



TESEV

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TESEV Democratization Program
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Report Summary

The Parliamentary Will Remains Weak

*The New Law on the Turkish Court of Accounts
and the Ongoing Problems of Monitoring Military Spending*

Turkish Economic and Social Studies Foundation (TESEV)'s Democratization Program (DP) carries out research-based analysis and policy proposals towards contributing to the reorganization of state-citizen relations in line with the principles of participatory democracy. Within this framework, the Program has been carrying out research and advocacy activities through its “security and democracy” working area since the beginning of the 2000s. TESEV DP's work in this area has predominantly concentrated on the goal of sustaining the civilian and democratic oversight of the security sector in Turkey – a must for a full functioning democracy and a goal that is also enlisted among the Copenhagen political criteria. Accordingly TESEV DP has advocated for a sustainable and comprehensive democratic reform in the security sector in order to ensure transparency, accountability and civilian oversight of Turkey's security institutions (the armed forces, law enforcement forces, and intelligence services). TESEV DP's latest focus within the scope of this working area has been on the civilian oversight of Turkey's defense and military spending. This issue, which is also repeatedly underlined in European Union progress reports, remains yet one of the most important issues of Turkey's democratization process that needs to be tackled.

In democracies, one of the most fundamental and crucial tasks of a parliament without doubt, is to ensure the efficient, effective and proper public spending of the

country's tax-payers' money. In Turkey, public spending is monitored by the Republic of Turkey Directorate of Court of Accounts on behalf of the Turkish Grand National Assembly (Parliament). More specifically, an amendment to the 1982 Constitution has tasked the Court of Accounts with the capacity to investigate, monitor and resolve on the income and spending of public offices and welfare institutions on behalf of the Parliament. Naturally, amongst the public institutions that the Court of Accounts is entitled to monitoring are also military establishments and institutions.

Transparency and accountability of military spending occupies an important place in a democratic political system. It is also amongst the democratic criteria that Turkey needs to fulfill to become a full member of the European Union. However, the monitoring capacity of the Court of Accounts over defense and military spending is currently "restricted" in comparison to its capacity over other public institutions. In other words, despite recent reforms and legal changes that took place since 2004, the defense and military spending in Turkey still lacks both transparency and accountability and remains mostly secret and closed to public and parliamentary scrutiny.

The initial step for rendering the military spending more transparent to public and parliamentary scrutiny dates back to 2004 when an amendment to the Article 160 of the Constitution was accepted by the Parliament. The second step towards that end came in 2010, with a delay of six and a half years: In December 2010, the Parliament adopted the new Law on the Court of Accounts (no. 6085) which also included the provision that "oversight of military spending will be carried out on behalf of the Parliament" that was missing in the previous law. Finally, on 29 June 2012 a last minute intervention resulted in the government expeditiously passing a series of amendments to the Law on the Court of Accounts despite objections from the opposition.

The latest TESEV DP report *The Parliamentary Will Remains Weak* focuses on these most recent developments and analyses and discusses the improvements and the

persisting problems regarding the capacity of Court of Accounts to monitor military spending on behalf of the Parliament, particularly in the context of the new Law and its 2012 amendment. Authored by journalist and columnist Lale Kemal, one of the rare experts in Turkey on politics of security and security institutions, the report observes that lack of transparency and secrecy of military spending in Turkey prevails, while also drawing attention to the role, responsibility and the weak will of the Turkish Parliament in using its monitoring authority through the Court of Accounts.

The report identifies and is especially critical of two particular issues in the original new Law of 2010: the restrictions imposed on the capacity of the Court of Accounts auditors to monitor military spending; and the restrictions imposed on the public access of military spending monitoring results. The report also underlines that the unforeseen 2012 amendment to the Law by the current government has further limited the monitoring capacity of the Court of Accounts, and thus, the Parliament, reversing some of the positive reforms of the original 2010 Law. Following the publication of the report, another important yet restrictive development has taken place: a regulation that was prepared by the government and took effect in August 2012, has paved the way for adopting the “principle of secrecy” regarding the Court of Accounts reports on the oversight of the security institutions’ assets, and thus concealment of monitoring results from the public. The report, consequently argues that these most recent legal changes has resulted in a regression of the new Law on the Court of Accounts even beyond that of the previous law (Law no. 832 on the Court of Accounts) which itself constituted an obstacle to the transparency and monitoring in accordance with the international standards.

In the Conclusion, the report summarizes, observes and recommends the following:

About the Original New Law on the Court Accounts (2010)

- The adoption of the new Law on the Court of Accounts requires both further specialization of the Court auditors regarding defense and military spending; and demonstration by the Parliament of a strong will for monitoring defense and military spending. In the lack of strong Parliamentary will, the auditors

are faced with the risk of lack of capacity and legitimacy to monitor the armed forces as necessary.

- The evaluation of the Court of Accounts monitoring reports on military and defense spending must be done by an independent commission that would consist of experts and parliamentarians that are specialized in the fields of military and military spending, formulation of security policies and weapons technology.

As of today, no such commission has been established. Following the adoption of the new Law on Court of Accounts in 2010, the establishment of a Public Accounts Commission through a preamble amendment was planned; however, this amendment has not taken place in the one-and-a-half years that has passed since the adoption of the Law.

Within the current state of things, the role of the Court of Accounts has been confined within the Parliamentary Planning and Budgetary Commission. Considering that there are still monitoring reports --some of which date back to as old as 2006—that have not yet been evaluated by the Commission, a rigorous investigation and evaluation by the Commission, of the upcoming monitoring reports on the military spending, is not a realistic prospect; hence the necessity for the establishment of an independent commission.

- Building the capacities of the Court of Accounts auditors remains a key issue for ensuring effective and efficient monitoring of the military spending. Some of the measures that could be directed at capacity building are as follows:
 - The number of Court of Accounts auditors that will be responsible for monitoring military spending must be increased;
 - Auditors that will be responsible for monitoring the security sector must be given opportunities for learning from good-examples abroad. Cooperation perspectives with such countries (and their relevant institutions) must be sought and considered in detail;
 - Capacity building trainings, directed at specialization in the oversight of security sector and its multiple dimensions, must be organized for the Court auditors that will be in charge of monitoring military spending;

- The academic research undertaken by select Court auditors should be followed by policy makers and the Court of Accounts alike, and should be used to inform both practices and policy making in this area;
- Modern monitoring techniques should be implemented with the new Law on Court of Accounts, and no component of the military spending (based on reasons of secrecy and security) must be held outside the scope of the Court's monitoring capacity; the latest legislative changes that act in that direction must be reversed;
- The National Defense Ministry group under the rubric of the Court of Accounts must be restructured; expert teams, that are competent in undertaking financial, IT, compatibility and performance monitoring of defense and military spending, must be formed;
- It should be remembered that the principle of independence of judges and prosecutors also apply to the Court auditors; hence their independence as auditors is not restrained legally, but by laws and regulations regarding implementation of monitoring procedures, which uphold secrecy of spending by security institutions (including the 2012 regulation mentioned above). These restrictions must be removed by the Parliament.
- Recent research in this field shows that certain information about military spending is concealed even from the parliamentarians. The appropriate amelioration of this problem lies with the Parliament and the government. Furthermore public opinion about this issue is also weak and steps must be taken to inform and the public. As long as military spending in Turkey is concealed behind a cloak of secrecy, the serious weaknesses concerning the maintenance of stability and security in Turkey will ensue. This is precisely why the Parliament must use its authority to oversee defense and security spending through the Court of Accounts;
- Despite some of the deficiencies of the Law on Accounts (no 6085), that the military spending of the Turkish Armed Forces will be actively monitored, rather than being subjected only to armchair monitoring, is an important step in breaking the military tutelage. Yet, for security sector reform to succeed,

the lack of political will in the parliament as well as the government, and mental obstacles need to be surpassed.

About the 2012 Amendment to the New Law on the Court Accounts:

- The unexpected, last minute amendment, undertaken by the governing party in June 2012, has regressed the new Law on Court of Accounts even beyond the previous and inadequate Law. This amendment has largely overturned the effectiveness of the oversight that the Court of Accounts used to have over public institutions in an undemocratic manner, and has also constituted an important blow to the principles of independence and neutrality that are the *raison d'être* of the Court of Accounts. The amendments have rendered the oversight capabilities of auditors irreconcilable with international democratic standards. The reasons that compelled the government to undertake this legal change is therefore a matter of curiosity.
- The timing of the amendment is striking within this framework. The Court public officials interviewed by the author have pointed out that the amendments were adopted in the period that preceded the release of the first monitoring reports that were prepared within the scope of Law no. 6085 in September. They have voiced the strong possibility that the amendment might be due to the discomfort of the governing party about the would-be-released results of the Court's reports on the public spending, and a consequent desire to conceal from the public the possible spending problems and fraud associated with public institutions.

Indeed, the amendment does enable the institutions to conceal their mistakes in public spending; mistakes that would have surfaced through the monitoring of public institutions in the absence of the amendment. This lends strength to the analysis that the government, which has entered into its third period in power and is feeling stronger than ever before, might have wanted to conceal the possible mistakes in public spending in anticipation of a resulting weakening.

- The authority of the Court of Accounts is a matter that requires a Constitutional regulation and it has become imperative for this issue to be seriously handled in the process of the new Constitution; the new Constitution must to include a mechanism that will enable the functions of the Court of Accounts to be in line with international standards of monitoring. Lastly, it must be kept in mind that the Court of Accounts is not only a monitoring body, and that it has a judicial function as well. The new Constitution must include clear regulations on this judicial function.

About the author:

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Lale Kemal is the Ankara representative of Taraf newspaper, and a columnist for the English language daily Today's Zaman. Since 1991, Kemal has acted as the Turkey correspondent for the British journal Jane's Defence Weekly. Her research on the Turkish Armed Forces and defence industry are published in this magazine bi-yearly. A journalist since 1979, Kemal has an Associate's Degree from the Global Politics department of the London School of Economics and Political Science. Her work focuses on domestic and foreign policy in general, and civil-military relations in particular.

Kemal's book "Barren Politics in a Trap – the Pipeline Letdown through Secret Documents" earned her the Bülent Dikmener Special Jury Prize in 1997. Kemal has also authored the book "Turkish Defence Procurement, Joint Ventures and Offset Agreements: The International Guide to the Turkish Defence Industry," which was published in English in 1999 by the London based SMI. Kemal has also contributed to TESEV's 2006 publication on security sector institutions "Almanac Turkey 2005: Security Sector and Its Democratic Oversight," under the headlines Turkish Armed Forces, Gendermarie Command Headquarters, and Coast Guards.