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Turkey's War on the Judiciary: Is Ankara Really Flouting International Concerns?

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The Turkish government has reacted to recent corruption probes by attacking the rule of law and the judiciary. This has confirmed international concerns about the state of democracy in Turkey and has drawn censure from the Euro-Atlantic community. And yet, the community may have misread Ankara's motivations. Far from arrogantly flouting international concerns, Ankara is acting out of concern for them. Dismayed by the damage inflicted by the judiciary to its reputation as perceived in Washington and Brussels, Ankara is moving quickly to rid itself of the influence of the hostile Gulen movement, a community accused of attempting a sort of coup through its influence in the judiciary. Ankara's actions are deeply misguided, but they illustrate the leverage open to the EU to correct them.

Concerns about the Rule of Law: Ankara's repressive reaction to the Gezi protests last summer resulted in the questioning of the governing Justice and Development Party's (AKP) commitment to democratic principles. Since then, Ankara has continued to forcefully disperse low-level, peaceful protests, has increased pressure against its critics using such methods as tax inspections or dismissals from employment, and has adopted controversial laws to prevent protests, such as the criminalisation of medical first-aid without government authorisation, and added to the centralisation of power around the government.

This behaviour sharpened when, on 17 December 2013, corruption and graft probes were launched by the judiciary against members of the innermost circles of the AKP. The government's response to the probes was defensive, and cemented the authoritarian tone in the country. It quickly proposed a bill on the judiciary that would have the effect of undermining the principle of the separation of powers by removing hundreds of civil servants from the police and prosecutors, and also took steps towards reducing internet freedoms to prevent the spread of information about the changes.

The prime minister's accusations concerning the apparent political motivations of the judiciary are, of course, nothing new for Turkish citizens. The Turkish judiciary has traditionally reflected certain ideologies in their rulings, overtly contradicting the principles of impartiality and independence. Despite often being brushed over by the government, and overlooked by outside observers enthusiastic about the judiciary's actions against the military, this partiality was the dark side of the AKP's so called years of democracy, as the courts continued to violate procedural standards.

What is new, however, is the government's choice of bogey man. This time, the government has been deflecting attention from the corruption probe by pointing to what it calls a "parallel state" operating within Turkey's judiciary and police, claiming they are working as "spies" for their international collaborators and aiming to carry out a "coup" against the government prior to elections in March. Although Prime Minister Recep Tayyip Erdoğan has not named names, his accusations are clearly directed at the Gulen movement, the members of which are suspected to have infiltrated the judiciary.

Correct Diagnosis, Wrong Solution. The Gulen movement is an influential social-religious network active in around 160 countries and, until now at least, has been seen as an asset for Turkish soft power. Domestically, however, the movement is increasingly suspected of having gone beyond the legal borders for a social movement. Despite the Gulenists defining their community as informal, indeed as simply "inspired" by the self-exiled Fethulla Gulen's teachings, they are accused of abusing state means for their own political agenda.

The Gulenists are believed to have been influential in such court rulings as the Ergenekon and odatv cases, which dealt with "a clandestine organisation allegedly planning to overthrow the AKP government" and which were conducted in serious violation of procedural standards (such as the right to self-defence and use of impartial evidence). More dramatically, these cases turned into "witch-hunts" of a large range of opponents, while simultaneous smear campaigns were conducted against Turkey's secular elites. The Ministry of Justice recently determined that the trials were not conducted fairly.

Until now, however, the Gulenists have profited from their close alliance with the AKP, thereby gaining key places in state institutions. Indeed, the Gulenists' violations generally went unnoticed in other European capitals as they were presented by the party as a "cleansing of the political system from military tutelage." Thus, whilst Erdoğan is right in pointing to the negative influence of the Gulenists, this only highlights a broader stream of corruption within his own party. And his response—to attack the judiciary, rather than strengthen its independence—is thus unjustified.

A Weakening of International Cooperation. The rivalry between the prime minister and Gulen has implications for the whole region, and indeed for the Euro-Atlantic community. The government's response to the probes prejudices democratic principles, further restricts internet freedoms, adopts illiberal rhetoric and removes thousands of civil servants from service. This is already throwing the country into economic turmoil. Turkey's economy risks stagnation thanks to its dependence on foreign direct investment, with recent outflows putting the Turkish Lira at record lows.

Not surprisingly, the government's slamming of media, opposition, and employer groups has increased already deep political tensions prior to the March elections. Turkish increasingly multi-polar society will not accept a single ideology imposed by the government, let alone by the politicised judiciary. Simultaneously, Turkey's prestige is fading, along with its soft power capacities and diplomatic assets to the international community.

The political tensions are now causing competition between Turkey's state institutions, with widespread purges of civil servants affecting the institutions' very ability to function. Moreover, the methods used in Turkey's "perception wars" include phone tapping and the publication of documents leaked to the internet on a daily basis by unidentified users. A "wikileaks" scenario in which government secrets are released drip by drip to the media is a likely consequence.

The problem is not just that the leaked information includes, for example, allegations that may affect Turkey's ongoing peace process with the PKK. The institutional competition has resulted in the disclosure of Ankara's intelligence operations, such as an alleged arms transfer to Syria, bolstering the Damascus government when it accuses Turkey and the West of supporting terrorism in Syria. Moreover, previous experience suggests that these leaked documents may be followed by court cases that could also turn into "witch hunts" against a wide-range of individuals.

Conclusion. International censure, compounded by predictions that the probes may decisively affect the electoral outcome and result in probes against the AKP's own leadership, is pushing the government to act quickly. This resort to preventive measures violates the constitutional order and further centralises power in all areas of public and private life. This is pushing Turkey to the brink of serious economic, institutional and social instability, with negative implications for the Euro-Atlantic community. Despite this, the potential for the EU to intervene has been downplayed by some European capitals, which would prefer to see Turkey's accession process put on ice. Ankara, in turn, is exploiting the situation to backtrack on the country's democratisation.

Given the damage to its reputation suffered in Washington and Brussels in the wake of the Gulen leaks, however, Ankara is signalling a re-orientation towards a less ambitious and more cooperative international policy. This is reflected in the fragile momentum in EU–Turkey relations that was already apparent last year thanks to the EU's constructive approach towards the country. At the tail end of 2013, Brussels opened a new accession negotiations chapter, in recognition of Turkey's burgeoning civil society and despite the government's crackdown on the Gezi protesters. The approach was effective, with Brussels' timely intervention playing a key role in the modification of a judiciary bill that would otherwise tie the judiciary to the executive.

Ankara's renewed sensitivity to international censure, even though currently expressed in an aggressive war against the judiciary, provides an opportunity for Brussels. Rather than questioning the prospects for Ankara's accession process, the EU should accelerate the process by removing political obstacles and rebuilding trust in the accession bid, and giving a green light to talks on two pertinent chapters, one on rights and freedoms and the other on justice and security, not least on internet freedoms and the decentralisation of power. It should equally engage with civil society, by increasing the number of beneficiaries of European programmes and by facilitating visa procedures until their complete abolition.

Turkey's cooperation, and its strategic assets, depend on its Europeanisation. That is why the EU's engagement should not be limited to a reactionary censure of the country for these undemocratic practices, but should aim to assist in the building of independent institutions, improving the rule of law, and drafting a new constitution.