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Book Review

Mehmet Gün, Turkey's Middle-Democracy Issues and How to Solve Them: Judiciary, Accountability and Fair Representation, Gün+: North Yorkshire, 2020, ISBN 978-1-913071-55-4, 537 pp., £29.99.

For many years, Turkey has had a poor record as regards human rights. Despite Turkey being a signatory to international conventions on human rights it has not consistently safeguarded these rights. Turkey made some progress by introducing reforms that began with the European Union (EU) accession process initiated in 1999. This process ushered in harmonisation laws and implementation of judgments of the European Court of Human Rights (ECtHR) that led to developments on the normative level. However, these changes were not sufficiently put into practice or adopted by public mechanisms.

The unsuccessful coup attempt of 15 July 2016 marked the latest stage in the period of increasing authoritarianism. The government claimed that the Gülen movement was responsible for the attempted coup, a view that was backed by opposition parties. On 20 July 2016 a 90-day state of emergency (OHAL) was declared (no. 2016/9064). The following day the Turkish government notified the Council of Europe and the General Secretariat of the United Nations (UN) of its derogation from international conventions in accordance with articles 14 and 4. The OHAL was subsequently extended until 18 July 2018.

During the OHAL 152,000 public servants, including academics, teachers and police officers lost their jobs. In the two-year OHAL at least 35 health institutions, 1,061 educational establishments, 800 student hostels, 223 courses, 129 foundations, 1,125 associations, 15 universities, 19 trade unions and 4,262 organisations were closed down.

Immediately following the lifting of OHAL, a law was enacted by the Turkish Parliament (TBMM) ensuring that many elements of OHAL would be maintained for a further three years. This law restricts certain fundamental rights, enabling public servants (including judges) to be dismissed, periods of detention to be extended and restrictions to be introduced in freedom of movement and freedom of assembly. The law also increases the powers of provincial governors appointed by the government.

Although judicial mechanisms should play an effective role in the development of human rights, under OHAL more than twenty per cent of judges and prosecutors have been dismissed. Some of have been arrested and remanded in custody, including two members of the Constitutional Court.

The independence and impartiality of the judiciary was safeguarded by articles 138-160 of the 1982 Turkish Constitution. According to the principle of the separation of powers the executive and legislature should not comment on rulings of the judiciary and avoid exerting pressure on it. However, in practice, there are many allegations of discriminatory justice and political intervention in cases. In the European Commission's report on Turkey of 2019 there is the following: "There has been further serious backsliding and the recommendations in the previous reports were not accepted or implemented. Political pressure on judges and prosecutors and transfers of a large number of judges and prosecutors against their will continued. This continues to have a negative impact on the independence and overall quality and efficiency of the judiciary. The large scale recruitments of new judges and prosecutors under the current system are concerning because no measures were taken to address the lack of objective, merit-based, uniform and pre-established criteria for their recruitment and promotion."

Apart from this, there are many problems in Turkey regarding fair representation. In this regard, the above-mentioned report states: "Women remain underrepresented in political life... The parliamentary immunity regime in Turkey needs to be strengthened in order to ensure elected representatives' freedom of expression... Ahead of the March 2019 municipal elections, the appointment of trustees to replace municipal executives and elected representatives continued to have a negative impact on local democracy."

Hence, human rights violations in Turkey have attracted the attention of many people around the world. The global media covers this issue and newspaper articles, academic and non-academic articles appear regularly. This book contains a detailed study of the latest situation regarding the judiciary, accountability and fair representation in Turkey and will be welcomed by the many people who take an interest in this issue. It will also make a significant contribution to the literature.

This book consists of 7 chapters. The author is a lawyer with 40 years of experience in the field of international law (and is also a founder and chairman of the Better Justice Association in Turkey). The author analyses Turkey's problems and their origins and shares his proposals to deal with these problems with the reader. He pinpoints the problems and causes of these issues in an evaluation of Turkey's 'middle democracy', to which people are 'inured', with the eye of a lawyer and sets out his solutions. He establishes that the problems stem from a failure of accountability, that this has resulted in compromises being made in the principle of 'the supremacy of law', demonstrating that this paradox emerges as a problem of 'middle democracy' and presents as a solution a transformation of law and administration that will ground the mentality of government on the foundations of the rule of law. The author makes a detailed examination of the main causes of the problems, demonstrating that easy solutions may be found, that the country may be able to move from the level of middle democracy to advanced democracy in a short space of time, and shows the way to get out of the middle income trap and ensure a sustainable rise in income.

Hence, the author makes three important points relating to avoiding what he describes as the trap of middle democracy: "i) to ensure that the rule of law and accountability prevails in the public sector by ii) improving the judiciary to be fully independent, efficient and accountable, and iii) ensure fair representation in all types of elections, including elections in political parties and public professional organisations." (p. xxxvii)



The introduction to the book bears the title ‘The Humanitarian Vision of the Turks’. The chapter begins by asking the questions that have been asked for centuries, but have lost none of their significance, such as why the state exists, how democracy can be improved or what the basic aim of a democratic state is. The book explores these questions, making reference to both Eastern and Western philosophers, pointing out that states should be established on compassionate values. In other words, “states should take the mantle of philanthropy, human happiness and perfection, i.e. humanism” (p. 10). In this context, he mentions articles 1 and 55 of the United Nations (UN) Charter, pointing out that these texts are in the light of the development of humanity far from the principles of humanism. In this sense, it is made clear that Turkey, one of the founding members of the UN, should be based on an understanding of humanitarian principles that disregard national and ethnic boundaries, such as the diversity and tolerance espoused by thinkers like Mevlana (Rumi), Yunus Emre and Sheikh Edebali, who emerged in Anatolia. This proposal is in fact a realistic model for countries like Turkey that have profound ethnic divisions and the implementation of such principles is of urgent importance.

The second chapter of the book bears the title: ‘The Democratic Orientation of Turkey’. In this chapter, there is a brief mention of the evolution Turkey has gone through since the inception of the republic in order to have better and more stabilised state governance. The author examines in depth the connection between the concepts of democracy, economic growth and justice. It is noted that Turkey needs to make serious improvements in fields such as justice and the rule of law, political parties and the electoral system, the separation of powers and an independent judiciary (p. 49). For instance, it is pointed out that the 1982 Turkish Constitution introduced after the military coup of 1980 is in need of serious reform. It is emphasised that it is not sufficient to merely remark on the principle of the supremacy of law, stressing the need to ‘protect and maintain the immunity of political government executives’ (p. 19). In this sense, the necessity for significant changes to the YSK (Supreme Electoral Council) is noted (p. 22). Apart from this, the author stresses the need for reforms to be made to the Political Parties Law no. 2820 to strengthen internal party democracy and to ensure that party administration is not carried out by the political elite. (p. 49). He also points out that with the new executive presidency system in Turkey there are no check and balance mechanisms, proposing that this could be rectified with the enactment of a General Administrative Procedures Act. Such a law would mean decisions taken by the President and legal procedures opposing these decisions would have to be shared with public opinion. Additionally, preventative auditing measures regarding the use of covert funding is important (Saving Deposits Insurance Fund) (p. 69). The importance of an independent and pluralistic media is also emphasised in the book (p. 71).

The third chapter of the book has the title ‘Justice and Judiciary Power’. In this chapter, the importance of an independent judiciary is emphasised, with reference being made to UN resolutions nos. 40/32 and 20/146 and the International Bar Association’s principles in this regard (pp. 96-99). In this context, it is noted that the appointment and promotion of judges and prosecutors in Turkey is under the control of the executive. The author proposes that these appointments be made by an independent, impartial body based on merit in a transparent way. In order for this to happen the professional bodies to which judges and prosecutors belong must be independent and the powers of the Minister of Justice and other administrative mechanisms be limited. (pp. 105, 159). Courts should be open to everyone and even broadcast live online. All judgements should be made public and in order for equality of arms to be ensured the prosecutor should not sit at a higher bench than



the defence side in court trials and proceedings, but rather at an equal level. The author makes important proposals regarding such problems, based on his more than 40 years of experience as an international lawyer, all of which comply with article 6 of the European Convention on Human Rights (pp. 105-118, 158-161).

In chapter 4, entitled: 'Rendering of Accounts in Judiciary and Executive Powers' the author defines the expression 'rendering of an account' thus: "it is a means to assure the rule (supremacy) of law in the public and, at the same time, to be seen to preserve it" (p. 223). In this sense, he points out that it is important for social peace and order that public servants are able to carry out their duties while remaining in their area of jurisdiction. After the recent referendum in Turkey an executive presidential system was introduced, in which the president is publicly accountable. However, as he indicates, the relevant ministers are only accountable to the president. (s. 222). After making such a significant point, he emphasises the supremacy of law and sets forth three fundamental principles: "i) the party rendering an account keeps the other side informed of its activities; ii) the questions of the party calling the first part to account are answered, and the underlying activities are explained with reasons therefor; and iii) feedback (approval, criticism, accusations, release and other similar acts) is given, or a decision is made, about the party rendering an account and its activities" (p. 225). In this context, he states that the appointment of public servants must be transparent and objective and be subject to judicial review. In addition, the preliminary authorisation conditions and procedures for the prosecution of public officials must be abolished (p. 270).

Chapter 5 bears the title 'Participation in Administration and Justice in Representation'. The author notes how a small group may, when necessary, by taking control of political parties or professional organisations, establish 'political oligarchy' and prevent the emergence of diverse voices (p. 292). Hence, by pointing out that such political elite groups exist in political parties and create authoritarian leadership he draws attention to one of Turkey's most pressing problems. In order to prevent this, he stresses the need for internal party elections or institutional elections to be carried out under the observation and supervision of a judicial authority. Hence, he advocates the necessity for swift decisions to be made in an independent and impartial way in judicial appointments. He also proposes that candidates in internal party elections be subject to two-round elections under judicial supervision (pp. 305-309). He also indicates the need for the existing ten per cent electoral threshold in Turkey to be reduced to 3 per cent, in order to achieve broader representation in parliament. The author also suggests that subsidies from the treasury should be distributed fairly and equally to ensure a fair race between competing views (pp. 316-318). He adds that unlawful and off the record donations should be prevented (pp. 321-323). Apart from that, he recommends that central government control of local government should be relaxed and that institutions such as İller Bankası (provincial banks) set up to support local projects should be democratic and independent of central government (pp. 336-337). In this chapter, he also advises that to counter the infiltration of state institutions by religious and faith groups they should be closely observed and audited by the state, within legal parameters (pp. 384-385). In this context, he also draws attention to the principle of appointment to state institutions being made on merit, which has been a particularly serious problem in Turkey in the current period.

Chapter 6, 'The Need for an Effective Civil Constitution' states: "in order for efforts to draft a new Constitution to succeed, it is necessary to pass a framework law for this purpose establishing the organisational structure, secretariat and method to be followed, outlining a basic framework and plan for the work that will be carried out; ensuring that the full diversity of society participates in



deliberations; and specifying how the concern of those with different and opposing views will be addressed'' (xlix). The author also proposes that the jurisdiction of the Turkish Constitutional Court be broadened, that a body by the name of the Constitutional Protection Institution be established, and that the Constitution and constitutional order should be entrusted to an efficient functioning organisation of the Constitutional Protection Institution) (p. l). Furthermore, he stresses the need for constitutional and legal checks on presidential and state of emergency decrees and for ambiguities to be resolved as soon as possible. For instance, he states that presidential decrees should be judicially reviewed by the Council of State, as these are administrative decisions. Despite the Constitutional Court stating on 12 October 2016 that it did not have jurisprudence regarding emergency laws, the author argues this power should be granted to the Constitutional Court in accordance with article 148 of the Constitution and that this article should be reframed. (pp. 410; 424-427)

The final chapter of the book has the title 'Law for Harmonisation with the Referendum Results'. In this chapter, the author points out the need for new constitutional provisions to be drawn up with regard to candidacy and election, first and foremost article 101. He also considers that in order for the advancement of democracy there should be a two-round electoral process in every election even for local headmen, as well as in presidential elections. (pp. lii; 437). Moreover, he recommends a redrawing of constituency boundaries in order that all political views are able to find expression. He also emphasises the need for a reorganisation of the YSK so that its decisions are subject to judicial review and for article 5(2) of law no. 7062 of 20 November 2017, which blocks judicial review, to be redrafted. He also calls for changes to be made in the Political Parties Act and the General Code of Administrative Procedure (pp. 449-457).

In conclusion, this is a well-written, well-structured book which examines in a comprehensive, detailed and clear manner the connection between pivotal principles: democracy, the judiciary, accountability and representation. This book provides an opportunity to understand and engage with Turkey's fundamental problems and potential solutions. It plots a simple road map to democracy in Turkey. It is to be hoped that this road map could be an example for other countries which are also struggling, like Turkey, with the above-mentioned principles.

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