

**Remarks by Alan O. Makovsky
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“Turkey: Post-Election Human Rights and Strategies for Accountability”
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Thank you. I would like to thank the Co-Chairmen for calling this important and timely briefing and for giving me the opportunity to participate. I worked for Tom Lantos for seven years. He was a passionate and eloquent defender of human rights around the globe. It was an honor to work for him, and it is an honor for me to speak at this body that so appropriately bears his name.

I was asked to say a few words about the state of rule of law in Turkey, *particularly as seen through the lens of the judiciary, and with some reference to elections*. That is what I hope to do in the brief time allotted me here.

In April 2017, Turkish voters passed into law, by referendum, a set of constitutional amendments that amounted to a systemic change in Turkey, from a parliamentary system to a highly centralized Presidential system. This system went fully into effect with the June 24, 2018, election, in which Recep Tayyip Erdogan, the prime initiator and advocate of the new system, was re-elected to the Presidency with a slight majority. His party, the AKP – in de facto partnership with another, hard-nationalist party -- holds the balance in Parliament.

In accord with the constitutional changes brought about by the 2017 referendum, the prime ministry has been abolished, and all executive branch functions are now under the direct control of the President. He appoints all positions in the executive branch, without checks and balances and without parliamentary review. In a vast number of areas, the President is free to issue decrees that have the force of law. The first decree President Erdogan issued, in fact, established a massive super-structure in the Presidential palace to conduct oversight over the ministries and set policies in all areas – in effect, vastly reducing the power of the ministers and of the career bureaucrats that largely staff those ministries.

The referendum and the June 24 election this year have formalized President Erdogan’s authoritarian rule over Turkey. Erdogan now is in total control of the executive, in effective control of the legislative branch, and, increasingly, in near-total control of the judiciary.

Judiciary

One of the most notable elements of the new system is the formal increase in Presidential influence over the judiciary. To be fair, Turkey was never known as a paragon of judicial independence, but such independence as the judiciary once wielded has now been drastically reduced, and the groundwork has been laid for its full evisceration.

Under the new system, virtually every key position in Turkey's two most important judicial bodies will now be appointed by the President or by the Parliament he dominates. This includes the 15 judges on the Constitutional Court, which rules on Constitutional issues and tries corruption cases brought against senior officials. It also includes the 13 judges on the Council of Judges and Prosecutors, which determines the placement and promotions – in effect, the career path – of all of Turkey's judges and prosecutors.

The problem of Presidential dominance of the judiciary is not merely structural, however. It also reflects a climate of fear that infects the judiciary as much as it does ordinary citizens. Since the failed coup of July 2016, roughly one-third of all judges and prosecutors – almost 4,500 -- have been fired, and most of those were arrested, in most cases charged with being Gulenist. In an atmosphere of ongoing firings and arrests of colleagues, what judge would want to rule the wrong way – wrong from the government's perspective, that is -- on a case brought against alleged Gulenists or anyone else? Last year, for example, three judges were fired after they released from custody 21 journalists charged with being Gulenists.

The issue of Gulenists in the Turkish judiciary – and the negative perception of their presence by many Turks, including many Erdogan opponents – is complex. That the witch hunt for Gulenists has created paranoia, fear, and loathing within the ranks of the Turkish judiciary is obvious, however, and it is virtually certain that it affects the manner in which Turkish justice is meted out.

Since last year, Turkey's traditional, early September ceremony opening the judicial year has been held in the Presidential Palace rather than in a judicial building, per previous tradition – a symbolic acknowledgement of Presidential dominance of the judiciary. In fact, this change was made at Presidential direction, and the judiciary went along.

Elections

Both the April 2017 referendum and the June 2018 Presidential and parliamentary election have often been deemed free but not fair, meaning that the campaign environment was tilted heavily toward the government – particularly as a result of control of the media -- but that the vote-counting was generally fair. In both cases, however, serious concerns have been raised that could have affected the final result. In the case especially of the referendum vote, a vast number of ballots lacking an official stamp were counted, even though this was specifically against Turkish law.

Both campaigns were held under emergency rule, at times limiting the opposition's ability to hold rallies. For the June 2018 elections, more than a thousand polling places were eliminated, ostensibly for security reasons, in Turkey's Kurdish-dominated southeast. According to the OSCE observer mission, this may have limited access to the ballot box for some 120,000 voters; some Kurdish sources put the number of those likely affected at more than 300,000. The final report of the election observer mission of the OSCE's Office for Democratic Institutions and

Human Rights was just issued this week, and I'd urge anyone wanting further information on this and related topics to consult it.

President Erdogan and the parliament have been elected to five-year terms, but Turkey will hold nationwide local elections this coming March.

In an electoral matter relating to local elections and that bears heavily on rule-of-law concerns, it should be noted that the Erdogan government has removed from power numerous elected mayors. These are overwhelmingly but not exclusively from local affiliates of the liberal, heavily-Kurdish People's Democracy Party – HDP, in Turkish – which the government consistently accuses of “terrorism.” 82 of 103 elected HDP-affiliated mayors in Turkey's Kurdish-majority southeast have been removed in favor of government-appointed “trustees.” Erdogan has also forced from office six elected mayors of his own AKP party – including the mayors of major cities Istanbul, Ankara, and Bursa – not for crimes, merely for the sake of bringing in fresh blood before the next round of local elections.

In the last parliament, the immunity of dozens of elected HDP parliamentarians was lifted. Nine, including former HDP co-chairman and two-time Presidential candidate Selahattin Demirtas, are still in jail. Governmental repression of the HDP makes resolution of Turkey's longstanding Kurdish problem ever more distant.

Article 299

If I may, I'd like to add one point regarding a particularly pernicious law that functions to stifle free speech in Turkey. That is Article no. 299 of the Turkish Penal Code, which bans insults directed against the President of the country. Obviously, the application of the law is highly subjective. This law was on the books well before Erdogan became President, but he has used it far more than any previous President. Literally tens of thousands of people have been investigated for this crime during the Erdogan Presidency, and – even according to the Turkish Ministry of Justice -- more than 10,000 were indicted in 2016 and 2017. People ranging from young teenagers to parliamentarians, including the opposition leader, have been prosecuted under this law. It has a chilling effect on freedom of speech.

There are many limitations on freedom of speech in Turkey, many far more serious than the law on insulting the President. We all know, for example, that there are more journalists in jail in Turkey – 173, according to one respected accounting – than in any other nation. I know my colleagues on this panel will elaborate on freedom of expression in Turkey.

I wanted to make sure to mention Law no. 299, however, because it is sometimes overlooked; because, even though the penalties usually are not great, it intimidates people from speaking out; and because few concepts are more antithetical to freedom than the idea of punishing those who criticize a political leader. Perhaps it was a less objectionable idea in the days when the Turkish President was little more than the symbolic head of state and when the law was

used relatively sparingly. But it is a particularly insidious practice when applied to a party leader who is elected by the people to be the nation's chief policy-maker.

In closing, let me say that it is clear that the rule-of-law situation in Turkey today is poor and deteriorating. The World Justice Project recently rated Turkey 101st out of 113 countries across the globe in its Rule of Law Index. On the specific category of Constraints on Government Power, it was rated 111th; on Fundamental Rights, 107th.

I don't want to exaggerate. Turkey is not North Korea or Saddam's Iraq. Nobody is executed for insulting Erdogan, though they may go to jail for a short time, get fined, or lose their job. However, Turkey is increasingly a place where the whims of President Erdogan rule; where fear frequently determines what people say or don't say; where being sympathetic to Kurdish rights can prompt the President and his supporters to label you a terrorist or where criticizing the President's policies too harshly might get you indicted as a Gulenist; and where the judiciary can be cowed by the President's desires. With the implementation of the new Presidential system in Turkey, and with President Erdogan's re-election, there is little prospect that things will improve any time soon.