



National Security Program

Foreign Policy Project

Legislating Autocracy?

Recent Legal Developments In Turkey

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BIPARTISAN POLICY CENTER



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Executive Summary

The history of the Republic of Turkey's relations with the United States is also that of the country's modernization and democratization. U.S. military and economic assistance to Turkey under the Truman Doctrine and Turkey's subsequent entry into the North Atlantic Treaty Organization (NATO) coincided with the emergence of a multiparty political system in 1950. In the more than six decades since, Turkey has overcome several political crises and military coups to emerge as an imperfect but dynamic and evolving democracy. That progress—an important component of the strong U.S.-Turkish relationship—has been slowed in the last two years.

"Which direction Turkey's domestic political development follows," our task force wrote last fall, "is an increasing concern not just for Turks but also for the United States. Practically, this means that Washington should be open with Ankara about its concerns about issues like press freedom, freedom of assembly, rule of law, and the Turkish government's increasing sectarianism."¹ Unfortunately, since then, all of these values have suffered. In fact, in the last three months, Turkey's democratic progress has been reversed. Recently, several laws either submitted to or pushed through Turkey's parliament by Prime Minister Recep Tayyip Erdoğan and his ruling Justice and Development Party (AKP) undermine central pillars of democracy—separation of powers, checks and balances, government accountability to voters, freedom of speech—and have put Turkey on the road to authoritarianism. If left unchecked, which they very well might following the AKP's victory in the March 30 local elections, these structural changes could prove more dangerous to Turkish democracy than the abuses of power in which Erdoğan has engaged thus far.

The context for these developments is a corruption scandal that, ever since it came to light on December 17, 2013, has rocked Turkey with allegations that reach the highest echelons of government. The scope of the alleged corruption is huge, reaching the prime minister's family and closest associates, and possibly the prime minister himself. At the same time, popular opposition to the government, which has been simmering since last summer's large, countrywide protests, has once again exploded into view. Following the recent death of a teenager injured by police during the protests nine months ago, tens of thousands of Turks took to the street to make their dissatisfaction with Erdoğan and his brutal tactics known.²

Erdoğan's response has been to marshal the government's powers in a heavy-handed attempt to quash both the corruption charges and the public opposition. Hundreds of prosecutors and thousands of police officers tied to the graft investigation have been fired or reassigned, media has been blocked from reporting on it, and the allegations have been portrayed as the fabrications of Turkey's enemies, both at home and abroad.³ Police dispersed protestors, sometimes violently, and access to social media was blocked.⁴

Not content with these measures, Erdoğan's government has undertaken a legislative campaign to vastly increase the state's power and insulate it from accountability. The AKP submitted a slew of bills that would fundamentally transform the functioning of critical state institutions and, thanks to its majority in parliament and control of the presidency, turned several of them into law. The most consequential of these bills deal with the structure and functioning of the judiciary, government control over the Internet, and the mandate and powers of the intelligence service.

Restructuring the Judiciary

Turkey's Supreme Board of Judges and Prosecutors (HSYK) is the administrative heart of its judicial system. HSYK oversees the legal curriculum for students, admission into the profession, as well as the appointment, promotion, and disciplining of judges and prosecutors. As Turkey's judicial system does not include juries, judges are the sole arbitrator of all legal cases. Thus, HSYK's control over the selection of judges grants it de facto sway over the administration of justice. Its independence is, therefore, a central component of Turkey's system of checks and balances.

However, parliament recently passed, and President Abdullah Gül signed, a law that would almost fully place Turkey's courts under the control of the executive branch. Although the original draft of the law—which would have given the minister of justice sole authority to make appointments to HSYK—was amended to preserve the current structure and selection process, it still significantly enhances the justice minister's authority. He is now responsible for calling HSYK meetings and setting their agendas, selecting members for positions within the body, and appointing the inspectors who probe judges and prosecutors for misconduct. Critics and legal scholars charge that imbuing a member of the Cabinet with such powers violates the principle of judicial independence enshrined in Turkey's constitution.⁵ The law has been challenged in the Constitutional Court, but the case has not yet been taken up.

Regulating the Internet

Turkey's parliament and president have also approved a law granting the government sweeping powers to censor and monitor the Internet with minimal oversight. The country's Internet-regulating body, the Presidency of Telecommunication and Communication (TİB), now has the authority to demand that service providers block any content deemed to be a violation of privacy. Individuals or organization may file take-down requests with TİB, but the body also has the authority to determine violations on its own. The power to block offending content appears to extend not just to websites where the content appears, but to the entire service or server hosting the content. It was under this interpretation of the new law and under orders from Erdoğan that TİB acted to block access to Twitter on March 20 and Youtube on March 27.⁶

The new law also requires Internet service providers to maintain records of all users' online activity for two years and to provide it to the government upon request. A last-minute

amendment to the law added a layer of judicial review to both parts of it—the content-blocking and recording-requisitioning authorities.⁷ However, judicial consent is not required to take either action. The government may act first—taking down Internet content—and then seek court approval within the next 24 hours. Court approval may not matter anyway as the court that would review such government action would be selected by HSYK.

Expanding the Security State

A third law, introduced in parliament but not yet voted on, would expand the purview of Turkey's National Intelligence Organization (MİT), while simultaneously shielding it from prosecution and adding stiffer penalties for journalists that report on its activities. The bill would give the agency, which is currently limited to carrying out intelligence-gathering and counter-intelligence duties, the mandate to conduct loosely defined operations in the name of national security. The MİT would be allowed to conduct wiretapping of phone calls, without a warrant, made by foreign nationals or on public pay phones, and it would be allowed to establish and maintain contacts with terrorist organizations. The MİT would also have the power to demand access to any data or information held by any organization or institution in Turkey, private or public. These new powers would cover activities that the MİT already appears to be involved in, such as providing arms to radical extremist groups in Syria and negotiating with the Kurdish Workers' Party (PKK).⁸

If passed, this law would also put in place extraordinary legal protections for those working for and with the MİT. Prosecutors would be required to notify the agency of any complaints that are filed against it, but would be barred from taking up such investigations. Any prosecution of an MİT agent—whether for crimes committed in their official or personal capacities—would be moved to a special court, to be designated by HSYK. Meanwhile, the law would create stiff penalties for any media outlet that reports on any aspect of the MİT or its activities.

Implications

On their own, each of these laws might appear worrisome but not catastrophic. Debates about online privacy, the balance between civil liberties and security, and the rise of surveillance in the digital era are, after all, raging throughout the developed world. Yet, taken together, these laws create a self-referential and self-validating system of societal control and pose a significant threat to Turkish democracy.

The laws on Internet regulation and the expansion of MİT powers maintain the patina of legitimacy by including a layer of judicial review. These new government authorities cannot be abused, supporters suggest, because the courts are able to exercise oversight—either by withholding consent for blocking online content or by trying intelligence officials who cross the line. This presupposes, however, that the judges and courts are able to arrive at independent conclusions about the legality of government actions, free from political interference and influence. With the appointment, promotion, sanctioning, and dismissal of

judges now effectively controlled by one member of the Cabinet, the prime minister's office has gained the tools, if not to directly dictate the administration of justice, then at least to coerce judicial compliance. This eliminates one of the most important checks and balances on government power.

The idea that governments must be accountable to the people whom they serve and, therefore, cannot be above the law is a central principle of liberal democracy. To that end, a justice system separate from the other branches of government and outside the sway of political pressure has been a crucial structural element of stable and well-functioning democracies. By controlling HSYK, the prime minister will be able to effectively replace the rule of law with rule by his own fiat.

This authoritarian turn is not a bolt out of the blue. Since his reelection in 2011, Erdoğan has been gathering personal power while eliminating critics and rivals. He has accomplished this, predominantly, by abusing the powers of his office. By threatening to, or actually, investigating, sanctioning, firing, or imprisoning his enemies, Erdoğan has managed to rein in Turkey's military, business leaders, and journalists. He also had grand designs to refashion his country's political institutions. He envisioned creating a presidential system, imbuing the position with unprecedented powers, and assuming the post himself.⁹ Last summer's Gezi Park protests thwarted those ambitions.

Now, motivated by the goal of impeding the progress of corruption investigations into his inner circle, Erdoğan is succeeding in restructuring the Turkish state. These legal changes, if allowed to stand, will have far-reaching implications for the future of democracy in Turkey, and be much harder to undo, than Erdoğan's previous power grabs. As long as Turkey remains a democracy, and the people can choose a new government, sidelined politicians can be rehabilitated, unjustly jailed opponents can be released, and silenced journalists can regain their voices. But the ability of the voters to make free and informed choices is growing increasingly limited as the government expands its ability to define unacceptable speech and punish it. Moreover, even if power were to change hands, the next government would also benefit from the enhanced authority Erdoğan has given himself; it would be loathe to shed it. After having made positive changes that strengthened the rule of law in Turkey just half a decade ago, Erdoğan is now undoing Turkey's democratic gains in the name of holding on to power.

Restructuring the Judiciary

The AKP came to power promising to limit the military's role in politics and to complete Turkey's unfinished democratization. In the first years of its rule, it appeared to be honoring that pledge. One of its most notable achievements in this area was advancing judicial independence and rule of law through constitutional amendments made in 2010. Unfortunately, one of Prime Minister Erdoğan's first instincts when his inner circle was threatened with prosecution on charges of corruption was to undo this progress and bring the judiciary's central administrative organ, HSYK, and therefore the courts, back under the sway of the government.

Evolution of HSYK

This is not the first time that HSYK has undergone reorganization. Since its establishment by the 1982 Turkish constitution, its composition, process for selecting members, powers, responsibilities, and relationship to the executive have all evolved.

1982 CONSTITUTION

HSYK was created by Turkey's 1982 constitution, written following the 1980 military coup d'état. Meant to be the judiciary's bureaucratic center of power, HSYK was created to appoint judges and prosecutors as well as inspect and investigate their conduct and take disciplinary action accordingly, including removing them from office.

The constitution originally created a seven-member board, with the minister and undersecretary of justice taking up two of those slots. Judges nominated by the president of the republic for the remaining five positions came from within the Supreme Court of Appeals (three) and the Council of the State (two), Turkey's highest civilian courts. The Council of the State, known as "the court of last resort" makes the final decision in appellate review of first-instance and district courts. These cases are primarily administrative, dealing with disputes among boards, tax issues, and the future of low-level courts. In comparison, the Supreme Court of Appeals (also known as the Court of Cassation) is the court of last instance for reviewing verdicts in criminal and civil cases.

Turkey's judicial system does not include juries, meaning that judges are the sole arbitrators of all legal cases. As a result, HSYK, as described by legal scholar Thomas Giegerich, "is the keystone of the Turkish judicial architecture because it plays a crucial role in the promotion and transfer to other locations of, and disciplinary proceedings against, judges and public prosecutors, including their removal from office."¹⁰ HSYK's independence, thus, is a central component of Turkey's system of checks and balances.

Evolution of Turkey's Supreme Board of Judges and Prosecutors (HSYK)

1982 CONSTITUTION	2010 CONSTITUTIONAL AMENDMENT	2014 CHANGES
INDEPENDENCE		
Housed in a building which belonged to the Ministry of Justice	Housed in a separate building	Unchanged
Dependent on Ministry of Justice for budget	Separate budget	Unchanged
Inspection and investigation carried out only upon permission/approval from the Minister of Justice	Minister of Justice can only attend Plenary meetings, not Chamber meetings, and cannot attend meetings concerning disciplinary matters of judges and prosecutors	Justice Minister sets the agenda for Council meetings Justice Minister makes decisions on disciplinary action Justice Minister sets curriculum for the Justice Academy and has the authority to remove the Directors of the Academy
MEMBERSHIP		
Seven regular and five substitute members: <ul style="list-style-type: none"> Minister of Justice Undersecretary of Justice Three members elected by the Court of Cassation Two members elected by the Council of State from 	22 regular and 12 substitute members <ul style="list-style-type: none"> Minister of Justice Undersecretary of Justice seven members elected from the First Instance of Judges and Prosecutors; Three members elected from the First Administrative Judges and Prosecutors; Three members elected from the Plenary Session of the Court of Cassation; Two members elected from the Plenary Session of the Council of State; One member elected from the Plenary Session of the Turkish Justice Academy; Four members selected by the President of the Republic from notable lawyers and lecturers of law faculties. 	Unchanged

1982 CONSTITUTION

2010 CONSTITUTIONAL AMENDMENT

2014 CHANGES

STRUCTURE

HSYK had single body consisting of the seven regular members.

HYSK consists of multiple bodies:

- General Assembly: all 22 members, assigns jurisdictions to courts, selects judges for highest courts, and reviews decisions of lower chambers.
- First Chamber: seven members, responsible for appointment and transfer of judges.
- Second Chamber: seven members, responsible for promotions and disciplinary proceedings.
- Third Chamber: seven members, responsible for admitting applicants into the legal profession, oversees Inspection Board.

Unchanged

Inspections Board that investigates judicial conduct subordinate to Minister of Justice.

Inspections Board that investigates judicial conduct subordinate to Third Chamber.

Inspections Board subordinate to Minister of Justice.

HSYK officers (President, members of the Inspections Board) selected by Minister of Justice.

HSYK officers (President, heads of Chambers, etc.) selected by General Assembly voting.

HSYK officers (President, heads of Chambers, members of Inspections Board) selected by Minister of Justice

HSYK could not convene without Undersecretary of Justice present.

Undersecretary of Justice can only attend General Assembly and First Chamber meetings; cannot be elected as Head of any Chamber; meetings can be held without him.

Undersecretary of Justice is President of the General Assembly.

Justice Minister has authority over career development, such as taking courses or traveling abroad for training

TRANSPARENCY

Decisions related to disciplinary proceedings were not published.

Decisions related to disciplinary proceedings are published online.

Unchanged

Decisions could not be challenged.

Decisions on dismissals are open to judicial review.

Unchanged

No mechanism for internal objections.

Internal objections to decisions by any of the Chambers can be raised in the General Assembly.

Unchanged

However, because the judiciary—along with the military—was one of the ruling Kemalist establishment's main tools for protecting the secular and republican character of the Turkish state, HSYK was originally made dependent upon the executive in its daily functions. With its offices housed in buildings controlled by the Ministry of Justice, its budget under executive control, appointments to positions within the board made by the minister of justice, meetings conducted only if the undersecretary of justice was present, and no public record of its proceedings, HSYK was at the mercy of the executive branch of government. The European Commission for Democracy through Law, an advisory body to the Council of Europe known as the Venice Commission, warned that the close relationship between HSYK and the Ministry of Justice "in some respects seems too close in a manner which may pose a risk to independence."¹¹

2010 CONSTITUTIONAL REFERENDUM

The 1982 model was in place for nearly three decades before being changed by the AKP government. Whether motivated by the democratic deficit of the previous arrangement or by their intent to dismantle the traditional centers of Kemalist power, the AKP restructured the judiciary. Their changes sought to enhance the judiciary's independence from political influence and to meet requirements for EU accession.

In 2010, changes to HSYK were included in the AKP's package of constitutional reforms, passed through a popular referendum, with 58 percent support.¹² These reforms increased the independence of HSYK from the executive by enlarging the board from seven members to 22, democratizing how the now broadened membership was selected, and opening the board's decisions to legal review. The structure itself was also renovated, creating three separate chambers—one that decides where judges and prosecutors will serve, one that decides on their promotion or disciplining, and a third that governs admittance into the legal professions—as well as a plenary that reviews the decisions of the chambers, sets jurisdictions, and elects judges to the highest courts.

Rather than being appointed by the Supreme Court of Appeals and the Council of the State, as in the past, HSYK members were now selected by a spectrum of legal institutions, including the very courts that they would oversee. Moreover, the makeup of the board was also diversified, being drawn not just from executive-branch representatives—such as the minister of justice—and judges, but also from lawyers and legal experts.

As a result of the 2010 changes, in addition to the minister and undersecretary of justice, the board consists of:

- seven members elected from the First Instance of Judges and Prosecutors;
- three members elected from the First Administrative Judges and Prosecutors;
- three members elected from the Plenary Session of the Court of Cassation;
- two members elected from the Plenary Session of the Council of State;
- one member elected from the Plenary Session of the Turkish Justice Academy; and

- four members selected by the president of the republic from notable lawyers and law-faculty lecturers.

The powers and responsibilities accorded to HSYK were also altered. Most importantly, the board's decisions were made subject to judicial review, opening HSYK actions, including dismissals of judges and prosecutors to judicial review by the Council of State. Through this mechanism, HSYK not only became an effective check on executive power but also had its own power over the legal system balanced and constrained, requiring it to justify and be accountable for its own actions. Transparency was also increased, as hearings were published for public reference. On the other hand, HSYK gained some powers, including the capability to create, abolish, and redistrict court jurisdictions, along with overseeing the promotion and training of judges and prosecutors.

Most notably, HSYK gained greater independence from the executive. It was given its own building and separate budget, and the minister of justice's power over the board was reduced. While still HSYK's pro forma president, the 2010 reforms removed the minister of justice from having a say in the board's substantive proceedings. He was barred from participating in the board's decisions on hiring, promotions, and disciplinary actions for judges and prosecutors. Further, the minister of justice was stripped of his power to select the heads of HSYK's various committees and of his role as the head of HSYK's inspection arm, which conducts oversights of judges and prosecutors and alerts the board to potential professional transgressions.

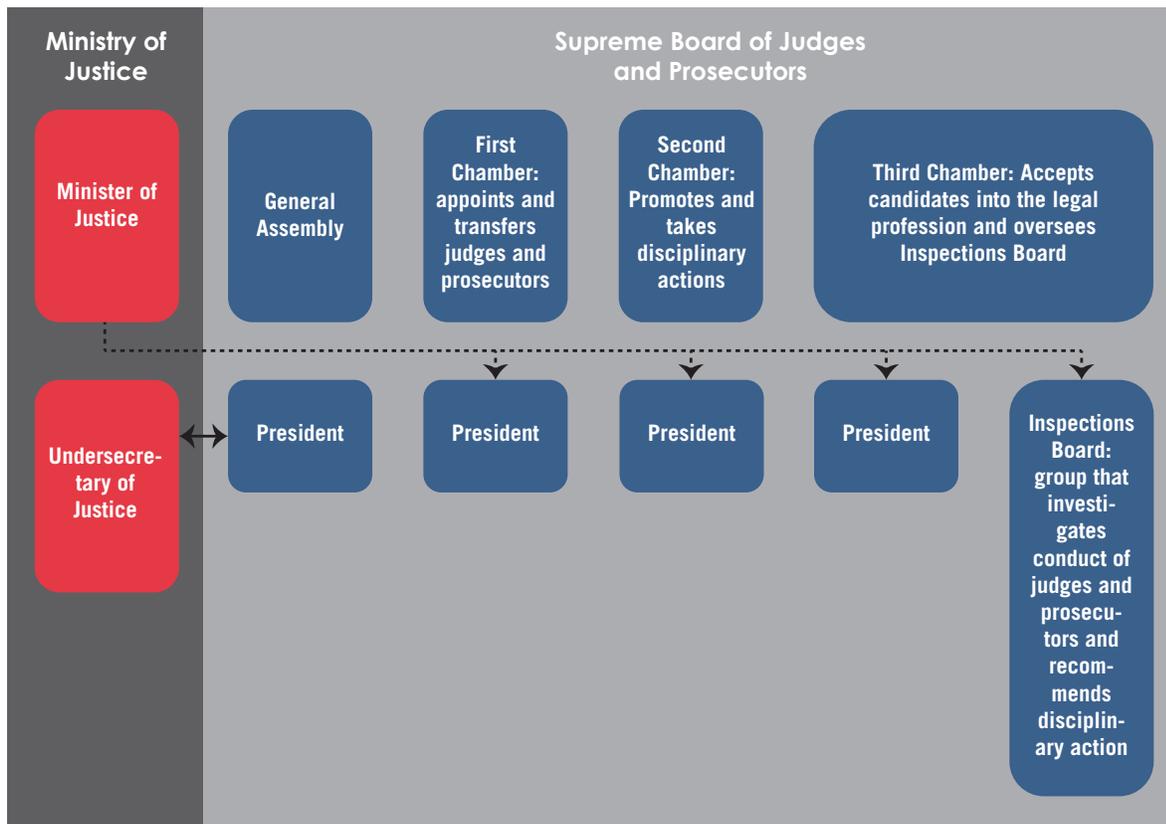
Likewise, the undersecretary of justice's role was also diluted by the 2010 reforms. As one of 22, not seven, members, HSYK could now convene without his presence. And, like the minister, he was also limited in the proceedings he was allowed to attend.

These reforms were praised by European Enlargement Commissioner Stefan Füle as "a step in the right direction as they address a number of long-standing priorities in Turkey's efforts towards fully complying with the accession criteria."¹³ Likewise, in its 2011 Progress Report, the European Commission praised the restructuring of HSYK as "progress in the independence and impartiality of the judiciary."¹⁴

2014 LAW

In November 2012, the AKP put forward suggestions for a new civilian constitution, including refashioning the Turkish state into a strong presidential system and making reforms to HSYK that would reduce its independence.¹⁵ However, with the multiparty constitutional commission failing to reach an agreement on a new draft constitution, the AKP's plans for a restructured HSYK—not to mention the strong presidential system that would allow Erdoğan to continue ruling Turkey after his tenure of prime minister expires—seemed to be dashed until, in the wake of the corruption scandal, the AKP pushed through parliament legislation that undid many of the 2010 HSYK reforms.

Turkey's Supreme Board of Judges and Prosecutors



The original bill the AKP submitted would have altered HSYK's structure by transforming its three separate chambers into two bodies, a move favored by some, including the Turkish Bar Association.¹⁶ Rather than being divided by function—appointments, promotions, and professional standards—the proposal structured HSYK by professional function, with an 11-member board of judges and a seven-member board of prosecutors carrying out all the decisions for their respective occupations. A less benign measure in the original version of the legislation would have reverted to the minister of justice and parliament sole authority to select HSYK's members, revoking the power given to courts and other legal institutions in 2010.

Eventually, as a result of criticism from President Gül and others, these proposed changes to HSYK's structure and composition were removed from the legislation—leaving it as a 22-member body. Other elements of the bill, however, were left untouched. On February 15, 2014, the Turkish Grand National Assembly approved an amended version of the HSYK legislation. Passed by a vote of 210 to 28, debate over the bill was lengthy and fiery, with members of parliament hurling insults at each other and engaging in physical altercations, one of which sent an opposition member to the hospital with a broken nose.¹⁷

Eleven days later, despite the controversy, President Gül signed the draft proposal into law. "In line with my warnings," he explained, "I saw that changes were made [reducing] the powers given to the minister, particularly regarding the appointment of HSYK heads of departments, the appointment of inspectors, the disciplinary penalties, and the release of regulations and circulars, which will be given back to HSYK's plenary committee."¹⁸

President Gül's statement notwithstanding, the new law still restores many of the powers that the minister of justice enjoyed under the 1982 constitution, subjugating the judiciary to executive influence. In particular, the legislation gives him the ability to unilaterally issue decrees in HSYK's name, decide on disciplinary action against members of the judiciary, and wholly set the agenda for all board meetings. The minister himself would divide up HSYK's members into the three chambers and chose the leadership of each. He would also have the power to appoint the inspectors charged with assessing judicial and prosecutorial conduct.

Moreover, the bill revises downward the quorum necessary to convene meetings of the General Assembly and chambers. Now, just 12 of 22 members of the General Assembly and four of seven members of the chambers need be present. This means that not even a majority of HSYK members need to be present to make important decisions about the composition and jurisdiction of the judiciary.

The new law also gives the executive sway over education of the next generation of Turkey's legal professionals. The minister of justice now has the authority to remove single-handedly the directors of the Justice Academy, which is responsible for providing vocational training to Turkey's judges and prosecutors, allowing him to set the curriculum to which all members of the judicial system are exposed to at the onset of their careers. All career development, such as attending courses or traveling abroad for training, now also requires the minister's personal approval.

Both Turkish and international legal experts have expressed concerns about the constitutionality of the law and its potential effects on the rule of law and judicial independence in Turkey. Opposition from within the judiciary itself has suggested that the law is unconstitutional. The acting head of HSYK, Ahmet Hamsici, issued a lengthy statement with the support of 15 members of the board, arguing that, "with the legal amendment, the board will report to the Justice Ministry. This amendment is against the Constitution and the formation of an independent body."¹⁹ Legal scholars have pointed to several sections of the Turkish constitution that appear to conflict with the law's changes: the preamble of the constitution enshrines the separation of powers as a fundamental principle of the Republic of Turkey, Article 159 declares HSYK "shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges," and Article 138 sets out that "judges shall be independent in the discharge of their duties."²⁰ Gianni Buquicchio, president of the European Commission for Democracy through Law, also expressed concern over the constitutionality of the changes, saying, "No law in this area should be adopted, and even less implemented, before its compatibility with international standards and the Turkish Constitution has been thoroughly examined and confirmed."²¹

Similarly, throughout the legislative process, opposition parties have also denounced the law's constitutionality. Kemal Kılıçdaroğlu, head of the Republican People's Party (CHP), warned that "democracy is slipping away from under our feet piece by piece."²² And the CHP's deputy chairman, Akif Hamzaçebi, said: "The prime minister wants to become the 'prime chief' of the country. He is working to create a judiciary that will issue decisions that the prime minister likes."²³

Unsurprisingly, therefore, the CHP challenged the law shortly after its passage by parliament, filing suit before the Constitutional Court on February 19, 2014. The case was quickly dismissed, as the bill had not yet become law. Following President Gül's signing of the law, on the morning of February 28, 2014, Hamzaçebi filed another challenge to the law's constitutionality. The appeal requests abolishment and a stay of execution on 23 of the 46 articles in the law.²⁴

To date, however, the Constitutional Court has yet to take up the appeal and the law has gone into effect. The law's passage grants Minister of Justice Bekir Bozdağ the power to remove or reassign approximately 1,000 unelected HSYK staff, including the secretary-general, inspectors, audit judges, and administrative staff.²⁵ It is a power he quickly exercised. Bozdağ appointed five new deputy general secretaries, a new head of HSYK's inspection board, and three board members, as well as a new head of the Justice Academy—with more appointments to come.²⁶

Regulating the Internet

Another of the AKP's initial successes, besides the 2010 judicial reforms, was paving the way for Turkey's skyrocketing Internet usage. In 2001, less than 5 percent of the population used the Internet on a daily basis; by 2012, that number had risen to 45.6 percent.²⁷ It is ironic, therefore, although not entirely surprising given its open nature, that the Internet has emerged as one of the primary weapons used against the government in the corruption scandal.

Ever since Prime Minister Erdoğan succeeded in largely quashing the official investigations that were made public last December, new allegations of corruption have come in the form of leaked recordings of phone conversations among Erdoğan, his family, and associates. These recordings are continually posted online by anonymous users with aliases such as "Haramzadeler" and "Başçalan" ("Sons of Thieves" and "Prime Thief," respectively).²⁸ The recordings allegedly show, among other abuses of power, Erdoğan instructing his son Bilal to remove large amounts of money hidden at his house, advising Bilal not to accept a \$10 million bribe but hold out for a higher amount, and demanding that the owner of a television news channel stop broadcasting the speech of an opposition leader critical of the government.²⁹

Attempting to contain the scandal, the parliament recently passed a new law drastically increasing the government's ability to censor the Internet and, therefore, stifle the release of such damaging information. These new measures are actually an amendment to a 2007 law (Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications) that allowed authorities to ban any sites that encouraged suicide, sexual abuse of children, the supply of illegal drugs, promotion of prostitution, and unauthorized gambling, as well as online insults to modern Turkey's founder Mustafa Kemal Atatürk.³⁰ Since the inception of the 2007 law, 37,000 websites have been denied operation by court orders.³¹ Many of the shuttered sites had little to do with limiting online facilitation of illegal activity. Instead the law was often used as a political tool. Among websites shut down were those deemed to be pro-Kurdish and pro-gay (including gay dating websites), along with any news networks considered to be associated with either group.

Now this 2007 law has been amended to further increase the state's power over the Internet. Specifically, it gives the Presidency of Telecommunication and Communication (TİB), the Turkish agency created by the 2007 law to regulate the Internet, the authority to require all Turkish Internet service providers to block access to online content—whether a specific website or an entire Web-based service, such as Twitter—that violates the right to privacy. Any individual or legal entity who believes that their privacy has been violated can apply directly to TİB to request the content be taken down. Moreover, the law gives the TİB itself the right to determination that certain content violates privacy and must be removed.

These requests, whether made by TİB itself or on behalf of an individual, are forwarded to Internet providers who must comply within four hours.

The original version of this new law allowed TİB to make such blockage demands without warrant or even court review. Due to vociferous criticism both within and outside Turkey, however, the government amended the law just days after it was originally passed. The amendment now requires TİB to submit the request to block content to a court, but only after it has already required providers to execute it. In fact, TİB has up to 24 hours after it issues the blocking order to seek judicial review. However, the court charged with deciding whether to allow TİB's actions to stand has yet to be set up. That duty will fall to the newly subjugated HSYK, now under the sway of the Justice Ministry. In short, the executive branch will get to oversee the judicial oversight of its Internet censorship.

Another aspect of the new Internet law requires Internet providers to store records of Web users' online activities for two years and to make the information readily accessible to government officials upon request. Under the terms of the law, Internet providers who attempt to deny the government access to this data will be penalized, though consequences have not been explicitly outlined. A post facto amendment added a layer of judicial review to this newly granted authority as well, except in cases of cyber-attacks.³²

Members of the opposition, journalists, and business leaders, including The Turkish Industrialists and Businessmen's Association (TUSAİD), called on President Gül to veto the bill.³³ Gül raised several concerns with the initial draft, sent it back to parliament, but signed the amended version—to the consternation of the opposition. Despite the amendments, CHP Deputy Chairman Akif Hamzaçebi cautioned that, "one should not think that the internet law has become democratic," while MHP Deputy Chairman Yusuf Halacoğlu charged that, "the law is still against Article 28 of the Constitution" and that "the right to information is obviously under threat."³⁴ A spokesman for EU Commissioner Štefan Füle also criticized the law saying, "the Turkish public deserves more information and more transparency, not more restrictions," and European Parliament President Martin Schulz deemed the bill a "step back in an already suffocating environment for media freedom."³⁵

Erdoğan describes the law as a positive step toward promoting a healthy society. "While we are expanding the Internet and technology to this extent," he explained, "we are also taking certain measures. We are not restricting anybody's freedom. We are trying to protect our children from ill-intended defrauders and blackmailers. ... I am sure parents understand us. We will take every necessary step to protect our children and the youth."³⁶ He appealed to the core of the AKP, framing the law as a way to address concerns of conservative voters, characterizing those who oppose the bill as degenerates and members of an alleged "porn lobby."³⁷

The government's first use of these new powers, however, appears to have had little to do with protecting children. On March 20, Turkey joined countries such as Iran, North Korea, Syria, and China and blocked its citizens from using Twitter. TİB claimed to be responding to several complaints about violations of privacy on the messaging service. One of these

complaints came from former Transport Minister Binali Yıldırım, who claimed defamation by Twitter account @oyyokhırsıza (“no votes for thievery”), which had posted strongly worded tweets against Yıldırım and his son concerning allegations made against them in the corruption scandal. Other complaints came from an individual requesting that Twitter remove a fake account using his name and one demanding that Twitter take down explicit photos shared on the website without her consent.³⁸ “Because there was no other choice,” TİB explained, “access to Twitter was blocked in line with court decisions to avoid the possible future victimization of citizens.”³⁹

Expanding the Security State

Turkey's MİT has been at the center of some of the biggest foreign policy divergences between Ankara and Washington. In the last year, the MİT has been implicated in leaking U.S. intelligence to Iran, revealing to Iran the identities of Israeli agents, and providing weapons to some of the most radical Islamist groups fighting in Syria. More positively, the organization has also played an important role in the AKP's ongoing but stalled attempt to bring the PKK's 30-year-long insurgency to an end.⁴⁰

If Erdoğan has his way, the MİT would play an even greater role in even more aspects of Turkish policy. On February 19, AKP parliamentarians introduced legislation that would expand the organization's powers and duties while shielding it from investigation and prosecution.⁴¹

Under its current mandate, spelled out in Law Number 2937, The Law On The State Intelligence Services And The National Intelligence Organization, passed in 1983, the MİT's purview is limited to intelligence-gathering and counter-intelligence only.⁴² The biggest change made by the draft legislation before parliament would be a broad expansion of MİT's authorities to include conducting operations, both overseas and domestically. Specifically, the draft law states that the "MİT will fulfill all kinds of tasks assigned by the Cabinet, including foreign security, the fight against terrorism and national security."⁴³

Further, the bill would also give the intelligence service authority to "establish direct contacts with any local or foreign institution, organization, entity or individual and employ appropriate coordination methods in cases when national security and the country's interests so require. While carrying out their duties, MİT members may meet with detainees or convicts in penal institutions after a prior notice, and may contact any entity threatening national security, including terrorist organizations, as part of their duties."⁴⁴ Taken together, these two measures appear to give the MİT the right to carry out the sort of activities it is already allegedly conducting.

The measure that would authorize the MİT to contact "terrorist organizations" at "penal institutions" appears to be a clear reference to the meetings that the organization's chief, Hakan Fidan, is believed to have been conducting over the past year with PKK's leader Abdullah Öcalan at the island prison of İmralı.⁴⁵ That same permission to contact terrorist groups when coupled with law's provision allowing the MİT to carry out operations in the name of national security would seem to authorize the gun-running into Syria that the organization has been tied to in recent months. Indeed, Turkish police have stopped several trucks in the last few months attempting to cross into Syria with cargo of weapons and

military supplies.⁴⁶ In each case, the truck was accompanied by an MİT officer and, after a standoff, usually allowed to proceed. Although it is uncertain to whom these weapons were being delivered, there is a strong suspicion that the intended recipients were not part of the mainstream, internationally recognized Syrian opposition. The revelation, as part of the ongoing corruption scandal, that Prime Minister Erdoğan and his associates might have had business dealings and close personal relations with a known member of al-Qaeda, designated a terrorist group by the United States, certainly suggests that the AKP government is not uncomfortable maintaining contact with radical extremist groups.⁴⁷ The provisions of the draft MİT law would appear to legitimize such contacts.

In addition to expanding the intelligence organization's mandate, the pending legislation would also greatly enhance its power to carry out missions already within its purview. Foreign phone calls as well as those made by foreigners to Turkey or on public pay phones could be, under this law, "monitored, wiretapped, recorded or have their signal data analyzed with the approval of the MİT undersecretary or his/her deputy and without consideration of regulations in other laws."⁴⁸ Such eavesdropping, in other words, could be conducted without a warrant. The law would further the MİT's intelligence-gathering ability by imbuing it with the authority to demand, and receive, access to any information in the possession of any Turkish person or organization. Further, it would be empowered to utilize the resources of any government or public institution—such as data centers or telecommunications networks—that it deemed critical for its mission.⁴⁹

The draft law also provides broad protection from prosecution for the MİT and its agents. Prosecutors would be required to notify the MİT if they receive any sort of complaint against the organization or its members, but would be prevented from launching investigations or prosecutions on the basis of such information. Instead, if any MİT personnel are charged with a crime—whether it is a crime committed in the course of their duties or as an individual person—they would be tried by a special court in Ankara, to be determined by the newly reconfigured HSYK. Similarly, the MİT head, who already can only be prosecuted with the prime minister's consent, would now have the additional protection of being tried only by the Supreme Court of Appeals, whose judges are chosen directly by HSYK. This structure—whereby courts and judges that are directly under the control of the prime minister's office can only hold the intelligence service accountable—creates a de facto immunity for the MİT. Similarly, the law would grant any undercover agent working for the MİT, whether as a member of the agency's staff or as an independent contractor, blanket immunity from prosecution, widening the web of those who can do the prime minister's bidding without fear of repercussions.

Conversely, the law would criminalize almost any public discussion of the MİT's role in the Turkish state. Although every government seeks to protect state secrets and classified information, this legislation appears to impose heavy penalties on any media outlet that reports on any aspect of the intelligence organization. It provides for "jail sentences of three to 12 years for owners of periodical or non-periodical publications, content providers, content authors, reporters, writers, managing editors, publishers, printers and those

involved in dissemination in cases when such information or documents are published [about the MİT's 'duties and activities'] via radio, television, the Internet, social media, newspapers, magazines, books or any other media vessels and by the way of any print, visual, audial or electronic mass communication medium."⁵⁰

The bill has elicited broad criticism within Turkey and encouraged unfavorable comparisons to the infamous and brutal security apparatuses on which many Middle Eastern dictators relied to maintain their grip on power. CHP Deputy Chairman Engin Altay suggested that "Prime Minister Erdoğan is copying al-Mukhabarat [Syria's security apparatus]. He is establishing his own criminal organization."⁵¹ "It is better to abolish Parliament," he concluded, "than pass this draft."⁵²

The AKP, on the other hand, has downplayed the bill's implications. Instead, the government insists that the legislation would simply update the MİT's authorities to better enable it to deal with the challenges of a modern era. Deputy Prime Minister Beşir Atalay exhorted his fellow lawmakers to "examine the draft and then compare it to the [intelligence] laws of other countries."⁵³ The MİT would merely be receiving, he continued, the same tools and authorities granted to many intelligence agencies around the world in this age of technology and terrorism.

While the bill was approved by the Turkish parliament's Internal Affairs Commission, the AKP decided to postpone debate in the General Assembly until after the March 30 local elections. "Our first job after the elections," according to Deputy AKP Parliamentary Group Chair Mustafa Elitaş, "will be the proposal that amends the MİT law."⁵⁴

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