

THE GLOBAL GOVERNANCE SYSTEM PROTECTING HUMAN RIGHTS: THE CASE OF TÜRKIYE UNDER THE EUROPEAN UNION AND THE COUNCIL OF EUROPE

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Abstract

Global protection of Human Rights aims to safeguard the dignity of the human being as such, in an intricate and complex network of International Organisations, States, and other agencies within an anarchic international system. One of the states whose democratic performance has concerned academics the most is the Republic of Türkiye, whose democratic erosion has been a virtually unanimous finding. This paper seeks to evaluate Türkiye's compliance with Human Rights in 2017, and to compare it with 2007: this 10-year period of analysis will be able to grasp some knowledge on the role of global governance structures in their assessment and promotion. This reflection will be based on a literature review, in addition to the use of official documents such as the European Commission progress reports, Human Rights Watch annual reports, quantitative indicators of various international organizations and the statistics of the European Court of Human Rights. It aims to inductively infer conclusions about the evolution of compliance and respect for Human Rights in Türkiye and to correlate this performance with the course of democratic erosion and the international pressures the State has been going through.

Keywords

Democracy. European Union. Global Governance System. Human Rights. Türkiye

Summary

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Introduction

Human rights constitute a social construct that has been consolidated over the past decades with the primary objective of protecting the dignity and value of every human being, particularly in relation to their own state or the absence thereof. Given the character of Human Rights as global goods and to the role of a set of international organisations, States in their foreign policies and the other international, national and subnational agencies, the Global Governance system is especially complex and intricate in defending Human Rights across the world. However, resistance to the fulfilment of international obligations arising from various protective mechanisms to which states voluntarily commit has resulted in varying degrees of difficulties in guaranteeing these rights to all human beings worldwide. Some claim that as the failure of global governance; others find there weaknesses to be overcome by the international society in this Kantian cosmopolitan duty of protecting every individual.

One of the states whose democratic performance has raised significant concerns among academia and civil society in general is the Republic of Türkiye. Despite efforts towards Westernization since the establishment of the modern republic a century ago, the deterioration of the quality of Turkish democracy has been a nearly unanimous conclusion among scholars studying this unique case in recent years.

In light of this scenario, the intention of this article is to evaluate some indicators regarding the implementation of Human Rights in Türkiye in 2017, and to compare them with the corresponding values from 2007. This temporal delimitation is justified by the slow internalization of democratic values in the political culture of a country in consolidation and by the occurrence, in 2007, of significant events related to this theme, such as the Gezi protests or constitutional

amendments, elections and a failed *coup d'état*. Therefore, it is believed that analyzing the 10-year period covered in this study will provide insight on the articulation between the global governance system and the Turkish commitment to Human Rights.

In order to achieve it, this study will be based on a review of the most recent literature on the topics involved and the use of official documents, such as progress reports from the European Commission, annual reports from Human Rights Watch, quantitative indicators from various international organizations and other data from the European Court of Human Rights.

This article is therefore organised as follows: it begins by providing a brief description of some internal political events and it will then identify the international obligations and the influence of the European Union on Türkiye in relation to the topics under analysis. In a third section, through a comparative approach (2007-2017), the main conclusions from the reports of the European Commission and Human Rights Watch on Human Rights will be presented, followed by an analysis of statistics on the most recurring violations of the European Convention on Human Rights, as well as other quantitative data that will contribute to an objective comparison between the two years.

1. Türkiye as a special case

The history of Türkiye is indispensable for understanding the social and political phenomena of current times. The contemporary Turkish political regime has been identified by various authors and theorists of democracy studies as a ‘delegative democracy’, ‘illiberal democracy’,

‘competitive authoritarianism’, and ‘rising neo-fascism’². Regardless of the specific sub-category, the assessment of the quality of democracy in Türkiye by the academic community is not favorable. Moreover, this evaluation has been accentuated, with theorists increasingly aligned in recognizing a shift from a path of positive democratic consolidation to a growing authoritarianism.

In 1923, the Republic of Türkiye was proclaimed. The agenda was revolutionary and led by a secular and republican figure, Mustafa Kemal Atatürk, who was modern and Western-oriented. The system was not democratic, and the modernization of the country happened through a top-down approach that Fatih Bayraktar³ describes as assertive but can also be interpreted as imposing and disruptive. Ahmet Öztürk and Istar Gözaydın⁴ consider this reformism as being conducted by the elites and for the elites. Therefore, it is often considered that the origin of Turkish fragmented and fragile identity can be attributed to this process as well. The axiological frameworks and social, political, and religious ideologies of the Turks were questioned and shaped in a top-down approach, which can be traced back to the modernization process of the 19th century, the Tanzimat. The Constitution of the Turkish Republic in 1924 reflects the principles of popular sovereignty and the basis of secularism from the 1921 constitution. It introduced individual and political rights and removed Islamic law (Sharia) as the official religion and the responsibility of Parliament to implement it through constitutional amendments in 1928⁵. The democratic journey began in the 1940s

² Akkoyunlu & Öktem, 2016: 506

³ Fatih Bayraktar, 2018: 43

⁴ Öztürk & Gözaydın, 2017: 211

⁵ Idem, 212

with the introduction of multi-party system, which eventually led to the victory of the Democratic Party in 1950 and the defeat of the Republican People's Party⁶. However, the fragile existence of Turkish democracy was interrupted by several military coups in the second half of the 20th century. Nevertheless, the constitutions that followed the coups brought improvements in the fundamental rights and freedoms of citizens, reinforced the system of checks and balances, more broadly codified freedom of thought and expression, and recognized (in Article 90 of the 1982 Constitution) that Turkish laws must always respect international agreements, especially regarding human rights⁷.

Although marked by significant political instability, the 20th century of the Republic of Türkiye brought legal advancements and public policy changes in various domains related to the respect and guarantee of human rights and fundamental freedoms. In 1999, Türkiye adopted several measures in this regard, amending articles of the Penal Code and mitigating concepts such as terrorism and abuse of power. In 2001, under pressure from the European Union, amendments to the constitution allowed for

several important steps towards the improvement of the country's democracy. Article 1 was amended to diminish the restrictions on freedom of thought and expression; gender equality was reinforced with a new text for article 41; the number of civilian members of the National Security Council was increased; the pre-trial detention period was diminished (article 19); death penalty was abolished except in cases of war (article 38); it was introduced the right to a fair trial (article 36); it was established the principle of proportionality; articles 13 and 14 were reformulated to limit the abuse

⁶ Ahn, 2014: 15

⁷ Öztürk & Gözaydın, 2017: 213; Matos, 2015: 94

of fundamental rights and freedoms – namely that not only individuals, but also the state could be charged with the accusation of not respecting them, in line with ECHR recommendations –; detainees became able to inform their relatives about the detention some guidelines were introduced some guidelines for the registration of their custody; the alteration of article 26 removed the phrase ‘language prohibited by law’, therefore improving freedom of expression and minorities’ rights; some parts of article 28 were erased concerning the freedom of the press; article 33 was improved to avoid several restrictions on the establishment of civil society associations; as well as article 34 eased the freedom of assembly. Furthermore, the amendment of articles 68 and 69 made it more difficult to forbid or dissolve political parties; rights of privacy, of family life and the inviolability of the domicile were also developed (articles 5, 20 and 21); the restrictions on meetings and demonstration were reduced (article 34).⁸

In this environment of political, social, and economic changes, in 2001, the dissolution of the Virtue Party (FP) gave rise to two new parties: the Happiness Party (SP) and the Justice and Development Party (AKP)⁹. Considered by itself as a Turkish center-right party composed of conservative democrats, the AKP achieved an ‘unprecedented electoral success’¹⁰ in its first elections. Three of the main reasons cited by many analysts to justify this sudden success are the conservative yet pragmatic nature of the proposed program, the priority given to economic growth, and, at a time when the EU accession process was highly popular, a commitment to enlargement and the necessary reforms for its realization¹¹.

⁸ Matos, 2015: 143-144

⁹ Ahn, 2014: 17

¹⁰ Öztürk, 2017: 213

¹¹ Ahn, 2014: 17, 18

The AKP's first term proceeded without major setbacks and with a strategy marked by alignment with the Union's demands. In addition to harmonization packages, 143 new laws were approved by Parliament in 2003 alone, and this continuous effort extended throughout the following years until the end of the term¹². In 2005, the involvement in the process secured Türkiye the official opening of negotiations. This phase was therefore marked by considerable dynamism in relations with the Union, with visible results and impact on Turkish society.

2. The Turning Point: Key Events from 2007 to 2017

In 2007, the election results significantly reinforced the AKP's influence in Turkish political life and the legitimacy of the government. From the 34% obtained in the previous elections, the AKP experienced an increase of approximately 13%, reaching 47% of the votes and occupying 340 out of 600 seats in the Grand National Assembly of Türkiye¹³. Ziya Öniş¹⁴ presents reasons for this success, including: i) the economic growth during the first term, ii) the party's economic liberalism tempered by a more humanistic dimension, iii) the commitment to the European Union and the necessary reforms, which were softened by Turkish values and moral standards, iv) the lack of an effective opposition, and v) strong leadership.

However, some events began to generate discomfort and concern regarding the AKP's liberal and democratic tendencies, and necessarily, regarding Erdogan himself. In the first quarter of 2007,

¹² Matos, 2015: 147, ss.

¹³ Idem, 157

¹⁴ Öniş, 2009: 23-24

the Turkish government, even before its re-election in July, ordered the first blockade of YouTube¹⁵. In 2008, the first arrests were made under the Ergenekon case.

The Ergenekon case was part of a long and controversial process related to the investigation of the so-called ‘deep state’ in Türkiye, allegedly led by military and former military personnel, ultranationalist lawyers, and journalists accused of promoting armed rebellions against the government. Regardless of the nature of the group and these individuals, what caused the most concern was the conduct of the entire process, with several violations of the law in terms of obtaining evidence and arrests¹⁶.

The following year, a media group was fined \$2.5 billion in an unprecedented decision, which led to the company's unsustainability and culminated later in the forced sale of the historic newspapers *Milliyet* and *Vatan*¹⁷.

In 2010, a referendum was held on some amendments to the Constitution then in force, which had resulted from the coup d'état in the 1980s. Although theoretically the amendments aimed to strengthen the rule of law and the standards of fundamental rights and freedoms¹⁸, some researchers considered them a significant milestone in weakening republican and secular forces, reinforced by their approval in a popular plebiscite. Fatih Bayraktar¹⁹ even states that it was a victory for Erdogan over the Kemalists, and Isabel David wrote that ‘a fundamental bastion of the Kemalist establishment had been

¹⁵ Ahn, 2014: 6

¹⁶ David, 2012: 339-ss; Jenkins, 2009

¹⁷ Ahn, 2014: 6

¹⁸ Matos, 2015: 157

¹⁹ Bayraktar, 2018: 54

broken²⁰. These conclusions are based on changes to the composition of the judiciary, which increased its dependence on the government, and the weakening of the military's power.

In this context, further measures were adopted by an increasingly explicit conservative and Islamic AKP. Since 2011, Erdogan began to marginalize senior figures within the party, replacing them with others who were closer and more loyal²¹. In 2013, the controversial alcohol law was also approved, imposing strict restrictions on advertising for such beverages and on consumption in the case of driving, as well as prohibiting the sale of alcohol between 10 pm and 6 am.

In the same year, protests erupted in Gezi Park, Istanbul, triggered by environmentalists opposing the demolition of the park from which the movement took its name. Although they began in this way, they quickly gained unprecedented dimensions in Turkish society: in 79 cities, around 3 million people with different backgrounds and political orientations participated in the demonstrations²².

These movements were broadcast worldwide and criticized for the Turkish government's violent and disproportionate reactions. 11 people died and about 8,000 were injured in clashes with the police, who had orders from Erdogan to respond with violence²³. Internet and social media blockages were constant during the protests and even afterward. The security reasons presented by the authorities did not convince the protesters, who saw these actions as a blatant disregard

²⁰ David, 2016: 308-309

²¹ Akkoyunlu & Öktem, 2016: 512

²² Öztürk & Gözaydın, 2017: 214

²³ Idem, 215

for freedom of expression. Muftuler-Baç & Keyman²⁴ quote Erdogan publicly stating, 'We will eradicate Twitter. I don't care what the international community says.' Isabel David²⁵ identifies the consequences of this movement as the weakening of the AKP's public image, division among its supporters, and a significant contribution to the electoral results of the HDP (People's Democratic Party).

In the 'Opinion of the European Economic and Social Committee on the situation and functioning conditions of civil society organizations in Türkiye,' published in the Official Journal of the European Union in July 2015, the rapporteur stated:

The EESC [European Economic and Social Committee] delegation was deeply shocked to hear that after the Gezi Park protests, doctors had been forbidden to treat the injured and patients' records had been requested for investigative purposes. Some doctors were also allegedly investigated for crimes such as disobeying government regulations because they did not comply with instructions from the public authorities²⁶.

The EESC document²⁷ on the situation of civil society organizations in Türkiye yielded several outcomes and recommendations:

The EESC encourages the Turkish government and administration to recognize civil society organizations as an important part of society and as protagonists in Türkiye's process of approximation to EU values and acquis. (...) As a basic prerequisite for the functioning of civil society organizations, the separation of powers under the rule of law in all areas must be

²⁴ Muftuler-Baç & Keyman, 2015: 3

²⁵ David, 2016: 486

²⁶ European Economic and Social Committee, 2015: 36

²⁷ Idem, 34-35

maintained. Disproportionate state interference that unduly hampers their functioning, such as special audits, is incompatible with this principle.

In the aftermath of the Gezi protests, the AKP was shaken by a corruption scandal that exposed 'a number of high figures within and around the party, leading to two ministerial resignations. (...) Erdoğan accused foreign powers of conspiring with a 'parallel structure' (...) to undermine the legitimate authorities'²⁸. The reaction was fierce and involved a 'mass purge of alleged supporters of Fethullah Gülen'²⁹. Several other measures raised questions about the country's democratization process. The rhetoric of the then Prime Minister became progressively more aggressive, with a reinforced emphasis on the rhetoric of internal and external threats and appeals to nationalist and conservative sentiments. In this regard, in October 2013, new legislation was passed that abolished the ban on the wearing of headscarves, a secularist measure implemented by Kemal Atatürk in the 1920s³⁰. In 2014, new laws on the internet and social media were adopted, increasing restrictions on their use and facilitating their blocking. In the same year, YouTube and Twitter were blocked³¹. The presidential elections also took place in 2014. Recep Tayyip Erdoğan was elected in the first round with an absolute majority of voters (51.79%); Ekmeleddin Mehmet İhsanoğlu received 38.44% of the votes, and the HDP candidate, Selahattin Demirtaş, garnered the support of 9.76% of the voters. The high turnout rate of 74% and the first-round election reinforced Erdoğan's legitimacy in this new role.

²⁸ Bechev, 2015: 8

²⁹ Ibidem

³⁰ Ahn, 2014: 6

³¹ Ibidem

However, Isabel David argues that ‘the AKP's control of the Presidency coincided with a lack of commitment to democratization’³².

Two other phenomena should be added for understanding the country's democratic performance and human rights in the following years: the failed coup attempt of 2016 and the constitutional amendments of 2017.

On July 16, 2016, a group of military personnel allegedly initiated a coup attempt against the established political power. The process has been analyzed over the past few years, but the temporal proximity still leaves unanswered questions and, above all, highly biased ideological positions that skew both sides of this event: for some, the coup was staged to strengthen Erdogan's power through a purge that removed his opponents from various sectors of society; for others, it was a victory for democracy and the political and democratic maturity of Turkish citizens who, for the first time in a history marked by several coups, united against the military and in favor of their political institutions.

Mevlut Cavusoglu, the Turkish Minister of Foreign Affairs, wrote an article published in the media on July 25, praising the heroic behavior of anonymous citizens:

‘Around 10 a.m. on Friday, July 15, members of a dormant cell belonging to a marginal terrorist cult attempted to stage a coup in Türkiye, seeking to overthrow the democratically elected government. This coup was staged by a group within the Turkish Armed Forces linked to the terrorist organization of Fethullah Gulen (...). At that moment, something miraculous and

³² David, 2016: 488

unprecedented happened. The people of Türkiye responded, realizing that their democracy was in danger. When news of the coup spread through the media, people stopped what they were doing and took to the streets. When President Recep Tayyip Erdogan returned to Istanbul's Ataturk Airport, hundreds of thousands of ordinary citizens had filled the streets, confronting armed soldiers³³.

Three days later, the then Ambassador of the Republic of Türkiye in Lisbon, Ebru Barutçu Gökdenizler, also wrote an opinion article published in *Jornal de Negócios*, referring to the heroic character of the population and the internalization of democratic values:

“That night, the Turkish nation made history by taking to the streets, where they remain vigilant since then, to defend democracy. It was the brave heroes who, along with the effective intervention of security forces and the media, thwarted the sinister coup attempt, saving the future of the country and its secular democratic system from the dark forces that sought to destroy it. (...) The state of emergency was declared with the aim of completely and swiftly eliminating the terrorist threat against our democracy, the rule of law, and the rights and freedoms of our citizens. (...) [and] will not affect the daily lives of Turkish citizens or those who travel to Türkiye, nor will it include restrictions on fundamental rights and freedoms³⁴.

Regardless of the positions on the origin and intentions of the coup, it is reported that there were 241 deaths and 2,196 injuries resulting from this event³⁵. From a political standpoint, the consequences were also significant. Immediately after the coup, as mentioned by the

³³ Çavusoglu, 2016

³⁴ Gökdenizler, 2016

³⁵ Blockmans & Yilmaz, 2017: 2

Ambassador, a state of emergency was declared for three months, which was later extended for a year, and for many, this contradicted the initial intention of protecting fundamental rights and freedoms. One of the characteristics of the decisions made during this period was the reduction of parliamentary intervention in legislative matters³⁶. Steven Blockmans and Sinme Yilmaz³⁷ conducted a systematic study of all presidential executive decrees from July 2016 to January 2017. When the values of all the decrees are summed up, it is concluded that within six months, these political decisions led to the dismissal of 88,174 officials and employees from various sectors. Among them were military personnel, employees from different ministries with varying degrees of responsibility, journalists, teachers, academics and researchers, diplomats, and other public and private sector employees³⁸. The number of detentions exceeded 36,000³⁹. Simultaneously, these decrees also resulted in the closure of 2,906 institutions, including public and private schools and universities, non-governmental organizations, foundations, trade unions, associations, news agencies, newspapers, radio stations, and television channels. Additionally, the decrees included measures such as the withdrawal of support for researchers and students abroad, the prohibition of recognition of their degrees, passport cancellations, and revocation of citizenship for those who did not respond to judicial summonses within 90 days⁴⁰.

³⁶ Bayraktar, 2018: 55

³⁷ Blockmans & Yilmaz, 2017: 14-ss

³⁸ Ibidem

³⁹ Öztürk & Gözaydın, 2017: 216

⁴⁰ Blockmans & Yilmaz, 2017: 14-ss

These decisions led to criticism from various quarters, both within and outside the country, and culminated in another highly controversial project that Erdogan revived from a previous failed attempt in 2013 due to the Gezi incidents and a corruption scandal: constitutional amendments. This proposal for changes to the Constitution includes modifications to 18 articles and interferes with the three branches of government. In the legislative dimension, it includes changes aimed at reducing the investigative power of Parliament, for example, by eliminating the right to ask questions orally. There is a transfer of certain powers to the President, including the power to issue decrees and oversight competencies⁴¹. The amendment to Article 8 exempts the President from the need for parliamentary ratification, except for matters relating to fundamental rights and freedoms and during states of emergency.

The Head of State can also return legislative proposals to Parliament, and they will require an absolute majority to pass⁴². Another concern is the possibility of the President maintaining their party affiliation, which undermines the system of democratic institutional balances and the survival of smaller parties⁴³.

Regarding the executive power, the dynamics are reversed: powers of the Prime Minister shift to the President, as well as governmental competencies such as the state budget and national security policies. The amendment to Article 8 is clear: the previous version stated that ‘the executive power and function are exercised by the President of the Republic and the Council of Ministers in accordance with the

⁴¹ Idem, 4-6

⁴² Öztürk & Gözaydın, 2017: 218

⁴³ Idem: 217

Constitution and the law,' while the amended version removes the reference to the Council of Ministers. Article 104 of the Constitution is added, stating that 'the executive power belongs to the President.' The President also gains exclusivity in declaring a state of emergency, which establishes the risk of longer and potentially more arbitrary durations⁴⁴. The President is further attributed the competence to restructure ministries and public institutions by decree, and 'high-level' positions in the civil service will also be appointed by decree⁴⁵. Finally, the judiciary is also affected by these changes, particularly through the reinforcement of its dependence on the President for appointments. The jurisdiction of the Constitutional Court is restricted⁴⁶, as well as the judicial accountability of the President. The number of members of the Supreme Council of Judges and Prosecutors is reduced from 22 to 12, with half of them now being appointed by the President and the rest by Parliament⁴⁷.

Overall, these changes towards a presidential system may compromise the quality of Turkish democracy. According to a study led by Peter Uvin, such a system 'without a democratic culture and a solid system of checks and balances and a high level of transparency in the state apparatus can damage human rights'⁴⁸.

For some authors, including Blockmans and Yilmaz, these changes do not meet the Copenhagen criteria, especially due to the 'accumulation of so much power in the figure of the President (...) [which] will lead

⁴⁴ Idem: 218; Blockmans & Yilmaz, 2017: 6-7

⁴⁵ Öztürk & Gözaydın, 2017: 219

⁴⁶ Blockmans & Yilmaz, 2017: 7

⁴⁷ Öztürk & Gözaydın, 2017: 219

⁴⁸ Idem, 2017: 218

to the loss of the current separation of powers⁴⁹. Since the principle of separation of powers is one of the corollaries of democracy and the rule of law, aiming to protect individuals against abuses of power by holders of sovereignty and the state itself, human rights are inevitably weakened, increasing the likelihood of their non-compliance and consequently leaving the citizen unprotected.

3. International obligations and the process of Europeanization

Türkiye, like all other sovereign states belonging to the international community, must deal with an interaction that is not always peaceful between its domestic legal system and a set of international norms to which it has voluntarily committed itself. As a rule of law, it owes its population compliance with these obligations and respect for the law, in protecting the dignity and well-being of all individuals.

In many interviews conducted in Türkiye, academics, public officials, and members of non-governmental organizations shared a common perception regarding this matter: Türkiye has significantly improved its legislation and adhered to many international mechanisms for the protection of human rights. However, at the time, there still existed a significant gap between the legislation, its implementation in daily life, and its internalization by the general population.

The Turkish Constitution is quite clear in Article 90, recognizing the superiority of international norms on fundamental rights and freedoms: 'In the event of a conflict between duly implemented international agreements on fundamental rights and freedoms and laws due to differences in provisions on the same subject, the

⁴⁹ Blockmans & Yilmaz, 2017: 3

provisions of international agreements shall prevail' (Article 90 of the Constitution of the Republic of Türkiye).

The constitutional recognition allows us to identify the concern that the legislator demonstrated regarding the protection of these rights and freedoms, as well as its openness to the provisions of international law in this domain.

Below, for the sake of systematization, the international conventions on human rights ratified by Türkiye and their respective ratification dates are listed.

Table 1: International Documents on Human Rights Protection and Ratification by Türkiye

TABLE 1 here

Given the logic and structure of this article, a more detailed analysis of the implications of each of the identified commitments for the Turkish state will not be conducted. However, when considered as a whole, these documents represent a broad international protection of Turkish citizens in various dimensions, particularly in relation to third parties, but most importantly, in relation to their own state. As mentioned earlier, one of the weaknesses identified by various domestic and international organizations regarding Türkiye's performance in this field is the non-compliance with these protections. In this regard, the United Nations Human Rights Council organizes a process called the Universal Periodic Review (UPR) through which it provides states with the opportunity to self-assess and subsequently improve their respect for human rights. The strategy includes providing technical assistance to states and sharing best practices. The review consists of information provided by the state itself ('national report'), information from reports by experts and

independent groups (the ‘Special Procedures’), and information from other stakeholders, including national human rights institutions and non-governmental organizations. One of the most emphasized aspects in the reports relates to Türkiye's reservations and declarations to international documents. Several states believe that these acts are incompatible with the rationale of the treaty or convention itself and are often unclear. In response, in both cycles of the UPR review, Türkiye rejected recommendations calling for the elimination of these reservations, considering that these options are in line with the provisions of the Vienna Convention on the Law of Treaties⁵⁰. However, several legal issues arise from this position, including dynamics of reciprocity among signatory states and others, which will require further in-depth studies in a more appropriate context. Still, in terms of international influence, another crucial issue arises for understanding Türkiye's internal reality and its performance in the field of human rights: the process of accession to the European Union and the necessary Europeanization of the country. While the assessment of Türkiye's path towards EU membership is contested by various authors in terms of its effectiveness and success, the evaluation of the country's Europeanization is even less consensual. For example, the work of Didem Buhari-Gulmez⁵¹, Isabel David⁵², or Tanja Borzel & Digidem Soyaltin⁵³ highlights that the adoption of the EU *acquis* by Türkiye is selective, ‘disassociated from behavioral practices,’ and used by domestic actors as a means of legitimizing their

⁵⁰ Human Rights Council, 2010

⁵¹ Buhari-Gulmez, 2017

⁵² David, 2016

⁵³ Borzel & Digidem Soyaltin, 2012: 16

own political interests. This is what the authors refer to as ‘à la carte Europeanization’.

However, several other studies point in the opposite direction and attribute a significant role to the EU, primarily as a mediator in a highly polarized society. Tocci⁵⁴ acknowledges that the process, albeit internal, is considerably influenced by the EU, giving a European twist to Türkiye's democratization. Müftüler-Baç⁵⁵ argued that Türkiye's candidacy ‘stimulated Turkish political and legal reforms and intensified the project of Europeanization in Türkiye’⁵⁶. This author attributes to the EU an effective leverage over Türkiye, based on the study of political reforms between 2001 and 2004. Diez⁵⁷, after highlighting the existence of four different meanings of the concept of Europeanization (not just one, as most scholars treat it—political, policy, societal, and discursive Europeanization), shares the view that the European dimension influenced Türkiye's democratization. Similarly, Özbudun and Gençkaya's book⁵⁸ links Turkish democratization and the constitution to the EU as ‘an important external actor promoting democracy in Türkiye.’ Regardless of the degree of influence of external actors on the democratization of the country and the compliance with international human rights obligations, it is important, for this study, to analyze the evolution of this observance and infer the current state of Türkiye on this matter. A Comparative Analysis: Human Rights in 2007 and 2017 For the reasons stated above, the years 2007 and 2017 were selected as the

⁵⁴ Tocci, 2005

⁵⁵ Müftüler-Baç, 2005

⁵⁶ Idem: 17

⁵⁷ Diez, 2005

⁵⁸ Özbudun and Gençkaya, 2009: 43

temporal benchmarks for this study. Therefore, this section aims to identify some of the main assessments conducted by different entities regarding Türkiye's respect for human rights during these years, in order to enable an informed and accurate reflection on the country's progress during that decade. As described above, one of the most concerning trends in Türkiye from a political perspective is its widely accepted slide towards a form of autocracy whose contours academia is still trying to define. One of the most vulnerable areas in a context of democratic backsliding is precisely human rights. Thus, in this regard, this section will consist of an evaluation of annual reports from various international organizations such as the European Union, the United Nations, and Human Rights Watch. The statistics from the European Court of Human Rights regarding cases against the Turkish state for violations of the Convention will also be considered. Finally, quantitative indicators from different organizations will be enumerated to provide a more diverse contribution to the comparative analysis that will conclude this article.

4. Annual Reports - European Commission and Human Rights Watch

As a candidate country for full membership in the European Union, Türkiye is subject to progress reports prepared by the European Commission, in which this body describes the state of compliance with the 33 chapters of the *acquis communautaire*. This feedback provided by the organization, although often criticized by the Turkish government as unfair and exaggerated, aims to guide the candidate in implementing the reforms required by the EU for enlargement to take place. Considering the theme of this book and the relevant time period, two chapters from two progress reports were analyzed: Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24

(Justice, Freedom, and Security) of the 2007 and 2018 reports. The 2007 report, in Chapter 23, regarding the judiciary, considers that there has been ‘some progress’⁵⁹. However, it expresses concerns about the independence of this power, citing the example of the Constitutional Court's intervention in annulling the first round of voting for the President of the Republic⁶⁰, and refers to the lack of significant developments in terms of reforms in this sector⁶¹. Limited progress in the fight against corruption is also criticized, and ‘regarding fundamental rights, there has been limited legislative progress’⁶². The report is even more critical when it comes to human rights: ‘There have been no developments regarding the promotion of human rights. These institutions, such as the Presidency for Human Rights, lack independence and resources’⁶³. While acknowledging the decrease in the number of torture and ill-treatment cases, the report recognizes that a high level of impunity persists, and there are gaps in the investigation of such crimes in terms of impartiality and independence when the perpetrators belong to security forces⁶⁴. Regarding religious freedom, the Commission positively noted the removal of religious affiliation from family records and an official condemnation of violence against non-Muslim minorities, but it also identified discriminatory practices, mainly against Alevites⁶⁵. Within this chapter, the report also highlights the following situations:

⁵⁹ European Commission, 2007: 58

⁶⁰ Ibidem

⁶¹ Idem, 59

⁶² Idem, 60

⁶³ Ibidem

⁶⁴ Ibidem

⁶⁵ Idem: 61

- No progress in protecting conscientious objection (in the case of mandatory military conscription)⁶⁶;
- The application of Article 301 of the Penal Code and the conviction of peaceful expressions of opinion by journalists, academics, and others have created a sense of self-censorship⁶⁷;
- Freedom of association and assembly respected by the authorities⁶⁸;
- Efforts to improve the right to education, but with gender imbalances and a lack of school-age children in schools⁶⁹;
- No developments in the issue of property rights for non-Muslim religious communities⁷⁰;
- Improvements in the legal protection of women, but continued low levels of political and social participation and high levels of violence⁷¹;
- Decrease in the number of child laborers and the percentage of unregistered children⁷²;
- No progress in the right to a fair trial and difficulties in implementing legislative changes already made in this regard⁷³;
- No progress in protecting minorities, cultural rights, and the rights of EU citizens⁷⁴.

⁶⁶ Ibidem

⁶⁷ Ibidem

⁶⁸ Ibidem

⁶⁹ Idem: 62

⁷⁰ Ibidem

⁷¹ Ibidem

⁷² Ibidem

⁷³ Idem: 63

⁷⁴ Ibidem

Regarding Chapter 24, the Commission acknowledged some improvements and highlighted several weaknesses that should be considered by the Turkish authorities. Thus, it criticized the lack of progress in migration policies, despite the implementation of the National Action Plan dedicated to this issue as well⁷⁵. In the case of asylum, 'limited progress can be reported in the preparation for the decentralization of procedures [...] [and in the improvement of] reception and accommodation conditions'⁷⁶, particularly regarding the harmonization of the application of existing legislation.

Despite positive developments in visa policy, progress has been limited in the area of external and Schengen borders, as well as in judicial cooperation in criminal matters and police cooperation, as Turkish legislation is not harmonized with European standards⁷⁷. A more positive assessment was made regarding the fight against human trafficking - legislation and its implementation improved, particularly through an increase in arrests and the identification of victims⁷⁸.

In a total of 31 explicit references to 'progress' in these two chapters of 2007, 12 of them were positive (progress or some progress) and the remaining 19 were negative considerations (no progress or limited progress). When the same analysis is carried out in the 2018 report, a slight difference is noted in this distribution, as the percentage of negative references to Türkiye's progress increases from 61% in 2007 to 66% in 2018, revealing that the tone used by the Commission in this assessment was not significantly harsher.

⁷⁵ Ibidem

⁷⁶ Idem: 64

⁷⁷ Idem: 65

⁷⁸ Idem: 66

The assessment of Chapter 23, concerning the judicial system and fundamental rights, in the 2018 report begins with a rather negative diagnosis: “Türkiye is in an early stage of implementing the *acquis* and European standards in this area. There have been serious setbacks in this area, and the recommendations of the last report have not been implemented”⁷⁹.

More specifically, the document justifies this position with evidence such as political pressure on the judiciary and mass dismissals of judges and prosecutors after the failed coup attempt in 2016⁸⁰. The report estimates that forced dismissals of this class amount to 30% and considers the constitutional amendment regarding the Council of Judges and Prosecutors to be burdensome for this scenario⁸¹, which, according to the same document, raises serious doubts about its independence from the executive power⁸².

The absence of progress in the fight against corruption was also identified, as well as a worrying curtailment of fundamental rights as a result of various decrees issued within the scope of the state of emergency. For the report, more serious than the lack of progress at this level is the regression⁸³. Therefore, the Commission urgently calls for the lifting of the state of emergency in the country, the restoration of independence and impartiality of the judicial system, the implementation of international obligations regarding corruption and fundamental rights, and the ‘resolution of serious human rights violations, including an effective investigation into allegations of ill-

⁷⁹ European Commission, 2018: 22

⁸⁰ *Ibidem*

⁸¹ *Idem*: 23

⁸² *Idem*, 24

⁸³ *Idem*: 22

treatment and torture⁸⁴. In this regard, the recommendations of the previous report, which were not implemented, are reinforced, and in addition, the removal of judges only in duly justified cases and the processing of coup-related cases based on evidence and compliance with all the prerequisites of a fair and dignified trial, including the right to defense and the presumption of innocence, etc., are added⁸⁵. In fact, the report notes that judges and prosecutors have remained in pretrial detention without charges for more than a year on average⁸⁶. Additionally, we can find in the continuation of the assessment of this chapter⁸⁷:

- Interference with the pluralism of judges' associations due to the closure of two of the most important ones.
- Public comments by holders of positions in sovereign bodies (executive and legislative) about ongoing processes without consideration for the presumption of innocence.
- Doubts about the competence of newly integrated judges in the judicial system due to the questionable meritocracy of the process.
- Negative impact of recurring transfers of judges.
- Concerning numbers of pending cases in courts at all levels.
- Various concerns regarding the fight against corruption, the implementation of legislative changes, and recommendations from various international organizations.

More specifically, regarding fundamental rights and freedoms, the report considers that presidential decrees in the context of the state of

⁸⁴ Idem, 23

⁸⁵ Idem, 23

⁸⁶ Idem, 24

⁸⁷ Idem, 25-28

emergency hindered their proper implementation⁸⁸, and during the period under review, ‘there was a serious setback in the areas of freedom of expression, freedom of assembly, freedom of association, and procedural and property rights. Severe restrictions were imposed on the activities of journalists, human rights defenders, and critical voices’⁸⁹.

These concerns are further intensified by the finding that recommendations from previous reports in these areas have not resulted in any progress, and therefore, Türkiye should focus on ending the state of emergency, pretrial detentions contrary to the standards of the European Convention on Human Rights, necessary alignment of criminal law and anti-terrorism legislation with European requirements, as well as implementing measures to combat impunity, particularly in cases of ill-treatment and torture⁹⁰.

Regarding human rights protection mechanisms, the Commission urges Türkiye to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Third Optional Protocol to the Convention on the Rights of the Child, and the International Convention for the Protection of All Persons from Enforced Disappearance⁹¹. Internally, Türkiye was also requested to maintain two relevant institutions for the protection of these rights - the National Institution for Human Rights and Equality and the Ombudsman - due to their importance in this field, although operational and financial weaknesses are recognized. In fact, the

⁸⁸ Idem, 29

⁸⁹ Ibidem

⁹⁰ Idem, 30

⁹¹ Ibidem

Commission is concerned about the lack of activity of these entities during a critical period following the attempted coup in July 2016⁹².

In a more concise and systematic manner, the following findings from the report are presented within the scope of Chapter 23⁹³:

- Proceedings against human rights defenders with ambiguous procedures and involvement of the media.
- Deaths caused by authorities in the Southeast of the country.
- References by the President to the possibility of reintroducing the death penalty.
- Privileges granted to security forces that may increase the risk of impunity.
- Poor conditions in overcrowded and deteriorated prisons, with limited access to psychologists and other professionals.
- Religious freedom generally respected.
- Setback in freedom of expression, non-application of previous recommendations, and a legal framework that does not guarantee its full implementation and enforcement.
- High number of imprisoned and intimidated journalists.
- Serious interference in social media and other media outlets such as newspapers, television, and radio channels.
- Regression in freedom of association and assembly - peaceful demonstrations and LGBTI parades prohibited, and several associations closed.
- Concern for the lack of protection for the LGBTI community.
- Ongoing disciplinary and criminal proceedings in the case of 'Academics for Peace' - 5,822 academics expelled from 118 universities, 386 of whom belonged to this group.

⁹² Idem, 31

⁹³ Idem, 32-40

- Insufficient protection of the principle of non-discrimination.
- Insufficient consideration of gender balance, gender discrimination, and gender-based violence, with setbacks.
- Little progress in children's rights.
- Considerable improvements in the rights of people with disabilities.
- Instances of hate speech against minorities and lack of understanding with the government.
- Various weaknesses in the field of cultural rights, such as limitations on the use of languages other than Turkish in certain contexts and the closure of several cultural and artistic centers.

Chapter 24, regarding judicial issues, freedom, and security, begins with a less negative assessment by stating that Türkiye is ‘moderately prepared’⁹⁴ in these areas and then praises progress in the field of migration and asylum, emphasizing the importance - and perhaps justifying the praise - of implementing the 2016 agreement with the EU on refugees, which, according to the report, ‘continued to yield results, with both parties committed to its effective implementation’⁹⁵. In fact, a correlation is established in the same document between the success of this agreement and the decrease in the number of irregular crossings in the Mediterranean and deaths⁹⁶. Regarding asylum, Turkish legislation is partially aligned with the *acquis communautaire*. The number of refugees in the country, around 3.5 million Syrians and 365,000 non-Syrians (and growing), makes them the largest refugee

⁹⁴ Idem, 41

⁹⁵ Idem, 46

⁹⁶ Ibidem

community in the world⁹⁷, with praise from the Commission for ‘significant efforts made to provide broad access to education and healthcare for Syrians under temporary protection’⁹⁸. However, later criticisms are raised regarding alleged expulsions and returns that, according to the report, contradict the principle of international law of non-refoulement⁹⁹. Interestingly, the document is silent on the numerous allegations made by international non-governmental organizations regarding the treatment and conditions to which refugees are subjected.

Some improvements in institutional capacity to combat organized crime are also recognized, with the caveat that more work is needed in the field of cybercrime, data protection, and witness protection¹⁰⁰. Regarding the fight against terrorism, the Commission acknowledges the country's vulnerability and the various attacks it has suffered, accepts its defense, and continues to consider the PKK a terrorist group but calls for efforts to ensure proportionality in the state's use of force in response. However, there has been legislative alignment following the Council of Europe Convention on matters of terrorism financing and money laundering¹⁰¹.

To conclude this overview, the following additional conclusions from the 2018 Progress Report are systematically listed within the same chapter¹⁰²:

⁹⁷ Idem, 47

⁹⁸ Ibidem

⁹⁹ Ibidem

¹⁰⁰ Idem, 41-42

¹⁰¹ Idem, 44

¹⁰² Idem: 48-51

- Need for greater harmonization in visa policy (particularly due to the Cyprus issue).
- Turkish legislative and administrative frameworks not fully aligned with European standards regarding external borders and the Schengen area.
- Praised judicial cooperation in criminal and civil matters with advancements.
- Moderately positive assessment of the implementation of measures in cooperation to combat drug trafficking.

Human Rights Watch is an international non-governmental organization based in the United States that focuses primarily on assessing the compliance of sovereign states with human rights, publishing annual reports with such evaluations. The 2008 report, covering events in 2007, begins with a negative observation: ‘Recent trends in human rights protection in Türkiye have been regressing’¹⁰³. In the 2018 report, covering events in 2017, only one explicit consideration of this nature is made, stating that constitutional amendments, by weakening the balance and interdependence of powers, constitute a setback for human rights and the rule of law¹⁰⁴. For a more structured comparative presentation, the table below proposes a comparison of the findings from each of the two reports on common issues and distinct aspects presented in those documents.

Table 2: Comparison of the 2008 and 2018 Human Rights Watch Reports

¹⁰³ Human Rights Watch, 2008: 437

¹⁰⁴ Human Rights Watch, 2018: 560

Table 2 here

A quick comparison of the two columns in the table above reveals that the volume of concerns or reports from Human Rights Watch has increased between these two years. The number of pages dedicated to the country in the report is nearly double, and the weaknesses identified in these documents coincide entirely with those of the European Commission. Both institutions, in 2007, recognized progress and expressed some concern regarding the Kurdish issue, freedom of expression, torture, and ill-treatment.

In 2017, except for the latter, the severity of the situations grew significantly to the point where several international organizations conducted more in-depth investigations into the country's compliance with human rights, and monitoring practices were reinstated, from which the country had been exempt for several years. In this past year, presidential decrees and the state of emergency, along with constitutional changes that undermine the fundamental democratic principle of the separation of powers, and the persecution of human rights defenders and the most critical voices of the government, including purges of military personnel, academics, and journalists, have created an environment of self-censorship and arbitrary exercise of political power typical of an autocratic state.

The European Court of Human Rights *Türkiye*, as a member of the Council of Europe, ratified the European Convention on Human Rights in 1954 and, in this context, recognizes the jurisdiction of the Court established by this international organization to ensure respect for the rights enshrined in the Convention. The Court's website provides, in addition to case law, reports containing annual statistics

on the cases judged and the articles violated by each state. The purpose of this section is to systematize the values in a comparative manner for the two years under analysis and, in interaction with other indicators previously explained, draw some conclusions regarding Türkiye's performance concerning its international human rights obligations. According to a general report of the Court reflecting on its activities between 1959 and 2017¹⁰⁵, one of the first statistics presented reveals that the state with the highest number of cases and judicial decisions finding at least one violation of the Convention was Türkiye, accounting for 17.1% of all cases judged. Italy (12.6%) and Russia (9.26%) follow in second and third place, respectively. During this extended period, the right most violated by Türkiye was the right to a fair trial, followed by the right to liberty and security and the protection of property. When examining the annual data for 2007 and 2017, the most violated right remained the same, but there was a significant reduction in the number of cases judged: from 331 to 116. The order of the most non-compliant states also changed: in 2007, Türkiye was in the lead, followed by Russia (192 judgments) and Poland (111); in 2017, Russia surpassed with 305 judgments, and Ukraine replaced Poland with 87 cases judged¹⁰⁶. Below is a summary table of this data:

Table 3: Statistics from the European Court of Human Rights on Türkiye

Table 3 here

¹⁰⁵ European Court of Human Rights, 2018a: 3

¹⁰⁶ European Court of Human Rights, 2008: 143; European Court of Human Rights, 2018b: 172

The analysis of the values presented above allows for some final reflections in this section. Firstly, and objectively, the number of judgments decreased between 2007 and 2017, almost to a third. The two most violated articles remained the same from one year to another; however, in 2017, freedom of expression, assembly, and association rose in this ranking to the third and fourth positions, respectively. Although these data may generate a positive assessment of Türkiye's performance regarding human rights, doubts remain when the aggregated data from 1959 to 2017 identify Türkiye as the state with the highest number of cases judged. This investigation lacks the necessary tools to further examine this decrease, but the issue should be analyzed in detail by academia – does the decrease in the number of cases judged for alleged human rights violations by Türkiye result from an effective compliance with these rights by the state or from a typically autocratic environment that generates fear and submission to a strong state that constrains, among other things, this freedom as well?

6. Additional indicators – a quantitative assessment

With the aim of providing a quantitative and objective comparison of international assessments on various dimensions analyzed in this study, data were collected from different entities to construct the table presented below. It is an attempt to create a general overview that compares the starting point (2007) with the established time limit (2017) and thus reinforces or questions the previous assumptions regarding Türkiye's performance from a human rights perspective.

Table 4: Performance Indicators regarding Compliance with Human Rights

Table 4 here

The data in the table above, as can be seen, comes from different sources. The various selected organizations are internationally recognized for their standards of rigor and objectivity. The diversity of these sources is intentional and aims to overcome some of the limitations that the use of quantitative data brings to a study of this nature. Additionally, these values are not analyzed in a vacuum of reflection and social construction; they are, on the contrary, framed by previous work that seeks to be critical and positive for the advancement of scientific knowledge in such a delicate area closely tied to political and ideological sensitivity.

The values presented in the various indicators are, much like literature, unanimous. Any assessment, more or less positive, that the country received in 2007 always experienced a decrease when compared to the equivalent values in 2017.

Some of the selected indicators are directly related to freedom of expression, which is a corollary of a free society without constraints on peacefully expressing one's opinion. An environment of censorship, even self-censorship in many cases, is a symptom of weaknesses in the principle of respecting the true popular sovereignty, of a people from whom legitimate political power emanates, and to whom the organs and institutions of the State should serve. It is also a clear abuse of the exercise of political power that, in a healthy democracy, would be constrained by the Constitution and public opinion itself.

The evaluations from all the sources used reported a deterioration in dimensions related to freedom of expression: in the World Press Freedom Index, Türkiye crossed the threshold of 50 out of 100,

dropping several places in the ranking and thus ranking 155th out of 180 evaluated countries. Therefore, it performs worse than other concerning states such as Ethiopia and Russia and approaches countries like Iraq and Kazakhstan. The remaining indicators reveal the same trend: an increasing number of social media blockages and other obstacles to internet usage, a growing number of detained journalists, a reduction in the number of circulating newspapers and their importation (around 200%), and media integrity, among others. In other areas of rights and freedoms, the outlook is not more positive. If civil and political liberties, according to Freedom House, saw a decrease of 33% and 66%, respectively, the perception of trust in the justice system decreased by approximately 49%, perhaps due to, among other reasons, an increasing government intervention in judicial affairs (-60%) or greater difficulty in accessing justice (-24% according to IDEA's assessment). The impartiality of the courts weakened (-130% and -71%), jeopardizing the separation and interdependence of powers, and consequently, the fundamental structure of a true rule of law (from a weak score of 0.2 out of a maximum of 1.0, Türkiye has dropped to -0.15). The values in these domains are also concerning.

Similar dynamics occur in more specific aspects such as gender equality (-23%), personal security and integrity (-26%), freedom of assembly and association (-30%), and the existence of free political parties (-7%).

Thus, the collected data, similar to other analyses, points to a deterioration in the evaluation of international organizations regarding Türkiye's compliance with international obligations arising from human rights protection mechanisms.

Final reflections and conclusion

Ziya Öniş¹⁰⁷, in 2009, wrote that Turkish politics was marked by ‘significant transformations and a considerable degree of instability’ and that events close to the time of writing already gave the feeling that ‘the process of democratic consolidation is far from complete’¹⁰⁸. Nevertheless, the author left a positive note, considering that democracy was showing signs of maturity.

Several years later, Ahmet Öztürk and Istar Gözaydın¹⁰⁹ concluded that ‘Türkiye has never had a fully functioning and institutionally balanced democracy; (...) but there has been a drastic decrease in fundamental principles such as (...) human rights and the rule of law in recent years.’ In the same line of thought, Fatih Bayraktar¹¹⁰, after comparing Türkiye's democratic evolution with that of Venezuela, concludes that Türkiye, ‘one of the oldest democracies in the Middle East, is another example of democratic erosion in the 21st century,’ and Muftuler-Baç and Keyman¹¹¹ describe the system as ‘majoritarian authoritarianism,’ resulting from the dominance of one party, growing intolerance, and imbalances in the system of checks and balances. Isabel David adds the character and personality of the current President of Türkiye as another variable that justifies this environment, as well as an AKP strategy to instrumentalize state institutions to align them with its undemocratic vision¹¹². Karabekir Akkoyunlu and Kerem Öktem¹¹³ conclude their article by stating that

¹⁰⁷ Öniş, 2009: 21

¹⁰⁸ Ibidem

¹⁰⁹ Öztürk & Gözaydın, 2017: 210

¹¹⁰ Bayraktar, 2018: 42

¹¹¹ Muftuler-Baç and Keyman, 2015

¹¹² David, 2016: 487, 489

¹¹³ Akkoyunlu & Öktem, 2016: 520

‘Türkiye has fully entered the domain of an authoritarian one-man rule’.

Thus, the results of scientific research conducted on the Turkish state, the quantitative data presented, the reports of international organizations from various backgrounds, ideological orientations, and natures, and the reflection carried out throughout the last pages all converge almost completely to the following assessment - and, simultaneously, an answer to the initial question of this article: from the perspective of human rights compliance, and by extension, the quality of democracy as a whole, between 2007 and 2017, there has been a degradation of these dimensions in the Republic of Türkiye.

Despite several hints in that direction, it was not the objective of this article to systematically identify the causes of this regression. However, now that the recognition of the decline in the quality of Turkish democracy is quite extensive, almost consensual, and increasingly solid, such reflection becomes increasingly urgent as a close and pressing challenge for academia.

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