Democratization Reforms in Turkey *(1993-2004)*

ERGUN ÖZBUDUN
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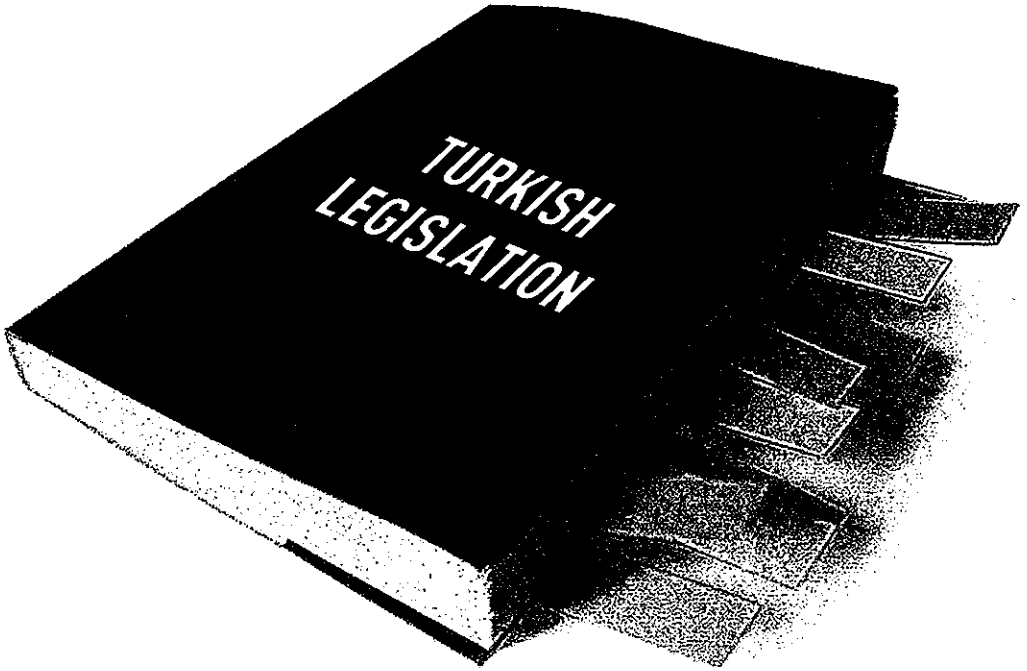

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DEMOCRATIZATION REFORMS IN TURKEY (1993 - 2004)

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PREFACE

Since 2001, the Turkish Parliament enacted seven comprehensive reform "packages" and crucial "harmonization laws". Fulfilling the Copenhagen political criteria for EU membership was certainly the leading incentive behind these constitutional amendments and legal reforms. However, this reform trend can be traced back to well before 2001 to early 1990s when the EU candidacy was not as concrete an incentive for Turkey as it is today. Therefore it would not be wishful thinking to say that the recent reforms in Turkey should also be interpreted as a natural outcome of public support for further democratization, which has become a universal norm in the post Cold-War period, as well as an outcome of Turkey's inevitable integration with the "greater" world. The ease with which reforms on certain taboos, particularly concerning the role of military in public politics and the Kurdish rights, have been adopted is testament to this new socio-political environment in Turkey.

The 1982 Constitution, prepared under non-democratic conditions, reflected the authoritarian and statist values of its military founders, and as such was hardly compatible with universal democratic norms. In this valuable study, the authors Ergun Özbudun, Prof. of Law at Bilkent University-Ankara, and Serap Yazıcı, Assoc. Prof. of Constitutional Law at Istanbul Bilgi University, undertake a complete survey of recent reforms in Turkey which were meant to strengthen democratic principles and institutions. The authors analyze these constitutional and legislative changes under four headings: fundamental civil rights and liberties, political rights, the rule of law and civil-military relations. Particularly important among the analysis presented by the authors in the first section of this essay is steps taken to protect the "essence" of fundamental rights and liberties, confining the general grounds for restrictions, the improvements concerning freedom of expression, freedom of association and freedom of religion and conscience. All of these crucial reforms present opportunities for democratic principles to be firmly embedded in the Turkish culture in the near future.

In the second and third sections of the essay, the authors analyze reforms concerning political rights and the rule of law. Reforms restricting the grounds

on which political figures can be banned from active politics, and political parties can be closed down are a real step forward in placing democratic politics above ideological quarrels. Equally important, the abolition of the State Security Courts and the empowerment of the Constitutional Court to review the constitutionality of laws and law-amending ordinances (decree laws) passed during the National Security Council (NSC) regime, both contributed to the further liquidation of the authoritarian legacy of the NSC regime in Turkey. One of the real impediments in the consolidation of democracy in Turkey has been the prerogatives enjoyed by the military over state control and governance. The fifth and final section of this essay is devoted to the study of civil-military relations in Turkey, analyzing reforms intended for civilianization.

As presented by the authors, the recent constitutional amendments and legal reforms present considerable steps forward in the adoption of true democratic principles and institutions in Turkey, contributing towards Turkey's candidacy for the EU, as well as her integration with the "civilized" world. Yet, there is also no doubt that more remains to be done both in terms of legal and structural reforms. However, the real test ahead of Turkey concerns whether the recent reforms are truly digested by the Turkish society. Democracy challenges intractable perceptions and mentalities. Turkey needs a process of self-critical reflection whereby these impediments to democracy would be revealed and discussed so that a truly meaningful change embracing the society as a whole could become possible.

A valuable reference for anyone wishing to better understand and analyze the recent democratic reforms in Turkey, this study makes a significant contribution towards the public debate on reforms among policy circles, the academia, the media and the civil society.

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Dr. Şerif Sayın Director, TESEV

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SUMMARY

This study analyzes the amendments made to the 1982 Turkish Constitution and other substantive changes in ordinary laws in Turkey between the years 1993-2004 under four headings: fundamental civil rights and liberties, political rights, the rule of law, and civil-military relations. Particular attention is given to the so-called "harmonization laws" that were passed in 2002 and 2003 in seven reform "packages" with the primary aim of fulfilling the Copenhagen political criteria for EU membership.

In the first section of this essay the constitutional amendments and other legal reforms concerning fundamental right and liberties are examined. Of the eight constitutional amendments since the adoption of the 1982 constitution, the one with most far reaching effects on fundamental rights and liberties was that of 2001. This amendment changed the overall approach to the restriction of fundamental rights and liberties, by emphasizing the protection of the "essence" of these rights and liberties and introducing the principle of proportionality, while also brining about improvements with respect to several rights and liberties such as freedom of expression and freedom of association. More recent constitutional amendments abolished the death penalty in Turkey, opened the way for affirmative action or positive discrimination in favor of women, and for the more effective application of European Convention of Human Rights and other international human rights instruments by Turkish courts through brining the status of international human rights agreements somewhere in between constitutional norms and ordinary legislation. Later the reform law packages introduced several other improvements concerning the protection of fundamental rights and liberties, most significantly on freedom of religion and conscience, freedom of expression, and freedom of association. The third reform law package recognized the right of community foundations (implicitly of the community foundations of non-Muslim minorities) to own and to dispose of immovable properties, which had been de-facto taken away since 1936. The sixth reform package recognized the right of non-Muslim communities to build places of worship. The most significant improvement on freedom of expression concerned allowing the teaching and broadcasting in "different languages and dialects traditionally used by Turkish citizens in their daily lives", including but not restricted to Kurdish. Significant amendments were also made to the Constitution to outlaw the punishment of "thoughts and opinions".

The second section of this essay examines improvements concerning political rights. With the new constitutional amendments Turkish citizenship was automatically granted to the child of a Turkish father or a Turkish mother, whereas previously citizenship of a child with a foreign father but a Turkish mother was determined by law. The voting age was lowered to 18 years old. In addition, two important amendments concerning eligibility to parliament and the regulation and prohibition of political parties were adopted. While a significant and often controversial non-eligibility criterion for parliament based on involvement in "ideological and anarchistic actions" was restricted to the more concrete "terror actions", regulations concerning the organization and function of political parties was considerably liberalized. Also, a five year political ban was introduced to members and administrators whose party was dissolved by a decision of the Constitutional Court, whereas previously such personalities would be banned from active politics forever. Another significant democratic reform came with the constitutional amendments in 2001, when the right to petition was extended to foreign citizens residing in Turkey within the framework of reciprocity.

The third section is devoted to constitutional and legal reforms concerning the rule of law. While conditions surrounding the right to a fair trial were improved considerably and the State Security Courts, which were established following the military coup of 1971, were abolished, other amendments empowered the Constitutional Court to review the constitutionality of laws and law-amending ordinances (decree laws) passed during the National Security Council (NSC) regime, contributing to the further liquidation of the authoritarian legacy of the NSC regime in Turkey.

The fourth and final section of this essay presents a general analysis of civil-military relations in Turkey and the recent constitutional and legal reforms which furthered civilianization. The Turkish Armed Forces have achieved important prerogatives through the process of making constitutions which are carried out under their influence, following each military intervention. One such prerogative, enabling the military to exert influence on political life in Turkey, was the National Security Council established with the 1961 constitution after the military coup of 1960. With the recent constitutional and legal amendments major reforms concerning the structure and functioning of the National Security Council were adopted. Most significantly the Seventh Reform Package allowed for the appointment for the first time of a civilian as the secretary general to the Council.

ÖZET

Bu çalışma, 1993-2004 yılları arasında Türkiye'de 1982 TC Anayasası'na getirilen düzenlemeler ve tabii hakları düzenleyen kanunlarda yapılan değişiklikleri dört başlık altında incelemektedir: asli vatandaşlık hakları ve özgürlükler, siyasi haklar, hukukun üstünlüğü ilkesi ve sivil-asker ilişkisi. AB üyeliğine mukabil Kopenhag siyasi kriterlerini yerine getirme birincil hedefiyle 2002 ve 2003 yıllarında yedi reform "paketi" biçiminde meclisten geçirilen "uyum yasaları"na özel bir dikkat sarfedilmiştir.

Bu çalışmanın ilk bölümünde temel haklar ve özgürlüklerle ilgili anayasal düzenlemeler ve diğer yasal reformlar gözden geçirilmiştir. 1982 Anayasası'nın kabul edilmesinden bu yana gerçekleşen sekiz anayasal düzenlemeden temel hak ve özgürlükler üzerinde en uzun erimli etkiye sahip olan düzenleme 2001 yılında yürürlüğe girmiştir. Bu düzenleme, bir yandan ifade özgürlüğü ve dernek kurma özgürlüğü gibi muhtelif haklar ve özgürlüklere ilişkin iyileşmeye sebep olurken; bu hakların ve özgürlüklerin "özü"nün korunmasına vurgu yaparak ve "orantısallık" ilkesini ortaya koyarak temel hak ve özgürlüklerin sınırlandırılmasına ilişkin tüm yaklaşımı değiştirmiştir. Daha yakın zamandaki düzenlemeler ile Türkiye'de idam cezası kaldırılmış; uluslararası insan hakları sözleşmelerinin statüsünün anayasal normlar ve tabii haklar mevzuatı arasına taşınmasıyla kadınlar yararına olumlayıcı edimsellik ya da pozitif ayrımcılığın, Avrupa İnsan Hakları Sözleşmesi ve diğer insan hakları belgelerinin Türkiye mahkemelerinde daha etkin bir uygulamasının yolu açılmıştır. Sonrasında diğer reform yasası paketleri özellikle din ve inanç özgürlüğü, ifade özgürlüğü ve dernek kurma özgürlüğü gibi temel hak ve özgürlüklerin korunması yönünde muhtelif ilerlemeler kaydetmiştir. Üçüncü reform yasası paketi cemaat vakıflarının (zımnen Gayrı Müslim azınlıklara ait vakıfların) 1936 yılından beri fiili olarak ellerinden alınmış bulunan, taşınmaz malların mülkiyeti ve tasarrufu hakkını tanımıştır. Altıncı refrom paketi Gayrı Müslim cemaatlerine ibadethane inşa etme hakkını tanımıştır. İfade özgürlüğüne dair en önemli gelişme, Kürtçe'yi içerecek ancak sadece Kürtçe'yle sınırlı olmayacak bir biçimde, "Türk vatandaşları tarafından gündelik hayatta geleneksel olarak kullanılan dil ve lehçeler"de yayın yapılmasına ve bu dil ve lehçelerin öğretimine izin verilmesidir. Ayrıca "düşünce ve fikirler"e yönelik cezalaların yasadan çıkartılması yönünde Anayasa'da önemli değişiklikler yapılmıştır.

Çalışmanın ikinci bölümü siyasi haklarla ilgili gelişmeleri incelemektedir. Yeni doğan çocuğun vatandaşlığı daha öncesinde yabancı bir babadan ve Türk bir anneden olma durumuyla sınırlandırılırken; yeni yasal düzenlemelerle Türk bir babadan ya da anneden olan çocuğa vatandaşlık verilmiştir. Oy kullanma yaşı 18'e indirilmiştir. Buna ek olarak milletvekili olma niteliği ve siyasi partiler yönetmeliği ve siyasi partilerin yasaklanmasına ilişkin iki önemli düzenleme kabul edilmiştir. Önemli ve bir o kadar da tartışmalı olan, "ideolojik ve anarşist eylemler" içinde yer almış olma durumuna dayandırılan milletvekili seçilememe kriteri , daha somut bir biçimde "terör eylemleri" içinde bulunmayla sınırlandırılırken; siyasi partilerin işlevleri ve örgütlenmelerine ilişkin yönetmelik liberalleştirilmiştir. Bunların yanı sıra partileri Anayasa Mahkemesi kararıyla kapatılan parti idarecileri ve yöneticilerinin beş yıl süreyle siyasetten men edilmesine ilişkin düzenleme yürürlüğe girmiştir. Daha öncesinde ilgili düzenlemeye göre, söz konusu kişiler ömürleri boyunca siyasetten men ediliyordu. Bir diğer demokratik reform da dilekçe hakkının, karşılıklılık ilkesi çerçevesinde Türkiye'de oturan yabancıları kapsayarak genişlemesiyle 2001 anayasal düzenlemeleri sonucu gerçekleşmiştir.

Üçüncü bölüm hukukun üstünlüğü ilkesine ilişkin yasal ve anayasal reformlara tahsis edilmiştir. Adil yargılamaya ilişkin koşullar göreceli olarak iyileştirilir ve 1971 askeri darbesi ertesinde kurulan Devlet Güvenlik Mahkemeleri'ni feshederken; diğer düzenlemeler Anayasa Mahkemesine Milli Güvenlik Kurulu (MGK) rejimi döneminde geçen yasa ve yasa hükmünde kararnamelerin anayasallığını gözden geçirme hakkı tanıması ile Türkiye'de MGK rejiminin otoriter mirasının tasfiyesine katkıda bulunmuştur.

Bu çalışmanın dördüncü ve son bölümü Türkiye'de sivil-asker ilişkilerinin ve sivilleşmenin yaygınlaşmasına yardımcı olabilecek yakın dönem anayasal ve yasal reformların genel bir analizini sunmaktadır. Türkiye Silahlı Kuvvetleri, her askeri müdahaleyi müteakiben; nüfuzlarını kullanarak anayasa yapım süreçlerinde önemli imtiyazlar elde etmişlerdir. Bu imtiyazlardan biri orduyu Türkiye'nin siyasi hayatına etki etmeye muktedir kılan ve 1960 askeri darbesini müteakiben, 1961'de kurulmuş olan Milli Güvenlik Kuruludur. Yakın dönemde Milli Güvenlik Kurulu'nun yapısına ve işlevine ilişkin belli başlı anayasal ve yasal düzenlemeler kabul edilmiştir. En önemlisi Yedinci Reform Paketiyle ilk kez bir sivilin Genel kurul sekreterliğine atanmasına izin verilmesidir.

I. INTRODUCTION*

The 1982 Constitution of Turkey is the product of the military intervention of 12 September 1980. The military regime (the National Security Council, NSC regime) that took over declared from the beginning its intention to restore democracy. It made equally clear, however, that this would not be a return to the status quo ante. Rather, it meant a radical restructuring of Turkish democracy so as to prevent the recurrence of the crises that had afflicted Turkish society and politics in the late 1970s. Thus, the Constitution of 1982 was prepared under the aegis of the NSC, with the help of a wholly appointed civilian Consultative Assembly, and approved by a popular referendum whose democratic legitimacy is open to question.

Thus, the 1982 Constitution, prepared under non-democratic conditions, reflected the authoritarian and statist values of its military founders. Its primary aim was to restore the authority of the state and to maintain public order rather than to protect the rights and liberties of its citizens. As is commonly observed, the underlying philosophy of the 1982 Constitution was to protect the state from the actions of its citizens, rather than protecting the fundamental rights and liberties of the citizens from the state's encroachment. Most of the fundamental rights commonly found in democratic constitutions were recognized by the 1982 Constitution but defined in highly restrictive terms. The Constitution also provided strong exit guarantees for the outgoing NSC regime by providing vaguely defined tutelary powers and reserved domains for the military. Therefore, quite understandably, the 1982 Constitution became a subject of heated debate and controversy almost from its inception. Parallel to the social and political developments following the restoration of democracy in 1983, it was amended eight times (in 1987, 1993, 1995, twice in 1999, 2001,2002 and 2004) sometimes fairly radically. The general directions of these amendments were to improve the protection of fundamental rights, to bolster the rule of law, and to limit the military's prerogatives in government. In addition to these constitutional amendments, a large number of ordinary laws were also modified in the same direction. Particularly noteworthy are the so-called "harmonization laws" that

* Section V of this study on civil-military relations is written by Serap Yazıcı (İstanbul Bilgi University) and the rest by Ergun Özbudun (Bilkent University).

were passed in 2002 and 2003 in seven reform "packages."

Of all eight constitutional amendments, the most radical and comprehensive one was that of 2001 which involved 34 articles, to be followed by the 1995 amendment which amended 15 articles, and the most recent amendment adopted on 7 May 2004 which changed 10 articles. In all these cases, the amendments were adopted through broad inter-party agreements in parliament, since in none of them a single party held a two-thirds majority of the parliamentary seats required for the adoption of a constitutional amendment without a popular referendum. Particularly, the 2001 amendments were the product of intense negotiations and compromises within the so-called all-parties "accord committee" composed of members of all parliamentary parties. Such broad inter-party agreements in constitutional matters are a good omen for Turkish politics, which had displayed a singular lack of capacity for inter-party compromise in the 1950s, 1960s, and 1970s. Similar compromises were reached on most of the harmonization laws packages.

Our study aims to analyze these constitutional and legislative changes under four headings: fundamental civil rights and liberties, political rights, the rule of law, and civil-military relations. In each section, an analytical rather than a chronological order will be followed.

II. FUNDAMENTAL RIGHTS AND LIBERTIES

Of the eight constitutional amendments, the one with the most far reaching effects on the fundamental rights and liberties was that of 2001. This amendment changed not only the overall approach to the restriction of fundamental rights and liberties, but also brought about improvements with respect to personal liberty and security, privacy of individual life, inviolability of the domicile, secrecy of communications, freedom of residence and travel, freedom of expression, freedom of the press, freedom of association, freedom of assembly, the right to a fair trial, and limited death penalty to certain categories of crime. The 2001 amendment also enlarged the scope of social and economic rights by bringing about improvements in the protection of the family, expropriations, the right to work, the right to form labor unions, and the right to an equitable wage.

1. General Grounds for the Restriction of Fundamental Rights and Liberties

The original text of Article 13 enumerated general grounds for restricting all fundamental rights and liberties, namely safeguarding the indivisible integrity of the state with its territory and nation, national sovereignty, the Republic, national security, public order, public peace, public interest, public morals, and public health. In addition to these general grounds, fundamental rights and liberties could also be restricted for the specific reasons stated in the relevant articles. The 2001 amendment deleted the general grounds for restriction. The amended text reads as follows: "Fundamental rights and liberties may be restricted only by law and solely on the basis of the reasons stated in the relevant articles of the constitution without impinging upon their essence. These restrictions shall not conflict with the letter and the spirit of the Constitution, the requirements of democratic social order and the secular Republic, and the principle of proportionality."

In addition to the deletion of general grounds for restriction, the amendment brought about two important improvements. One is the protection of the "essence" of fundamental rights and liberties, or their irreducible core, which was inspired by the German Constitution and adopted by the Constitution of 1961. The other is the introduction of the principle of proportionality which is also widely used in the jurisprudence of the German Constitutional Court. Although both of these

principles were used by the Turkish Constitutional Court prior to the 2001 amendment, their explicit constitutional recognition will, no doubt, provide an additional guarantee for the protection of fundamental rights and liberties. Together with such improvements, the guarantee that restrictions shall not be in conflict with the requirements of the democratic social order (which existed in the original text of the 1982 Constitution as well as in the European Convention of Human Rights) was also maintained. To put it briefly, Article 13 ceased to be a general restrictive clause and became a general protective clause.

2. The Abuse of Fundamental Rights and Liberties

The original text of Article 14 dealing with the abuse of fundamental rights and liberties had stated that "none of the rights and liberties embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, of endangering the existence of the Turkish State and Republic, destroying fundamental rights and liberties, of placing the government of the State under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on the basis of language, race, religion or sect, or of establishing by any other means a system of government based on these concepts and idea." The new text reads as follows: "None of the rights and liberties embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, and endangering the existence of the democratic and secular Republic based on human rights. No provision of the Constitution shall be interpreted in a manner that would enable the State or individuals to destroy the fundamental rights and liberties embodied in the Constitution or to engage in an activity with the aim of restricting them more extensively than is stated in the Constitution."

Thus, many of the circumstances which constituted an abuse of rights under the previous version of the Article were eliminated. In its new version, the Article was brought much closer to Article 17 of the European Convention of Human Rights. Another innovation is the recognition that abuse of rights and liberties can be perpetrated not only by individuals but also by the state.

3. Personal Liberty and Security

Article 19 was amended to shorten pre-trial detention periods. In the original text of the article such periods were maximum forty-eight hours for the individual crimes and maximum fifteen days for the collectively committed crimes. In the new text, the period for collectively committed crimes was shortened to a maximum of four days. Thus, conformity with the jurisprudence of the European Court of Human Rights was assured. Furthermore, the obligation to notify the next of kin without delay was strengthened by eliminating the exceptions to this rule. Finally, it was stipulated that those who suffered damage as a result of unlawful detention or arrest shall be compensated by the state.

4. Privacy of Individual Life

Article 20 provides a guarantee against unlawful searches and seizures of a person's private papers and belongings. Normally, this right can only be restricted by an order of a judge. However, the original text of the article permitted such restriction on the order of a competent administrative authority in cases where delay is prejudicial. With the amendment, this guarantee was strengthened by stating that the decision of the administrative authority shall be submitted to the approval of the competent judge within twenty-four hours, and the judge shall proclaim his decision within forty-eight hours from the time of seizure; otherwise seizure automatically ceases.

5. Inviolability of the Domicile

A similar improvement was made in Article 21 which regulated the inviolability of the domicile. Thus, the decision of the administrative authority in cases where delay is prejudicial has to be submitted to the approval of the competent judge within twenty-four hours.

6. Freedom and Secrecy of Communication

A similar change was made in Article 22 obliging the administrative authority to submit its decision to the approval of the competent judge within twenty-four hours.

7. Freedom of Residence and Travel

With the amendment to Article 23, "national economic situation" was deleted as a ground for restricting the citizen's freedom to travel abroad.

8. Freedom of Religion

Although no amendment was made to Article 24 governing the freedom of religion and conscience, the third reform laws package which went into force on 9 August 2002 recognized the right of community foundations (meaning non-Muslim foundations) to own immovable properties and to dispose of them freely. The sixth reform package which went into force on 19 July 2003 recognized to right of non-Muslim communities to build places of worship subject to the approval of the competent administrative authorities.

9. Freedom of Expression

A small but important change was made in Article 26 by deleting the phrase "language prohibited by law" which was included in the Constitution by its military founders evidently to ban the use of Kurdish. The NSC regime also passed a law to that effect without specifically mentioning Kurdish. This law was repealed in 1991, however, and since that time there has been no language prohibited by law. Nevertheless, the deletion of that phrase constitutes a guarantee against reintroducing such a law in the future.

Another change involved the Preamble of the Constitution which, according to Article 176, is an integral part of the Constitution. The original text had stated that "no protection shall be afforded to thoughts and opinions contrary to Turkish national interests, the indivisibility of the State with its territory and nation, Turkish historical and moral values; Atatürk's nationalism, his principles, reforms, and modernism." Now the words "thoughts and opinions" were replaced by the word "activity." Although it is debatable whether the term "activity" still encompasses the dissemination of thoughts and opinions, it may be argued that the intention of the Constitution-maker was to punish actions rather than the abstract expression of opinions.

Another constitutional amendment indirectly but significantly related to the

freedom of expression was that of 1993 which abolished the state monopoly on radio and television broadcasting. This reform led to a rapid proliferation of private radio and television stations, which greatly contributed to the development of social and political pluralism in Turkey.

Most of the improvements in the field of the freedom of expression were accomplished not by way of constitutional reform, but through changes in ordinary legislation. Thus, the Anti-Terror law passed in 1991 repealed the notorious articles 141, 142, and 163 of the Penal Code, which punished communist and anti-secular propaganda and organization. The first reform package passed on 19 February 2002 amended Article 312 of the Penal Code that punished inciting people to hostility and hatred on the basis of the differences of social class, race, religion, sect, and region. With the amendment, such expressions would constitute a criminal offense only if they may create a danger for public order. The third reform package of August 2002 changed Article 159 of the Penal Code under which insulting and deriding the Republic, Turkishness, the Grand National Assembly, the Government, the ministries, the military and security forces, and the moral personality of the judiciary was a criminal offense. Now, it was stipulated that criticisms without the intention of insult or contempt would not constitute an offense. The sixth reform package passed on 19 July 2003 abolished Article 8 of the Anti-Terror law which penalized separatist propaganda, thereby eliminating the last vestige of the so-called "thought crimes".

The third reform package also significantly broadened the scope of the freedom of expression by permitting the use of local languages other than Turkish (the exact wording of the Law is "different languages and dialects traditionally used by Turkish citizens in their daily lives") in radio and television broadcasting and their teaching by private language courses (two of the most controversial issues in Turkish politics). The sixth reform package broadened this right by permitting such broadcasting both by public and private radio and television channels.

10. Freedom of the Press

Similarly to the change in Article 26, Article 28 was amended to delete the phrase "language prohibited by law." A further improvement was brought about by the constitutional amendment of 2004, according to which printing presses and their annexes shall not be seized, confiscated, or barred from operation on the grounds

of being an instrument of crime. While the original text of Article 30 recognized this guarantee, it provided for exceptions in cases where conviction for offences against the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic or national security is involved. Now, these exceptions were deleted from the Article.

In addition to these constitutional amendments, certain provisions of the Press Law were liberalized by the second, third, and fourth reform packages.

II. Freedom of Association

Article 33 which regulated the freedom of association was extensively amended in 1995. The original text of the 1982 Constitution prohibited the associations to pursue political aims, engage in political activities, receive support from or give support to political parties, or take joint action with labor unions, public professional organizations or foundations. Furthermore, the Article stipulated that, while associations may normally be dissolved by a decision of a judge, they may also be suspended from activity by the competent (administrative) authority pending a court decision in cases where delay endangers the indivisible integrity of the State with its territory and nation, national security, national sovereignty, public order, the protection of the rights and freedoms of others, or the prevention of offences. The 1995 amendment abolished the ban on the political activities of associations and permitted them to engage in collaborative action with political parties and other civil society organizations. Furthermore, the amended Article stipulated that in cases where an association is suspended from activity by the decision of the competent administrative authority, such decision shall be submitted to the approval of the competent judge within twenty-four hours. The judge proclaims his decision within forty-eight hours; otherwise, this administrative decision automatically ceases to be effective. Article 33 was also amended in 2001 without significantly changing its substance.

Certain provisions of the anti-liberal Law on Associations, also a product of the National Security Council regime, were liberalized by the second, third, fourth, and fifth harmonization (reform) packages.
More recently, on July 17, 2004, Turkish Parliament passed an entirely new law on associations (Law No. 5231). This law has rightly been characterized by a leading Turkish NGO (the Third Sector Foundation of Turkey, TÜSEV) as "the

most progressive Law on Associations in over 20 years." Some of the major revisions include the following: (1) associations are no longer required to obtain prior authorization for foreign funding, partnerships or activities; (2) associations are no longer required to inform local government officials of the day /time/ location of general assembly meetings and no longer required to invite a government official to general assembly meetings; (3) audit officials must give 24 hour prior notice and just cause for random audits; (4) NGO's are permitted to open representative offices for federations and confederations internationally; (5) security forces are no longer allowed on premises of associations without a court order; (6) specific provisions and restrictions for student associations have been entirely removed; (7) children from the age of 15 can form associations; (8) internal audit standards have been increased to ensure accountability of members and management; (9) NGO's will be able to form temporary platforms/ initiatives to pursue common objectives; (10) government funding for up to 50% of NGO projects will be possible; (11) NGO's will be allowed to buy and sell necessary immovable assets.

12. Freedom of Assembly

The original text of Article 34 had stipulated that "the competent administrative authority may determine the site and the route for a demonstration march in order to prevent disruption of order in urban life. The competent authority designated by law may prohibit a particular meeting and demonstration march, or postpone it for not more than two months in cases where there is a strong possibility that disturbances may arise which would seriously upset public order, where the requirement of national security may be violated, or where acts aimed at destroying the fundamental characteristics of the Republic may be committed. In cases where the law forbids all meetings and demonstration marches in districts of a province for the same reason, the postponement shall not exceed three months. Associations, foundations, labor unions, and public professional organizations may not hold meetings or demonstration marches outside their own scope of activity and aims." These paragraphs were repealed by the constitutional amendment of 2001, thereby broadening the scope of the freedom of assembly considerably. Certain provisions of the Law on Public Meetings and Demonstration Marches were also liberalized by the second and third reform laws packages.

13. The Right to a Fair Trial

The right for a fair trial was added to Article 36 in 2001. Another constitutional amendment closely related to this right is the one that concerns the State Security Courts. These courts, first created in 1973 and then reincorporated into the 1982 Constitution, were mixed courts composed of civilian and military judges and public prosecutors, designed to deal with crimes against the security of the state. The European Court of Human Rights has consistently found Turkey in violation of Article 6 of the Convention in cases involving the State Security Courts. Therefore, Article 143 of the Constitution was amended on 18 June 1999 to eliminate the military judges and public prosecutors from these courts. The first, fourth and sixth reform packages also liberalized the procedure to be pursued by the State Security Courts and made it parallel to that of the ordinary courts. Finally, with the constitutional amendment of 2004, the State Security Courts were totally abolished.

14. The Abolition of the Death Penalty

Death penalty was restricted to crimes committed in cases of war, or the imminent threat of war, and terror crimes by the constitutional amendment of 2001. The third reform package passed on 9 August 2002 also eliminated the terror crimes exception. Thus, conformity with the Sixth Additional Protocol to the European Convention of Human Rights (ECHR) was attained. Finally, the 2004 constitutional amendment totally abolished death penalty including the cases of war or the imminent threat of war, thereby removing the constitutional obstacle to the ratification by Turkey of the 13th Additional Protocol to the ECHR. In the same vein, three other references to death penalty in Articles 15, 17, and 87 of the Constitution were deleted.

15. Prevention of Torture and Mistreatment

The Constitution of 1982, like its predecessors, explicitly forbids torture, mistreatment, and inhuman treatments and punishments in its Article 17. Such acts have also been a criminal offense under the Penal Code. On the other hand, incidents of torture and mistreatment have been quite widespread in Turkey. Therefore, certain reforms were made in 2002 to deter such practices. The second reform package changed the Civil Servants Law stipulating that damages paid

by Turkey as a result of the decisions of the European Court of Human Rights in torture and mistreatment cases shall be claimed from the perpetrators. The fourth reform package abolished the requirement to obtain the permission of the competent administrative authorities in order to prosecute public servants and other public employees in torture and mistreatment cases. Thus, the public prosecutors can now directly prosecute the perpetrators. The seventh reform package adopted on 30 July 2003 provided for a procedure of speedy trial in torture and mistreatment cases stipulating that such cases shall be given priority and trials shall continue during the judicial recess.
More recently, in July 2004, Turkish Parliament passed a law (Law No. 5233) which provided for the payment of damages by the state incurred as a result of terrorist actions or of the anti-terror activities of government officials.

16. Principles Related to Crimes and Penalties

With the constitutional amendment of 2001, Article 38 was modified to include two principles closely related to the rule of law. One is that unlawfully obtained findings shall not be accepted as evidence. The second stipulates that no one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation. Both principles were long established in the Turkish legal system; however, they were now elevated to constitutional level.

17. The Protection of Fundamental Rights and Liberties

With the amendment of 2001, a sentence was added to Article 40 stating that the State is obliged to inform the people concerned of the legal remedies and the competent authorities to which they should apply and the time limits for such applications.

18. Equality of Sexes

The original text of Article 10 states that "all individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such consideration. No privilege can be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings." The constitutional amendment

of 2004 further underlined the equality between sexes by stating that "women and men have equal rights. The State is obliged to put this equality into effect." This new provision opens the way for affirmative action or positive discrimination in favor of women, which were already adopted in some areas of life such as the retirement legislation. The 2001 amendment had also underlined the equality between sexes by stating in Article 41 that the family is based on the equality between the spouses.

19. Expropriation

The 2001 amendment to Article 46 substitutes the phrase "true compensation" for the word compensation. True compensation has to be interpreted in the sense of the actual market value of the expropriated property. The amendment also abolished other criteria used in calculating the amount of compensation, such as tax declarations, official assessment of the current price, unit prices and construction costs. Furthermore, in cases where the payment of compensation is made in installments, the highest interest paid on public claims has to be paid, instead of the highest interest paid on public debts. These changes have significantly strengthened the right to property.

20. Privatization

A constitutional reference was made to privatization in Article 47 for the first time by the amendment of 13 August 1999, thereby removing some of the legal obstacles on the way to privatization.

21. The Right to Work

An amendment to Article 49 made in 2001 included the unemployed among the groups, such as workers, to be protected by the state.

22. The Right to Form Labor Unions

Articles 51 and 52 governing the right to form labor unions were extensively amended in 1995. Thus, parallel to the changes made in Article 33 on the freedom of association, the ban on their political activities and on their collaboration with political parties and other civil society organizations was abolished. Furthermore,

the requirement that they shall use their income only within their aims and keep all their income in the state banks was repealed. The Article was amended again in 2001 substituting the word "employees" for the "workers", thus extending the right to unionize to public employees without granting them the right to strike however. The paragraphs which stipulated that employment in a given workplace shall not be made conditional on being, or not being, a member of a labor union, and that the workers should have held the status of a laborer for at least ten years in order to become an executive in a labor union were also repealed.

23. The Right to a Fair Wage

In 2001, Article 55 was amended to add the phrase "the living conditions of the workers" among the criteria in determining the minimum wage.

24. International Protection of Fundamental Rights and Liberties

Starting from the mid-1980's Turkey signed and ratified a number of international agreements on the protection of human rights. Thus, on 22 January 1987, she recognized the right to individual application to the European Commission of Human Rights, and on 25 September 1989, accepted the binding judicial competence of the European Court of Human Rights. She also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 26 February 1988, the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 29 April 1988, and the European Social Charter on 16 June 1989. More recently, Turkey ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Protocol 6 of the European Convention of Human Rights concerning death penalty.

In the fourth and fifth reform laws packages, the decisions of the European Court of Human Rights which found Turkey in violation of the Convention were recognized as a ground for a renewal of the trial in civil, criminal, and administrative courts.

In the most recent constitutional amendment of 2004, it was stipulated that in case of a conflict between domestic laws and the international agreements concerning fundamental rights and liberties, which were duly put into effect, international agreements should take precedence. Previously, Article 90 of the Constitution had stipulated that international agreements, which were duly put into effect, have the same value as domestic laws. Although this has been a subject of heated debate in the Turkish constitutional and international law literature, the dominant view was that in case of a conflict between international agreements and domestic laws, the rules "lex posteriori derogat legi anteriori" and "lex specialis derogat legi generali" would apply. The present arrangement puts international agreements on fundamental rights and liberties somewhere in between constitutional norms and ordinary legislation, as in the case of France. With this reform, a much more effective application of the European Convention of Human Rights and other international human rights instruments by Turkish courts will be ensured.

Another constitutional amendment made in 2004 changed the last paragraph of Article 38. While the original text of the Article stated that no citizen should be extradited to a foreign country on account of an offence, now, an exception to this rule was made concerning the obligations stemmed from being a party to the International Criminal Court. Thus, the constitutional obstacle was removed for Turkey in order to sign this Convention.

III. POLITICAL RIGHTS

1. Turkish Citizenship

With the constitutional amendment of 2001, Article 66 was changed to replace the sentence "citizenship of a foreign father and a Turkish mother shall be determined by law" with the sentence "the child of a Turkish father or a Turkish mother is a Turk".

2. The Right to Vote

The constitutional amendment of 1995 lowered the voting age to 18 years of age (which had already been lowered from 21 to 20 by the constitutional amendment of 1987). The 1995 amendment to Article 67 also granted the right to vote to the Turkish citizens living abroad under conditions to be defined by law. However, no such law has been passed so far. Article 67 was amended again in 2001 to add the provision "changes made in the electoral laws shall not be applied to the elections to be held within a year from the time the amendments go into force." This provision was designed to prevent last minute electoral manipulations by parliamentary majorities.

3. Eligibility to Parliament

Under the original text of Article 76, those who have been convicted, inter alia, of involvement in "ideological and anarchistic actions" were not eligible to become a deputy. With a constitutional amendment adopted on 26 December 2002, this extremely vague and broad term was replaced with that of "terror actions".

4. Regulation and Prohibition of Political Parties

Article 68 and 69 on the regulation and prohibition of parties were extensively amended in 1995 and 2001. The 1995 amendment redefined and somewhat limited the grounds for the prohibition of parties. Thus, the amended paragraph four of Article 68 reads as follows: "The statutes and programs, as well as the activities of political parties cannot be in conflict with the independence of the State, its indivisible integrity with its territory and nation, human rights, the principles

of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular Republic; they shall not aim to support or to establish a dictatorship of class or group or dictatorship of any kind; they shall not encourage the commitment of an offense." Furthermore, the paragraph stipulating that "political parties can not organize and function abroad, can not form discriminatory auxiliary bodies such as women's or youth branches, nor can they establish foundations" was repealed. Also repealed was the first paragraph of Article 69 which stipulated that political parties can not engage in activities outside the scope of their statutes and programs and can not contravene the restrictions set forth in Article 14 of the Constitution; those that contravene them shall be permanently dissolved. Similarly, the second paragraph of the same article banning political parties to engage in political cooperation with associations, trade unions, foundations, cooperatives, and public professional associations, and to receive material assistance from them was repealed. Finally, the age at which one can become a party member was lowered to 18, and the university teaching staff and university students were permitted to become members in political parties.

Another consequential amendment made in 1995 concerns the status of party members and administrators whose party was dissolved by a decision of the Constitutional Court. According to the original text of Article 69, "the founding members and administrators at any level of a political party which has been permanently dissolved, can not become founding members, administrators, or comptrollers of a new political party; nor can any new political party be founded, the majority of whose members are former members of a previously dissolved political party." The amended text reads as follows: "Members, including the founders of a political party whose statements and activities have caused it to be permanently dissolved, cannot become founders, members, administrators or comptrollers of another party for a period of five years starting on the date on which the Constitutional Court's final verdict on the dissolution of the party is published in the Official Gazette." Thus, the ban was limited to five years and only to those members of the party who caused it to be dissolved by their own words and deeds.

A similar amendment made in 1995 concerns the status of the members of Parliament whose political party is dissolved by the Constitutional Court. The original text of Article 84 had stipulated that all members of Parliament who were members of the dissolved party at the time when the dissolution proceedings

started would automatically lose their parliamentary seats together with the dissolution verdict of the Constitutional Court. The amended Article provides that only those deputies who caused the dissolution of their party by their own words and deeds would lose their membership.

The constitutional provisions concerning political parties were amended again in 2001 to make the prohibition of parties more difficult. According to the amended sixth paragraph of Article 69, the dissolution of a political party on account of its activities contrary to the provisions of the fourth paragraph of Article 68 may be decided only when the Constitutional Court determines that it has become a focal point of such activities. A political party can be deemed to have become the focal point of such activities when they are undertaken intensively by the members of that party and when these actions are implicitly or explicitly approved by the general convention, or the chairperson, or the central decision-making or executive organs, or by the plenary session of its parliamentary group or its executive committee, or when these actions are directly carried out determinedly by the above-mentioned party organs. It was also stipulated in the amended Article 69 that the Constitutional Court may decide to deprive a party totally or partially of the state funds, instead of closing it down permanently, depending on the gravity of the violations. A third change involving the prohibition of political parties was made in Article 149, according to which the Constitutional Court may decide to prohibit a party only by the three-fifth majority of its members instead of a simple majority. Thus, with the constitutional amendments of 1995 and 2001, the constitutional guarantees for political parties were significantly strengthened.

5. Right of Petition

With the constitutional amendment of 2001, the right of petition (Art. 74) was extended to foreign citizens residing in Turkey within the framework of reciprocity.

6. Provisions Concerning Civil Society

It has been pointed out above that the 1995 constitutional amendments brought about improvements in the status of associations and trade unions, two important civil society organizations. Similar improvements were made by the same

constitutional amendments with respect to the status of public professional organizations and cooperatives. Thus, by the change in Article 135, the ban on the political activities of public professional organizations was lifted. It was also stipulated that if, in cases where national security, public order, the prevention of an offense or the apprehension of the offender are concerned, a delay is prejudicial, the law may designate a competent authority to suspend the professional organizations and their superior bodies from activity. The decision of this authority is submitted to the approval of the competent judge within 24 hours. The judge proclaims his decision within 48 hours; otherwise this administrative decision automatically ceases to be effective. Similarly, by a change in Article 171, the ban on the political activities of cooperatives was abolished.

IV. THE RULE OF LAW

Certain constitutional amendments on fundamental rights and liberties, particularly those concerning the right to a fair trial and the abolition of the State Security Courts, are certainly relevant to the rule of law. A more directly relevant constitutional amendment was made in 2001 repealing the third paragraph of the Transitional Article 15, which had barred the review of constitutionality over the laws and law-amending ordinances (decree laws) passed during the National Security Council regime. Thus, the Constitutional Court was empowered to review the constitutionality of such laws and to contribute to the liquidation of the authoritarian legacy of the NSC regime. However, it may take many years to do so, since the Constitutional Court was allowed to exercise constitutional review only by way of incidental proceedings (concrete norm control) and not by way of principal proceedings (abstract norm control).

V. CIVIL-MILITARY RELATIONS

One of the major problems of Turkish democracy concerns civil-military relations. Among other parameters, democracy requires the establishment of democratic patterns of civil-military relations. In this pattern, military authorities are not able to exercise control over the decisions which are taken by elected civilians. In other words, all major political decisions, including matters of national defense or public order shall be taken by elected civilians who are accountable to the people. In such a system, the functions of the military institutions are limited to the national defense. In Turkey, however, the relations between the military and the civilians are not compatible with the democratic model of these relations. In fact, civilians feel themselves obliged to get the approval of the military authorities in the process of taking crucial political decisions with regard to both domestic and external matters. One of the major reasons of this problem is the historical role of the Turkish Armed Forces in the establishment of the Republic; the other, even more important, reason is the military takeovers which were carried out three times during the last half century. In fact, Turkish Armed Forces have achieved important prerogatives through the processes of making constitutions which are carried out under their influence, following each intervention. These prerogatives were firstly granted to the military by the Constitution of 1961 -adopted under the influence of the military leaders who carried out the 27 May 1960 intervention. The scope of these privileges were substantially extended by the amendments of 1971 and 1973 - adopted by the Turkish Parliament under the pressure of the military leaders who carried out the 12 March 1971 intervention. Finally they were significantly strengthened by the Constitution of 1982 - adopted by the military leaders who carried out the 12 September 1980 intervention. Some of these prerogatives were entirely eliminated from the Constitution, and others were weakened through the recent democratization and civilianization reforms adopted under the influence of the EU. Thus, major external and domestic political decisions are now taken by civilians to a large extent in accordance with democratic patterns.

Here we intend to examine the most recent constitutional and legal reforms in Turkey which were adopted to ensure civilianization. In order to emphasize the scope of these constitutional and legal reforms, military prerogatives which were granted to the Turkish Armed Forces following each intervention will be briefly examined.

Military Prerogatives Granted by the 1961 Constitution

1) The Constitution of 1961 granted the members of the National Unity Committee who carried out the 27 May intervention ex-officio membership of the Senate in the Turkish Grand National Assembly. Thus, the military leaders were able to influence the legislative process to a limited extent
2) The Chief of the General Staff who was previously responsible to the Ministry of National Defense was made responsible to the Prime Minister. Thus, his hierarchical status was strengthened.
3) The National Security Council (NSC) of which some members were military officers was established and it was authorized to make decisions in national security matters. Hence, military officers were able to exercise influence in the process of making decisions even in the periods of civilian governments.
4) All laws which were adopted by the military government were given immunity from judicial review. Thus, while all other norms were subject to the constitutionality review of the Constitutional Court, the laws adopted by the military government were granted such a privilege which is incompatible with the supremacy of the Constitution.

Military Prerogatives Granted by the Constitutional Amendments of 1971-1973

1) The influence of the NSC's decisions over the policies of the Council of Ministers was strengthened.
2) The Supreme Military Administrative Court was established for the first time. This court was authorized to resolve administrative conflicts which are concerned with the military authorities or military matters. Thus, while the military has acquired influence in the judicial process, the powers of the civilian Council of State were restricted.
3) The State Security Courts of which some judges and public prosecutors were military officers were established. These courts were authorized to try the crimes which were committed against the security of the state. On the one hand, the establishment of the State Security Courts has meant the creation of an extraordinary judicial body which is in conflict with the principle of natural judge; on the other hand, it provided a significant privilege for the military that it can exercise permanently in the judicial process during the period of civilian governments.

4) The expenditures of the Turkish Armed Forces were excluded from the judicial review of the Court of Accounts.
5) The declaration of martial law was made easier. This amendment indirectly strengthened the powers of the military since certain powers of the civilian authorities shall be transferred to the military authorities - such as certain judicial powers and security services- under the circumstances of the martial law.
6) The principle of natural judge was transformed into the principle of legal judge. Thus, martial law courts which could be deemed unconstitutional before the amendment were made literally consistent with the Constitution.

Military Prerogatives Granted by the 1982 Constitution

The Constitution of 1982 has not only maintained and strengthened the previous prerogatives of the military but also created additional privileges for the military. Some of the prerogatives recognized for the military by the 1982 Constitution resulted from the provisions that regulate a transitional period of this constitution; some of them, however, resulted from other articles of the Constitution.

The Privileges which Resulted from the Provisions that Regulate a Transitional Period:
1) One of the significant prerogatives of the military has been stated in transitional article 1 of the Constitution this article provided for the election of General Kenan

Evren -who was the Chief of the General Staff and the Chief of the National Security Council- for presidential office in the referendum which was held for the adoption of the Constitution. According to this article "**On the proclamation, under lawful procedure, of the adoption by referendum of the Constitution as the Constitution of the Republic of Turkey, the Chairman of the National Security Council and Head of State at the time of the referendum, assumes the title of President of the Republic and exercises the constitutional functions and powers of the President of the Republic for a period of seven years (...) At the end of the period of seven years the election for the Presidency of the Republic is held in accordance with the provisions set forth in the Constitution.**"

Although the Constitution maintained the parliamentary nature of its predecessor and, thus, authorized the Turkish Grand National Assembly to elect the President of Republic in principle, transitional article 1 made an exception which was only

applied for the election of General Kenan Evren for the presidential office for a seven years term. Thus, the military has acquired influence in the process of civilian government through the presidential office. In addition, the Constitution of 1982 substantially strengthened the powers of the President compared with its predecessor. Therefore, the transitional article I of the Constitution which provided for the election of the General Kenan Evren for the presidential office was a quite meaningful prerogative recognized for the military.

2) Moreover, the transitional article 9 of the Constitution granted a qualified veto power for the President over constitutional amendments for a six year term. According to this article "Within a period of six years following the formation of the Bureau of the Grand National Assembly of Turkey which is to convene after the first general elections, the President of the Republic may refer to the Grand National Assembly of Turkey for further consideration of any Constitutional amendments adopted by the Assembly. In this case the re-submission of the Constitutional amendment draft in its unchanged form to the President of the Republic by the Grand National Assembly of Turkey is only possible with a three-fourths majority of the votes of the total number of members" Obviously, this veto power was meant to be exercised by General Kenan Evren from the perspective of the military. Thus, the constitutional amendment process would indirectly be controlled by the military through the presidential office. However, General Kenan Evren has not exercised this power during his presidential term.

3) Another privilege that the military obtained through the transitional articles was stated in transitional article 2 of the Constitution. Transitional Article 2 provided for the automatic transformation of the National Security Council - which carried out the 12 September 1980 intervention- to the Presidential Council, immediately after the establishment of the Turkish Grand National Assembly, following the general elections which resulted in transition to the civilian government. Nevertheless, transitional article 2 granted only consultative powers to the Presidential Council for a six years term. Following the termination of this term, the legal status of the Council has automatically ended.

The Privileges Granted to the Military by the Other Articles of the Constitution

1) The Constitution of 1982, established the State Supervision Council, which functions under the control of the presidential office (Article 108). This council is authorized to control the legality of the administration on the request of the President. Although all administrative institutions are subject to the legality control of the State Supervision Council, the judiciary and the Turkish Armed

Forces are excluded from the control of the Council. The exclusion of the judiciary from the competence of the Council is essential for the protection of the independence of the judiciary. However, the exclusion of the Turkish Armed Forces from the competence of the Council cannot be explained by any reason. Therefore, Article 108 of the Constitution has meant an indirect privilege recognized for the military.

2) Another significant prerogative recognized for the military was stated in Article 118 which regulated the NSC. As was mentioned above, the NSC was firstly established by the Constitution of 1961, and the effects of Council's decisions were strengthened by the constitutional amendment of 1971. The Constitution of 1982, however, substantially amended the composition of the Council by increasing the number of its military members and significantly strengthened the influence of the Council's decisions over the Council of Ministers. According to article 118 of the Constitution "The National Security Council shall be composed of the Prime Minister, the Chief of the General Staff, the Ministers of National Defense, Internal Affairs and Foreign Affairs, the Commanders of the Army, Navy and the Air Force and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic (...)

The National Security Council shall submit to the Council of Ministers its views on taking decisions and ensuring necessary coordination with regard to the formulation, establishment and implementation of the national security policy of the State. The Council of Ministers shall give priority consideration to the decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the State, the integrity and indivisibility of the country and the peace and security of society (...)" This article obviously provided for a majority for military members vis-à-vis the civilian members. Therefore, the military perspective has inevitably been predominant over the Council's decisions. In addition, article 118 stated that "priority consideration shall be given to the Council's decisions by the Council of Ministers". Although the Council was not an executive, but a consultative body, this statement explicitly strengthened the binding character of the Council's decisions over the Council of Ministers. Hence, the military was able to influence civilian governments permanently through the NSC.

3) Another privilege recognized for the military by the Constitution of 1982 is stated in article 125 of the Constitution. This article regulates judicial control over all administrative acts and actions. However, the decisions of the Supreme

Military Council are not subject to the legality review of the judiciary. On the one hand, this provision provides an important prerogative for the military; on the other hand it weakens the principle of the rule of law.

4) Finally, the Constitution of 1982, just as its predecessor did, granted judicial immunity for the laws, law amending ordinances and decrees adopted by the NSC regime in the third paragraph of the transitional article 15. According to this provision "**No allegation of unconstitutionality can be made in respect of decisions or measures taken under laws or decrees having the force of law enacted during the period (...) from 12 September 1980 to the date of the formation of the Bureau of the Grand National Assembly of Turkey which is to convene following the first general elections**" This provision granted a significant privilege for the military which will indirectly be effective during the civilian government. In fact, one of the basic purposes of the NSC regime was to restructure the political and legal order of Turkey. Therefore, the military government adopted more than 500 laws and 90 decrees for the task, when it was in power. Granting judicial immunity for these norms by the transitional article 15 has meant providing permanent predominance for the military will over the will of the elected civilians despite the transition to the civilian government.

Consequently, the tradition of granting privileges for the military that would remain effective over civilian authorities was initiated by the Constitution of 1961 for the first time in Turkey. The scope of these privileges has been extended by the amendments of 1971 and 1973, and significantly strengthened by the Constitution of 1982. Thus, in Turkish politics the military became a factor which should be taken into the consideration by the elected civilians. However, various constitutional and legal reforms adopted by the Turkish Parliament changed the military character of Turkish politics to some extent and paved the way for civilianization. These constitutional and legal reforms for civilianization will briefly be examined below.

The Reforms for Civilianization

The Constitution of 1982 has so far been amended several times. These amendments has provided a gradual elimination of the authoritarian nature of the Constitution and paved the way for the liberalization and democratization processes of Turkey. Some of these amendments which were made in 1999, 2001and 2004 explicitly

eliminated certain military prerogatives and thus, strengthened the influence of the elected civilians in Turkish politics. The constitutional reforms for civilianization were furthered by the democratization packages which were adopted between February 2002 and August 2003 - especially by the one which was adopted in August 2003 and called "The Seventh Package". Hence, the military prerogatives inherited from the previous military governments were eliminated from the constitutional and legal order to a large extent. These constitutional and legal reforms will chronologically be dealt with below.

Constitutional Reforms

1) Article 143 of the Constitution which regulated the State Security Courts was amended in 1999 to eliminate the military judges and public prosecutors from these courts. Thus, the State Security Courts were entirely civilianized.
2) Generally speaking, the 2001 reforms significantly extended the scope of fundamental rights and liberties written in the Constitution, strengthened their safeguards, reinforced the principle of the rule of law and eliminated certain military prerogatives.The amendments which are concerned with civilianization were made in article 118 and the third paragraph of the transitional article 15 of the Constitution.

a) The 2001 Reforms made a significant change in article 118 which regulates the NSC. According to the original text of the article, the NSC was composed of five military members - Chief of the General Staff and four commanders- and four civilian members - the Prime Minister, Minister of Interior, Minister of Foreign Affairs and Minister of Defense- except for the President of the Republic. In addition, the decisions of the Council which are concerned with the independence of the state, the indivisibility of the state with its territory and the nation, the peace and security had to be given priority consideration by the Council of Ministers. The amended article 118 in 2001 stated, however, that "**The National Security Council is composed of the Prime Minister, the Chief of the General Staff, Deputy Prime Ministers, Ministers of Justice, National Defense, Internal Affairs and Foreign Affairs, the Commanders of the Army, Navy and Air Forces and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic (...)**

The National Security Council submits to the Council of Ministers its views on the advisory decisions that have been taken and ensuring the

necessary coordination with regard to the formulation, establishment and implementation of the national policy of the State. The Council of Ministers evaluate the decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the State, the integrity and indivisibility of the country and the peace and security of the society (...)"

Thus, the number of civilian members of the Council has been increased and the effects of its decisions on the Council of Ministers have been weakened. In addition, the advisory character of the NSC decisions has been explicitly underlined.
b) As was mentioned above, the original text of the provisional article 15 of the Constitution stated in its paragraph three that the acts which were adopted by the NSC between the years of 1980-1983, when it was in power, shall not be subject to the judicial review of the Constitutional Court. This paragraph of the provisional article 15 of the Constitution has been abolished in 2001 and hence, the principles of the supremacy of the constitution and the rule of law were strengthened. However, this abolition does not automatically allow the judicial review of these acts, since it does not make abstract judicial review possible, it only makes concrete judicial review possible over these acts.
3) The State Security Courts which were established by the constitutional amendment of 1973 - following the half military coup of 1971- and totally civilianized by the 1999 reforms were abolished by the 2004 constitutional reforms. Thus, one of the important institutions inherited by the military government was eliminated from the constitutional order.
4) As was mentioned above, the military has been granted a privilege by the exclusion of the Turkish Armed Forces from the judicial control of the Court of Accounts by the amendment of 1971. This privilege was eliminated from the legal order in 2003 by the Seventh Democratization Package and, then, it was eliminated from the Constitution in 2004. These reforms not only contributed to the civilianization process of Turkey but also provided entire transparency for public expenditures.
5) The 2004 reforms also abolished one of the minor military prerogatives recognized by the 1982 Constitution. The Higher Educational Board established by the 1982 Constitution included a representative of the Chief of the General Staff among other civilian members. However, the 2004 reforms eliminated the military member from the Higher Educational Board and, hence, civilianized the structure of the Board.
Legal Reforms

The authoritarian legacy was eliminated not only by these constitutional reforms, but also by several legal reforms which were adopted between February 2002 and August 2003. These legal reforms are called "Democratization Packages". These packages enlarged the scope of certain fundamental rights and liberties such as the freedom of thought, freedom of expression, freedom of association and so on. In addition, the Seventh Package abolished certain military prerogatives vis-à-vis the civilian government.

The Seventh Package includes a significant amendment which is concerned with the structure of the NSC. According to the original text of the law which regulates the Council, the Secretary General of the Council shall only be appointed from among high-ranking military officers. The package states, however, that, the Secretary General of the Council shall either be a high-ranking military officer or a high level civilian bureaucrat. In fact, in August 2004, Yiğit Alpogan, who is the ambassador of Turkey in Athens, was appointed the General Secretary of the Council as its first civilian head.

In addition, the frequency of the Council meetings was changed by the Seventh Democratization Package. According to the original text of the law on the NSC, the Council was to be convened once a month. The amended provision of this law states, however, that the Council shall be convened once in two months. Thus, the opportunity of military authority to control and to supervise the policies of civilian governments was relatively weakened.

Another significant amendment for civilianization made in the law on the NSC is concerned with the regulation about the implementation of the law. The original text of the law on the NSC authorizes the Secretary General of the Council to prepare the regulation for the implementation of the law. This regulation was to be adopted by the Council of Ministers after getting the opinion of the NSC. However, it was not allowed to be published in the Official Gazette. The amendment provides transparency for the regulation. Thus, it was allowed to be published in the Official Gazette. In fact, the regulation was put in effect by being published in the Official Gazette in January 2004.

The Seventh Package includes as well an innovation which provides transparency for public expenditures. Before the adoption of this reform, certain public expenditures were not subject to the judicial control of the Court of Accounts.

The package states that all public expenditures including that of the military institutions shall be subject to the judicial control of the Court of Accounts. The Court of Accounts shall exercise such control on behalf of the Grand National Assembly upon the demand of the Speaker of the Parliament.

In conclusion, these constitutional and legal reforms substantially civilianized Turkish politics by the elimination of certain military prerogatives and weakening some of its privileges. More importantly, it is observed that these reforms have already created a favorable public opinion for civilianization. Indeed, high-ranking military officers show a tendency to withdraw themselves from day-to-day politics just as their counterparts have done in consolidated democracies. Two important international issues that Turkey faced in the last year support this observation. Although the present government intended to find out about the position of the military with regard to the Iraq question, before the Assembly debates on the government's request, the Armed Forces chose not to intervene in such a risky political decision. The Armed Forces have maintained the same attitude with regard to the Cyprus question. Thus, Turkish Armed Forces seem to be gradually relinquishing their tendency to control the process of political decision-making.

VI. CONCLUSION

There is little doubt that the original text of the 1982 Constitution contained severe defects which rendered it hardly compatible with universal democratic norms. However, the Constitution has been substantially amended particularly since 1995. The three comprehensive amendment packages adopted in 1995, 2001, and 2004, together with the less comprehensive but still important amendments adopted in 1993, 1999, and 2002, led to significant improvements in fundamental rights and liberties, political rights, the rule of law, and civil-military relations. All in all, more than one-third of the original text of the Constitution was amended in the process. Also important in this regard were the seven reform packages passed in 2002 and 2003 that brought about noteworthy improvements in a large number of ordinary legislations. At present, Turkey seems to have liquidated a very large part of the semi-authoritarian legacy of the NSC regime.