of law in Turkey in the next two years. It is not in Erdoğan's or the AKP's interest to make the system work more fairly or more justly. Nor should we expect an improvement after the elections. If Erdoğan wins, he will continue his efforts to consolidate a patronal regime. If he loses, he will have to tighten the screws in order to maintain his grip on power, just as he did after the AKP lost its majority in parliament in the June 2015 general election. The problem of rule of law in Turkey is a durable one that we will be dealing with for a long time.

### **Conclusion and recommendations**

1. The biggest problem with U.S. policy presently towards Turkey is that it is driven by trying to figure out what will placate Turkey, but more specifically, President Erdoğan, rather than by a clear definition of U.S. interests and values in the relationship. This has given the inaccurate impressions that the U.S.

needs Erdoğan more than Erdoğan needs the U.S.. **The U.S. should recognize that Erdoğan's use of anti-Americanism and anti-Westernism is driven by a specific domestic political dynamic, and nothing the United States does will change this.**

2. Instead of starting from the position of seeking to solve the problem of anti-Western actions and rhetoric from Turkey's political leaders, **the U.S. should define clearly first for itself what its core interests and values are in its relationship with Turkey, and then articulate policies to achieve these interests, including by taking measures with Turkey to enforce those interests and values if they are threatened or violated.**
  
3. **I believe the U.S. has a long-term, strategic interest in Turkey being a stable state based on the rule of law, in which political and ethnic minorities enjoy fundamental rights, including the ability to participate fully in political processes.** I believe this strategic interest is of equal importance to the immediate interest of keeping Turkey in NATO. While the U.S. cannot make Turkey into such a state, this should be a key pillar of any U.S. strategic vision for the Middle East, and one that can be supported through measures taken now.
  - **First, the U.S. should consider the use of additional instruments, including Global Magnitsky sanctions on Turkish officials responsible for grave human rights violations.** Congress should make use of its lawful role in forwarding such cases and requesting the State Department's official review of evidence. The compilation of such cases will play an important role in any future transition in Turkey towards a more just and inclusive regime.
  - **Second, both Congress and the State Department should provide funding for human rights defenders, civil society activists, and journalists in Turkey.** Statements of support are welcome, but Congress should take the next step. Congress should create a special fund for Turkish civil society and independent media, and make a priority support for the tens of millions of Turkish citizens who see the country's future as a democratic, rule of law state.
  - **Third, the United States should make clear that the following items are not up for transaction in the U.S.-Turkey relationship:**
    - **The rule of law in the United States.** Attempts to change the outcome of judicial processes in the United States with disregard for normal diplomatic and legal channels, as has occurred with the hiring of American lobbyists on behalf of Reza Zarrab and the attempt to make the extradition of Fethullah Gülen a political and not evidentiary issue, will damage the U.S.-Turkey relationship. Similarly, if Turkish officials flout U.S. law, they will face criminal prosecution. The prosecution of Reza Zarrab and Turkish officials for the flagrant violation of the sanctions regime on Iran is an important signal that violations of U.S. laws will be punished. On a lesser scale but also important is the prosecution of individuals and presidential bodyguards who assaulted protesters at Sheridan Circle in May. **The Van Hollen amendment to SFOPS reinforces this principle by underscoring that such criminal actions may affect U.S. support and cooperation with Turkey.**

- **American citizens and employees of the U.S. government.** The U.S. will protect its citizens accused of crimes overseas, and insist on both consular access to them and access for them to lawyers of their choosing. If it concludes the detention of an American citizen is not based on a legitimate criminal accusation, it should sanction officials responsible for their detention. **This is why the Lankford-Shaheen amendment to SFOPS is a good idea.** The U.S. should also stress that the offensive conspiracy theory put forward by prosecutors and pro-government media about former State Department official Henri Barkey will have consequences for bilateral relations, and make clear it will protect its employees, including non-Americans, from undue and illegitimate criminal prosecution. The continuing detention of two of our foreign service nationals should result in the continuation of visa restrictions and other punitive measures as needed. **Congress should also request sanctions against individual officials responsible for the illegitimate detention of U.S. employees.**

These are practical recommendations for strengthening U.S. Turkey policy, but they are not a magic bullet. We should prepare ourselves for a very rocky short-term relationship, and take the necessary measures to protect the U.S.'s core interests. The U.S.-Turkey relationship is of great consequence. It is my hope that the U.S. will stand with the many Turkish citizens working for true democracy and rule of law in Turkey, and that circumstances will one day improve to allow the bilateral relationship to return to a less tense basis.

Thank you.