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REFORMING HISTORY: TURKEY'S LEGAL REGIME AND ITS POTENTIAL ACCESSION TO THE EUROPEAN UNION

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Abstract: For the past decade, Turkey and the European Union (EU) have had serious discussions about Turkey's possible entrance into the EU. The intensity of these talks, however, has always been tempered by Turkey's extremely questionable human rights practices. The most marked aspects of this record are the country's treatment of the Kurdish minority and its quashing of political dissent through the heavy-handed use of its legal system. In this note, I will argue that, despite Turkey's increasing political and economic stature in the world, it will not be able to gain entry into the EU until it is able to sufficiently address these human rights problems to the satisfaction of the EU and the international community in general.

INTRODUCTION

The controversy over Turkey's possible accession into the European Union (EU) provides a valuable study in comparing one legal construct with another.¹ Turkey, like many current members of the EU, boasts a democratically elected parliament and a facially independent judiciary.² It is a member of the North Atlantic Treaty Organization (NATO), the Council of Europe, the European Community (associate member), and the Conference on Security and Cooperation in Europe.³ However, in contrast to its EU counterparts, Turkey has received a great deal of international condemnation for its human rights practices.⁴ Critics of these practices point primarily to problems in the Turkish legal regime, such as (1) the torture of prisoners while in detention; (2) the extrajudicial killings of Kurdish na-

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¹ See Patrick R. Hugg, *The Republic of Turkey in Europe: Reconsidering the Luxembourg Exclusion*, 23 *FORDHAM INT'L L.J.* 606, 606 (2000).

² Paul J. Magnarella, *The Legal, Political and Cultural Structures of Human Rights Protections and Abuses in Turkey*, 3 *J. INT'L L. & PRAC.* 439, 439 (1994).

³ *Id.*

⁴ *Id.*

tionalists; and (3) denial of due process to persons who fall under the jurisdiction of State Security Courts.⁵

This Note analyzes the effect that these aspects of Turkey's legal regime will have on its ability to gain accession into the EU. Part I discusses the importance of Turkey in the European Continent and its relationship with the EU over the past several years. Part II analyzes the political and legal criteria for accession into the EU with respect to Turkey and compares these criteria to Turkey's current legal structure. Part III discusses Turkey's prospects for successfully acceding to the EU and the legal reforms the government could take to accelerate the accession process. I will conclude that, while Turkey has made significant progress in reforming its political and legal regime, certain reforms still need to be made if Turkey is to ensure its accession to the EU in the near future.

I. BACKGROUND: TURKEY AND EUROPE

A. *The Importance of Turkey to Europe and the West*

Geographically, Turkey stands at the crossroads between eastern Europe, central Asia and the Middle East.⁶ It is the only NATO member state to border Iran, Iraq, Syria, and two former Soviet states.⁷ As a result, one scholar has stated, "Only Turkey lies either close to or at the center of most of the gravest threats to Europe's peace and well-being."⁸

As the region's only modern democracy with a predominantly Muslim population, Turkey is also of great strategic importance to European governments.⁹ The founder of Turkey's transition to liberal democracy, Mustafa Kemal Ataturk, aggressively applied principles of secularism and statism to unite multi-ethnic regions of the former Ottoman Empire into a westernized nation-state.¹⁰ An important aspect of Ataturk's policies was the complete suppression of Islamic religious practices by various ethnic minorities and the replacement of the Islamic legal code with a European legal code.¹¹ Furthermore, the

⁵ *Id.* at 439-40.

⁶ Hugg, *supra* note 1, at 614.

⁷ *Id.* at 614-15.

⁸ JOHN NEWHOUSE, EUROPE ADRIFT 252 (1997), *quoted in* Hugg, *supra* note 1, at 615.

⁹ *See* Hugg, *supra* note 1, at 615.

¹⁰ *See generally* Magnarella, *supra* note 2, at 440-41 (providing political and legal background on Ataturk's reforms).

¹¹ *Id.* at 442.

Turkish military elite viewed themselves as the guardians of these westernizing reforms and the new nation-state.¹² The constitution gave the military the right and duty to intervene in Turkish politics in "the name of the nation."¹³ Over the past several decades, the military has used this constitutional legitimacy to declare martial law in certain regions dominated by Kurdish nationalists, and to deny due process and free speech rights to the Kurdish minorities throughout the country.¹⁴

Turkey's ability to maintain a secular democratic state in a region of the world with rising Islamic fundamentalism has allowed it to maintain very strong connections to Europe and the United States.¹⁵ This eagerness to align with the West is evident today in the Turkish people's strong appetite for U.S. foods, films, and music.¹⁶ It is also evident at the governmental level in Turkey's participation in NATO and in the European Community as an associate member.¹⁷

However, Turkey's attempt to maintain national unity by denying important legal rights to their Kurdish brethren and other believers of the Islamic faith has been a cause of tension between it and the EU.¹⁸ In the southeastern regions of Turkey, where a vast majority of the Kurdish population resides, the government has instituted a state of emergency in response to terrorist activity by Kurdish separatist movements.¹⁹ This state of emergency in the southeast has infused the military with immense power over Turkey's Kurdish minority.²⁰ The military, strongly imbued with Ataturk's ideal of national unity, has used its influence to prohibit radio and television broadcasts in Kurdish.²¹ It also has interfered with the distribution of Kurdish newspapers.²²

¹² *Id.* at 448.

¹³ *Id.* at 448.

¹⁴ *Id.* at 440.

¹⁵ See Hugg, *supra* note 1, at 624.

¹⁶ *Id.*

¹⁷ Magnarella, *supra* note 2, at 439.

¹⁸ See Commission of the European Communities, 2001 Regular Report on Turkey's Progress Towards Accession, SEC (2001)1756, 28 (Nov. 13, 2001), available at http://europa.eu.int/comm/enlargement/report2001/tu_en.pdf [hereinafter 2001 Regular Report].

¹⁹ See U.S. Dep't of State, Turkey Country Report on Human Rights (Feb. 23, 2001), available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/844.htm> [hereinafter State Department Report].

²⁰ See *id.*

²¹ See *id.*

²² *Id.*

Aside from the Kurdish problem, Turkey's ability to maintain a secular state has come at the price of severely limiting the religious freedoms of its predominantly Islamic population.²³ A primary example of this limitation is the lack of freedom female university students have to wear traditional Muslim head scarf on Turkish campuses.²⁴

The power of the military in Turkey's domestic policy is also an important reason why the country has been unable to undertake institutional reforms to protect human rights and guarantee the rule of law.²⁵ The European Commission concluded in its 2001 Regular Report on Turkey's Progress Toward Accession that Turkey still needs to effectively address the issue of the military's role in Turkish politics before the state can meet the political criteria for entering the EU.²⁶

B. *Relations Between the EU and Turkey*

Turkey has had a history of cooperation with the European integration movement since the movement's early beginnings.²⁷ In 1963, Turkey and the European Community (EC) signed the Turkey-EC Association Agreement.²⁸ This Agreement outlined ways in which the EC and Turkey could promote trade with Europe and also achieve the necessary political and human rights standards to eventually allow Turkey to enter the EC.²⁹

In 1980, economic difficulties and a military coup halted this progression towards European integration when the EC froze its relations with Turkey.³⁰ These relations were not fully normalized again until the return to civilian government in 1983.³¹

In 1987, Turkey formally applied for accession to the EC.³² The European Commission responded to this application rather negatively, concluding that negotiations for accession should be put on hold for economic, political, strategic and cultural reasons.³³ Never-

²³ See Hugg, *supra* note 1, at 627.

²⁴ See generally Phillip G. Smucker, *The meaning of a scarf: Turkish students fight to wear Islamic head coverings*, U.S. NEWS & WORLD REP., Mar. 16, 1998, at 31, 33.

²⁵ Hugg, *supra* note 1, at 661.

²⁶ 2001 Regular Report, *supra* note 18, at 33.

²⁷ Hugg, *supra* note 1, at 645.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See *id.* at 646.

³¹ *Id.*

³² Hugg, *supra* note 1, at 646.

³³ See CHRISTOPHER PRESTON, ENLARGEMENT AND INTEGRATION IN THE EUROPEAN UNION 215 (Clive Church ed., 1997).

theless, the Commission recommended continuing cooperation with Turkey, and this cooperation eventually led to the formation of an EU customs union with Turkey in 1995.³⁴

Contrary to Turkey's hopes, the formation of a customs union did not necessarily accelerate Turkey's prospective accession into the EU.³⁵ The Turkish government's ongoing battle with Greece over the status of Cyprus and their questionable human rights practices with respect to the Kurdish minority led the European Parliament to slow its cooperation with Turkey in September 1996.³⁶ The Parliament reacted by passing a resolution to block any EU appropriations to Turkey except those fostering democracy, human rights, and civil society.³⁷

In April 1997, at the EU Intergovernmental Conference, the EU announced that Turkey would remain eligible for accession on the same political criteria as other applicant countries.³⁸ The conference resulted in "concrete preparations for the enlargement process opened with the presentation by the Commission to the Council . . . of the so called Agenda 2000."³⁹

The Luxembourg European Council meetings of 1997 provided rather negative signals for Turkey's prospective accession to the EU.⁴⁰ The Council's opening statements excluded Turkey from the ten other central and east European countries allowed to launch the application process designed for accession to the EU.⁴¹ Furthermore, the Commission argued that Turkey would not yet be allowed to negotiate for accession, and would need to develop a "special strategy" with the EU before serious negotiations could take place.⁴²

Since the Luxembourg Council, the EU attempted to maintain the euphemistic position that Turkey is still very much eligible for accession, but needs to draw closer to the EU before actual negotiations for accession can begin.⁴³ This strategy, known as the Accession Part-

³⁴ Hugg, *supra* note 1, at 646-647.

³⁵ *See id.* at 647-48.

³⁶ *Id.*

³⁷ *Id.* at 648.

³⁸ *Id.*

³⁹ Giorgio Maganza, *The Treaty of Amsterdam's Changes to the Common Foreign and Security Policy Chapter and an Overview of the Opening of the Enlargement Process*, 22 *FORDHAM INT'L L.J.* 174, 183-84 (1999), *quoted in* Hugg, *supra* note 1, at 648.

⁴⁰ *See* Hugg, *supra* note 1, at 649.

⁴¹ *Id.* at 650.

⁴² *Id.*

⁴³ *Id.* at 651.

nership, concentrates on the required political and economic reforms that Turkey would need to make for accession negotiations, and also seeks to mobilize all forms of economic and humanitarian aid to Turkey within a single framework.⁴⁴ The Partnership clearly delineates the political criteria that Turkey will have to meet if it is to have any hope of gaining accession to the EU in the near future.⁴⁵

II. DISCUSSION AND ANALYSIS

A. *The EU's Political and Legal Criteria for Turkey's Potential Accession*

The European Council's 1993 meeting in Copenhagen represented an important step in the EU's relationship with the countries of central and eastern Europe.⁴⁶ Before this meeting, the EU seemed to view these countries as "associated countries" of the EU who benefited from lowered trade and investment barriers as a result of certain agreements between themselves and the EU.⁴⁷ At the Copenhagen Summit, however, the European Council stated that the associated countries of central and eastern Europe that so desire shall become members of the EU and that accession will take place as soon as a country is able to satisfy certain economic and political conditions.⁴⁸ This development led to the establishment of the political and legal criteria that the applicant countries needed to satisfy to obtain admission to the EU.⁴⁹ At the most general level, these criteria stipulated that these countries must have achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.⁵⁰

With respect to Turkey, the Commission's 2001 Regular Report on Turkey identified several short-term and medium-term objectives necessary for Turkey to satisfy the Copenhagen political criteria.⁵¹ The short-term legal objectives included: (1) strengthening legal and constitutional guarantees for freedom of expression in line with Arti-

⁴⁴ See generally Council Decision 2001/235/EC, Annex, 2000 O.J. (L 85) 15 [hereinafter Council Decision].

⁴⁵ See generally *id.*

⁴⁶ See GRAHAM AVERY & FRASER CAMERON, *THE ENLARGEMENT OF THE EUROPEAN UNION* 17 (Clive Archer ed., 1998).

⁴⁷ See *id.* at 16.

⁴⁸ *Id.* at 17.

⁴⁹ See Hugg, *supra* note 1, at 659.

⁵⁰ *Id.*

⁵¹ Council Decision, *supra* note 44, at 16.

cle 10 of the European Convention for Human Rights (ECHR); (2) aligning legal procedures concerning pre-trial detention with the provisions of the ECHR; (3) improving the functioning and efficiency of the judiciary, including the State Security Courts, in line with international standards; (4) removing any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting; and (5) overturning laws allowing for capital punishment.⁵²

While most of the medium-term objectives laid out by the Commission are similar in nature to many of the short-term objectives, a few are more specific: (1) adjusting detention conditions in prisons to bring them into line with the UN Standard Minimum Rules for the Treatment of Prisoners and other international norms; (2) lifting the state of emergency in the southeastern regions of Turkey; and (3) ensuring cultural diversity and guaranteeing cultural rights for all citizens irrespective of their origin.⁵³ In addition to these items, the Commission retained serious concerns regarding the role of the military in Turkish society and the special role of the National Security Council in enforcing the rule of law in Turkey.⁵⁴

B. *The Turkish Legal Regime and Human Rights*

1. Constitutional Basis of the Turkish Legal Regime

Unlike many of its neighbors in the Middle East, Turkey is a constitutional democracy.⁵⁵ Article 2 of the Constitution states that Turkey "is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of social peace, national solidarity and justice."⁵⁶ Furthermore, Article 67 of the Constitution provides for elections on the basis of free, equal, secret, direct, and universal suffrage, and provides that ballots be counted and sorted in public.⁵⁷ Furthermore, elections are governed by the Supreme Board of Elections, empowered to take all necessary measures to ensure the fair and orderly conduct of elections.⁵⁸

⁵² *Id.* at 16–17.

⁵³ *Id.* at 19.

⁵⁴ Hugg, *supra* note 1, at 661.

⁵⁵ See Ergun Ozbudun, *Chapter 2: Constitutional Law, in* INTRODUCTION TO TURKISH LAW 19, 19 (Tugrul Ansay & Don Wallace, Jr. eds., 1996).

⁵⁶ TURK. CONST. art. 2, available at <http://www.ibb.gov.tr/ibbeng/244/24400/01/>.

⁵⁷ *Id.* art. 67.

⁵⁸ *Id.*

At the same time, the Turkish Constitution is founded upon Ataturk's ideals of an indivisible, unified state that stresses a nationalist notion of Turkishness above any other ethnic or religious identity.⁵⁹ The preamble of the Turkish constitution states:

No protection shall be afforded to thoughts or opinions contrary to Turkish national interests, the principle of the existence of Turkey as an indivisible entity with its state and territory, Turkish historical and moral values, or the nationalism, principles, reform and modernism of Ataturk, and that as required by the principles of secularism, there shall be no interference whatsoever of sacred religious feelings in state affairs and politics⁶⁰

Article 5 repeats this theme of indivisibility by stating: "The fundamental aims and duties of the State are: to safeguard the independence and integrity of the Turkish nation, the indivisibility of the country, the Republic and democracy"⁶¹

Articles 24 through 28 of the Constitution appear to guarantee the rights of thought, speech, and press to Turkey's citizens.⁶² Furthermore, Article 13 of the Constitution states that "[r]estrictions on basic rights and liberties shall not conflict with the requirements of the democratic social order."⁶³ This Article enables the judiciary to restrict the basic rights and liberties of Turkish citizens in a manner that would be unacceptable in most liberal democratic regimes.⁶⁴

However, exceptions within these Articles have provided a legal basis for the Turkish state to harass, detain, and torture those who they believe question the state's uncompromising principles of secularism and Turkish nationalism.⁶⁵ Article 24, for instance, states that education and instruction in religion and ethics shall be conducted under state supervision and control.⁶⁶ Articles 25 and 26 allow for freedom of expression and the press, but allow the state to restrict these freedoms with regard to anyone who writes or prints any news or articles that threaten the internal and external security of the state

⁵⁹ See Magnarella, *supra* note 2, at 446.

⁶⁰ TURK. CONST. at pmbl.

⁶¹ *Id.* art. 60.

⁶² See Magnarella, *supra* note 2, at 447; TURK. CONST. arts. 24-28.

⁶³ TURK. CONST. art. 13.

⁶⁴ Ozbudun, *supra* note 55, at 30.

⁶⁵ Magnarella, *supra* note 2, at 447.

⁶⁶ TURK. CONST. art. 24.

or the indivisible integrity of the state with its territory and nation.⁶⁷ Article 28 of the Constitution also provides a legal basis for criminalizing speech that criticizes government actions.⁶⁸

Furthermore, the Constitution establishes a basis for the Turkish military to play a key role in enforcing the rule of law and ensuring that Atatürk's ideals of Turkish nationalism will quash any forms of expression opposed to those ideals.⁶⁹ Article 118 of the Constitution gives the armed forces the duty to protect the "integrity and indivisibility of the country, and the peace and security of society."⁷⁰ The Turkish military has used this constitutional mandate to erect various state security tribunals dealing with political and terrorist charges that consist of at least one military judge appointed by the Executive.⁷¹ To a great extent, these courts usurp the traditional functions of independent judicial courts by having members of the executive branch—specifically, military officers—decide certain judicial proceedings, which seem to be of fundamental importance to human and civil rights, including the right to freedom of expression, movement, and association.⁷²

2. Enforcing the Constitution and Human Rights

The balance between nationalism and individual rights under the Turkish Constitution has always tilted towards the former with regards to the enforcement of the rule of law.⁷³ This tilt has in many ways led to the human rights and due process violations that have made Turkey a recipient of considerable international condemnation over the past several decades.⁷⁴ The European Court of Human Rights and the European Human Rights Commission, for instance, have seen several hundred cases brought before them for violations of the ECHR relating to Turkey's human rights practices.⁷⁵

⁶⁷ *Id.* at arts. 25–26.

⁶⁸ *Id.* at art. 228.

⁶⁹ See Edip Yüksel, *Cannibal Democracies, Theocratic Secularism: The Turkish Version*, 7 *Cardozo J. Int'l & Comp. L.* 423, 432 (1999); TURK. CONST. art. 118.

⁷⁰ TURK. CONST. art 118.

⁷¹ See Mark Muller, *Nationalism and the Rule of Law in Turkey: The Elimination of Kurdish Representation during the 1990*, reprinted in *THE KURDISH NATIONALIST MOVEMENT IN THE 1990'S: ITS IMPACT ON TURKEY AND THE MIDDLE EAST* 173, 178 (Robert Olson ed., 1996).

⁷² *Id.*

⁷³ See *id.* at 43.

⁷⁴ See Hugg, *supra* note 1, at 662.

⁷⁵ *Id.*

Furthermore, investigations by the U.S. Department of State provide convincing evidence of an ongoing disregard for human rights in Turkey.⁷⁶ The State Department's 2000 Country Report on Turkey's Human Rights Practices points out how the police and the courts have used the restrictions in the 1982 Constitution to take actions against those accused of challenging the secular nature or unity of the state.⁷⁷ These actions may include extrajudicial killings, such as deaths due to excessive force, or severe torture under extended periods of detention without a hearing.⁷⁸ Politically, they may also include excessive restrictions on the ability of Muslims to practice their faith, and on ethnic minorities, such as the Kurds, to express themselves in their own language.⁷⁹

Recently, Turkey has made some improvements with respect to human rights and its enforcement of the rule of law.⁸⁰ The government has increased the human rights training of law enforcement officials.⁸¹ The U.N. Special Rapporteur, on his most recent visit to Turkey, reported that, while abusive practices continue to occur in some parts of Turkey, the situation had improved significantly and did not appear to be widespread and systemic.⁸²

Nonetheless, the EU Commission, in its 2001 Regular Report, implied that there is still a problem with regard to the manner in which existing legislation leads to interpretations that violate the freedom of expression as guaranteed by the ECHR, and confirmed by many judgments of the European Court of Human Rights.⁸³ The Commission goes on in the report to recommend an overall reform in legislation and practice in this area so that judges and prosecutors respect the case law of the European Court.⁸⁴

3. State Security Courts, Criminal Procedure, and the Military

The unique influence of the military in the Turkish state has also led the EU to question Turkey's preparedness for meeting the Co-

⁷⁶ *Id.* at 665.

⁷⁷ State Department Report, *supra* note 19.

⁷⁸ *Id.*

⁷⁹ *See id.*

⁸⁰ *See Hugg, supra* note 1, at 678-79.

⁸¹ 2001 Regular Report, *supra* note 18, at 21.

⁸² Hugg, *supra* note 1, at 678-79.

⁸³ *See* 2001 Regular Report, *supra* note 18, at 17.

⁸⁴ *See Id.* at 18.

penhagen political criteria for accession into the EU.⁸⁵ The EU's concerns over the influence of the military center around the National Security Council, an executive body that deals with matters considered threatening to national security, and the State Security Courts, which adjudicate cases involving subversive activity such as terrorism and drug smuggling.⁸⁶ The National Security Council is chaired by the President of the Republic and is made up of the Prime Minister; the Chief of the General Staff; the Ministers of National Defence, Internal Affairs, and Foreign Affairs; the Commanders of the Army, Navy and Air Force; and the general Commander of the gendarmerie.⁸⁷ Its conclusions and recommendations have immense influence in the Turkish political process.⁸⁸

The special State Security Courts also represent a major problem with respect to meeting the Copenhagen political criteria, primarily because their special rules of criminal procedure provide for less due process protection than a normal Turkish court.⁸⁹ In the State Security Courts, hearings may be closed, counsel may be denied, and detention may be twice as long as in normal investigations.⁹⁰ All of these issues have led the EU to push Turkey either to abolish the State Security Courts or to harmonize their procedures with other civil and criminal courts at the state and federal level and also with the ECHR (especially with respect to detention).⁹¹

Nevertheless, the inherent role of the military in legal affairs through the Turkish Constitution would seem to inhibit judicial reform with respect to human rights.⁹² Reforming the procedures and composition of the military courts may require constitutional reform; as a result, Turkey's prospects for meeting the Copenhagen political criteria remain quite remote.⁹³

⁸⁵ See Hugg, *supra* note 1, at 666.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See *id.*

⁸⁹ See *id.*

⁹⁰ Hugg, *supra* note 1, at 666.

⁹¹ See Council Decision, *supra* note 44, at 19.

⁹² See Muller, *supra* note 71, at 178.

⁹³ See 2001 Regular Report, *supra* note 18, at 13; see generally Muller, *supra* note 71, at 178.

III. REMEDIES: TURKEY'S CURRENT AND FUTURE PROSPECTS FOR EU ACCESSION

Recent developments with respect to the legal system have moved Turkey closer to being able to negotiate with the EU for accession.⁹⁴ On March 19, 2001, the Turkish government adopted its National Programme for the Adoption of the Acquis (NPAA), which provides for a wide-ranging agenda of political and economic reform.⁹⁵ Important reforms that were announced in the NPAA have been incorporated in constitutional amendments, and progress is also being made on drafting legislation to enforce these amendments.⁹⁶

At the constitutional level, the government adopted a package of thirty-four amendments to the 1982 Constitution.⁹⁷ These amendments address issues such as freedom of thought and expression, the prevention of torture, the strengthening of civilian authority, freedom of association, and gender equality.⁹⁸ Furthermore, several amendments are directly related to meeting certain aspects of the Copenhagen political criteria for accession to the EU.⁹⁹

The European Commission, in its 2001 Regular Report on Turkey's Progress toward Accession, has noted that the recent amendments are a significant step towards meeting the Copenhagen political criteria, strengthening guarantees in the field of human rights and fundamental freedoms, and limiting capital punishment.¹⁰⁰ In Articles 13 and 14 of the Constitution, a number of restrictions have been deleted, thereby narrowing the grounds for limiting fundamental rights and freedoms.¹⁰¹ Furthermore, the principle of proportionality has been introduced into the Constitution.¹⁰² For example, a portion of Article 14 now reads:

No provision of the this Constitution shall be interpreted in a manner that grants the State or individuals the right of destroying fundamental rights and freedoms embodied in the Constitution, and of staging an activity with the aim of re-

⁹⁴ See 2001 Regular Report, *supra* note 18, at 31.

⁹⁵ *Id.* at 8.

⁹⁶ *Id.* at 14.

⁹⁷ *Id.* at 15.

⁹⁸ *Id.* at 14.

⁹⁹ 2001 Regular Report, *supra* note 18, at 14.

¹⁰⁰ *Id.* at 19.

¹⁰¹ *Id.*

¹⁰² *Id.*

stricting rights and freedoms more extensively than is stated in the Constitution.¹⁰³

There has also been some reform with respect to the judiciary and the State Security Courts.¹⁰⁴ The Turkish government has held numerous courses to train judges, prosecutors, and judicial staff in EU law and human rights.¹⁰⁵ Also, the government now appoints all members of the State Security Court from the civil judiciary instead of the military.¹⁰⁶

The government has also instituted reforms concerning the role and composition of the National Security Council.¹⁰⁷ The number of civilian members of the National Security Council has been increased from five to nine, while the number of military representatives remains at five.¹⁰⁸ Furthermore, the government is now only required to "evaluate" the recommendations of the National Security Council instead of giving them "priority consideration."¹⁰⁹

Despite these reforms, the European Commission notes that if Turkey is to meet the Copenhagen political criteria, it still needs to create implementing legislation that will provide individuals with a real and practical improvement in exercising fundamental freedoms.¹¹⁰ The lack of implementing legislation is evident from the fact that, over the past year, the European Court of Human Rights found that Turkey has violated provisions of the ECHR in 127 cases.¹¹¹ These cases related to a wide range of violations of the Convention such as freedom of expression, ill treatment by the security forces, and length of police custody.¹¹²

To remedy these problems, the European Commission continues to urge Turkey to take practical steps to meet the Copenhagen political criteria and subsequently ensure the rule of law and the exercise of human rights.¹¹³ These steps include: (1) making legislative changes to the Penal Code so that the death penalty is completely abolished in accordance with Protocol 6 to the ECHR; (2) bringing pre-trial deten-

¹⁰³ *Id.*

¹⁰⁴ 2001 Regular Report, *supra* note 18, at 16, 19.

¹⁰⁵ *Id.* at 17.

¹⁰⁶ *Id.* at 16.

¹⁰⁷ *Id.* at 19.

¹⁰⁸ *Id.*

¹⁰⁹ 2001 Regular Report, *supra* note 18, at 19.

¹¹⁰ *Id.* at 20.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

tion provisions further into line with ECHR standards for offences falling under the competence of the State Security Courts; and (3) making concrete changes in legislation that would extend the scope of freedom of expression so as to give content to the constitutional amendments, in particular to reflect changes to the Preamble and Articles 13 and 14 of the Constitution.¹¹⁴

CONCLUSION

Despite the recent reforms, Turkey's short-term prospects for EU accession still appear unlikely. The European Commission's 2001 Regular Report on Turkey's Progress toward Accession states that, although it is beginning to make progress in some areas, Turkey does not yet meet the Copenhagen political criteria. The Report, therefore, encourages Turkey to intensify and accelerate the process of reform so that human rights and fundamental freedoms are fully protected in law and practice, for all citizens, throughout the country.¹¹⁵

Of the outstanding problems, the presence of the military in Turkish society appears to be the most intractable and the most troublesome.¹¹⁶ An example of this problem is that Turkey has many laws prohibiting contentious acts such as torture and indefinite detention, but has failed to enforce these laws partially because of fear of reprimand from the armed forces.¹¹⁷ Furthermore, when laws respecting human rights have been enforced, they have primarily benefited private actors who seek to silence journalists and human rights activists who question the activities of the state with respect to the Kurds and with respect to civil rights in general.¹¹⁸ It therefore appears that "only a thorough overhaul of Turkey's army-inspired constitution can put an end to such absurdities."¹¹⁹

However, lessening the military's influence in Turkish legal affairs is not as simple as it may seem. The military's legitimacy to affect the fundamental freedoms of Turkish citizens has come directly from Ataturk, who saw the military as a guardian of the Turkish democracy and the underpinning ideals of unity and national identity. Undermining the Turkish military's legitimacy in legal affairs may, there-

¹¹⁴ 2001 Regular Report, *supra* note 18, at 21-22, 24.

¹¹⁵ *See id.* at 33.

¹¹⁶ *See generally* *Why are we waiting?*, THE ECONOMIST, June 8, 2000, available at 2000 WL 8142371.

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *Id.*

fore, require undermining some of the beliefs and ideals of the founding father of Turkey. This conclusion has never been one that the Turkish state has liked to face, but it is a conclusion it must face if it is to gain accession to the EU.