

# Taking a stance for democracy

TÜSIAD predicted a long time ago that Turkey's political structure was heading towards a deadlock and eventually to a crisis. With this in mind, TÜSIAD carried out a comprehensive research on the needed reforms and, at the beginning of 1997, published its volume entitled, "Perspectives on Democratization in Turkey". Two progress reports have been published following the 1997 report, in 1999 and 2001. When Turkey's membership in the European Union was in question, Turkey was weighed against the Copenhagen criteria- the criteria that need to be fulfilled to be eligible for negotiations on membership. This assessment spelled out -once again- that the implementation of all the reforms that TÜSIAD has been advocating since 1996 was indispensable. On 21 May 2001 TÜSIAD published another report on democratization entitled "Perspectives on Democratization in Turkey and the EU Copenhagen Criteria". Prof. Süheyl Batum, Dean of the Faculty of Law, Bahçeşehir University, authored the report, summarized below.

It is now widely accepted that the malfunctioning political system was one of the fundamental reasons behind the recent economic crisis in Turkey. TÜSIAD strongly believes that unless the deficiencies in the political system are dealt with comprehensively, such economic crises will recur in the near future. Within the last few months, legislation addressing the economic crisis has become the priority of the parliament. However, one should keep

in mind that, the necessary political reforms and the restructuring process are not limited to those priority laws.

TÜSIAD has identified 10 areas for immediate political reform. It views the enactment of the following laws as imperative for a full scale and vigorous democratization in Turkey.

## 1. The Law on Political Parties

Political parties are central to the functioning of a representative democracy. Problems in the party system often lead to an impasse in the political base, weaken democracy and cause a rift between the parties and the electorate.

The party system and the related legal framework in Turkey have restrictive and anti-democratic aspects. Therefore, laws regulating the establishment, activities and organizational aspects of political parties, and restrictions on the parties' freedom of expression should be revisited. Leader hegemony, which contradicts the essence of party democracy, should end. Arrangements should be made to ensure democratic rule within parties.

## 2. The Electoral System

The current electoral process often engenders weak and unstable coalition governments in Turkey. The inefficient election system has been a significant contributor to the causes of economic crises of the last ten years as well. Besides, the current electoral system proved to be incapable of providing justice in representation in the Parliament, and it fails to produce stable governments.

The reform in the electoral system should therefore create possibilities for devising joint government programs and forming alliances between the parties with similar constituencies. In the new electoral system, distribution of seats among the parties is determined by an election mechanism that takes into account not only the first but also second and third choices of the voters. Such a mechanism lowers the level of representation in the Parliament of those parties with relatively weaker support as a second choice. All parties that gain a certain percentage of votes (determined by a reasonable threshold) should be proportionally represented in the parliament. The election system that best fits this definition is the "single-district two-round electoral system reinforced with proportional representation".

## 3. Legislative immunity and parliamentary investigation

Accountability of deputies is one of the crucial elements of democracy. Accountability forms the basis for a trust-based relationship between citizens and their elected representatives. However, the constitutional arrangements in Turkey disregard the principle of accountability of the executive and legislative branches of the government, creating extensive privileges for the political rulers of the country.

The practices in most of the democratic European countries tell us that the scope of legislative immunity and the institutions of parliamentary

investigations in these countries offer much narrower protections than in Turkey. The scope of legislative immunities should therefore be narrowed down so that they do not become barriers against legal pursuit or a judicial review. The parliamentary investigations should also be rearranged with a similar view.

#### **4. The death penalty**

The 'National Program' that Turkey has prepared for harmonization with the European Union, pledges to review the elimination of the death penalty in the medium-term. This ambiguous statement gives the impression that the Parliament may be limiting the scope of a decision in this direction by creating several exceptions.

Currently, the abolishment of the death penalty is common practice among European countries. Lately, as Russia, Azerbaijan, and Armenia have ratified protocol number 6 of the Appendix of the European Declaration on Human Rights, Turkey has become the only European Council member (among 43) that has not signed this specific protocol. Accordingly, Turkey should sign the said protocol, which stipulates the abolishment of the death penalty, excluding war crimes and warlike extraordinary situations.

#### **5. Freedom of opinion and speech**

In pluralistic-liberal democracies, freedom of opinion and speech are essential. Unfortunately, the European Court of Human Rights often accuses Turkey of lack of freedom of opinion and speech. With this record, it is impossible for Turkey to join the ranks of countries that abide by contemporary democratic norms.

The National Program mentions the need to make constitutional and legal changes so as to protect freedom of opinion and speech, which is a welcome development. Constitutional

laws, and the Anti-Terrorism Act should be changed according to the jurisprudence of the European Court of Human Rights. Laws that hinder freedom of the press, which is closely related to freedom of opinion and speech, should also be revised accordingly.

#### **6. Cultural life and individual liberties**

The two important issues regarding cultural rights are broadcasting and education in one's mother tongue. However, the National Program lacks clarity on these issues, which are also part of the Accession Partnership and are among the most important milestones towards membership in the European Union.

Cultural rights do not only pertain to Turkey. Countries like France, which do not recognize the concept of "minority", provide opportunities for education in different cultures and languages. Even infant democracies such as Bulgaria, Hungary, and Estonia undertake serious measures in these fields. Turkey should not fall behind these countries in terms of democratic performance and should lift restrictions regarding the issue in the Constitution. The right to broadcast in one's mother tongue should be handled within the framework of efforts to broaden freedom of the press.

#### **7. Freedom of assembly and civil society**

The Law on Assembly and Demonstrations, and the Associations Act should be reformulated in a manner that will encourage development of civil society and eliminate their antidemocratic terms.

#### **8. Torture and ill treatment**

Torture and ill treatment are topics that are included in the Accession

Partnership. Prevention of torture and ill treatment is crucial for practices of human rights and implementation of the rule of law. However, Turkey experiences flaws in this area. In order to get rid of the problems and allegations regarding torture and ill treatment Turkey should amend the necessary articles of the Turkish Penal Code and enact regulations simplifying the procedures for investigating, trying and punishing those officials found responsible for such crimes.

#### **9. The National Security Council**

The authorities of the European Union often question the role of the National Security Council, its constitutional status as well as its impact on political life. The scope of the NSC's responsibilities and actions should be redefined in accordance with the European Union standards and the political criteria of the EU Accession Partnership. In this respect, first of all, the number of civilian members in the National Security Council should be increased. Besides, relevant articles of the Constitution should be amended in a manner that will emphasize the advisory role of the National Security Council, accompanied with necessary legislative changes.

#### **10. The rule of law**

As one of the core criteria for being a real democracy, the rule of law calls for an efficient, functioning, independent and impartial judiciary. Besides, exemptions from judicial review should be revoked and all administrative acts and practices of state officials should be subject to judicial review. In this respect, necessary constitutional amendments and other legal arrangements should be put into effect in a bid to strengthen the independency and impartiality of the judiciary.