



SIGMA

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ASSESSMENT

TURKEY

2010

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment

In spite of political statements, analyses carried out, reports submitted and proposals developed, no relevant changes can be identified in relation to the general administrative legal framework or the public service in Turkey during the past year. In both sectors the situation remains as previously reported and summarised in the European Commission's 2009 Progress Report on Turkey and in its paper on the Enlargement Strategy and Main Challenges 2009-2010.

Reforms related to the political system continue to be the country's first priority. It is therefore difficult to create a momentum for administrative reforms aimed at improving the legislative framework so as to enable the modernisation of the organisation, functioning and accountability of public institutions and the updating and elaboration of the public service statute in the direction of increased professionalism and EU good governance principles.

Recent developments related to amending the Constitution are, for the time being, producing a mix of expectations. On the one hand, the draft amendments adopted by parliament on 7 May 2010 seem to be an attempt to push for further reforms in the judiciary, to reinforce democratic governance, and to improve the protection of political and individual rights. Reinforcing social dialogue related to public service matters is another positive step, as far as it is possible to assess from the available information. Setting up the Ombudsman and improving the protection of personal data are also matters that the constitutional reform is attempting to address. On the other hand, concerns have been voiced about possible political control over the judiciary, including the Constitutional Court, as a result of some amendments. Furthermore, the political confrontation between the main political parties and the lack of consensus regarding a few, but relevant, amendments have led to a situation in which amendments were approved by only a small majority. Considering that the two-thirds majority needed for the adoption of a law was not reached immediately, a national referendum has been considered as a possibility for the adoption of these amendments. However, a long political and legal battle can also be expected if such a referendum is called by the President.

Recommendations for the adoption of legislation related to the organisation of the administration, general administrative procedures, improvement of the regulation on state secrets, public service statute, simplification and unification of the salary system of public servants, and review of the legislation on political parties, among other issues, have produced no visible results. The same situation can be reported regarding the adoption of the new rules of procedure in parliament; the very positive expectations resulting from the consensus reached within the working group that drafted the new rules have not been confirmed for the time being. A new law on the Turkish Court of Accounts (TCA) is expected to be adopted soon by the plenary in parliament.

Some improvement can be reported in relation to the preparation of strategic plans by public organisations. Almost all public institutions – with the significant exception of the Prime Ministry – have adopted their strategic plans, which were subsequently reviewed by the State Planning Organisation. However, the implementation of these strategies is facing difficulties, for instance with regard to the lack of resources and the managerial legal environment and culture. The modernisation of the administrative legal framework is a critical factor for the success of these strategies.

In general, in the areas covered by this assessment, reforms are moving at a very slow pace or have even halted.

Main Characteristics

Turkey has a tradition of being served by a strong and professional public bureaucracy guided by a set of sound but traditional values that ensure neutrality, compliance, conformity, and control in decision-making. Therefore, the basic aspects of a state ruled by law have been established.

However, along with a certain degradation of such values due to increasing politicisation, it is visible that the current organisation and public service capacity need to be modernised and better co-ordinated to adjust to

the increasing demands of economic and social development, as well as to the requirements of the EU accession process. The current managerial skills and legal framework, as well as staff attitudes and competencies, can hardly cope in an environment that changes very quickly and requires more than formal conformity. Flexibility, accountability, effectiveness, openness, participation, transparency, quality of service delivery, and integrity must be embedded in the administrative culture.

The organisation of public institutions follows a strict hierarchic model characterised by too many control levels, some of which are without any relevant added-value. Power is highly centralised, both with regard to the levels of administration – where the central administration, with more than 75% of public employees, leaves reduced space and capacity for the local administration – and within each public institution – where the decision-making power is an exclusive attribute of the top manager. Attempts to reinforce decentralisation and delegation and to modernise the organisation and functioning of public services have so far produced meager results. Full implementation of the Law no. 5018 on Public Financial Management and Control could have a very positive impact in this respect.

Turkey also has a reasonable administrative legal framework, but it needs to be further completed and modernised. Regulations are usually very detailed – even in primary legislation – and procedures are very formalistic, making them heavy to apply by both the administration and citizens.

The public service is still attractive as an employer. However, this situation is mainly the consequence of life tenure and social protection – very important factors in the context of high and ever-increasing unemployment and the economic crisis – rather than the result of any motivation to serve the public interest, improve career prospects, increase the level of salaries, etc.

The civil service law (Law on State Functionaries) needs to be updated. Some attempts aimed at adopting a new law were launched some years ago, but the issue disappeared from the administrative reform agenda. Proper human resources management tools and capacity, which depend on the existence of a good civil service law, are largely missing. The salary system is also obsolete and too complex. It is not unitary and is unfair, as some functions are paid differently across the administration. Furthermore, the absence of an institution with strong political support and vested with the power, staff and skills to perform as a central management unit capable of ensuring common standards and uniform implementation of the rules is another fundamental cause of the current situation. Training must also be set as a strategic priority.

Administrative justice has been consistently reported as a matter for concern, but no changes have occurred.

Politicisation is increasing in spite of a centralised recruitment system. In fact, the recruitment system is quite fair during the first phase of the recruitment procedure (examination), but it is very vulnerable to patronage and political interference during the interviews carried out by the managers of recruiting institutions.

Reform Capacity

Turkey has good bases – an administrative tradition, a quite stable professional bureaucracy, competencies, research and training capacity, active NGOs, etc. – for developing the administrative legal framework, modernising its civil service system, and introducing a sound human resources management system. Shortcomings have been clearly identified, and a valuable capacity exists for producing analyses and proposals.

However, politicians are not paying enough attention to public administration reform and to the need to fill the gaps related to missing pieces of legislation and to align some pieces of antiquated regulations with EU standards and requirements. At the same time, there seems to be a lack of understanding about the positive impact that some reforms – such as the adoption of a good law on general administrative procedures – could have on improving the protection of citizens' rights and the business environment. The political agenda is too time-consuming. Moreover, confrontation (which is expected to rise due to the coming electoral period in 2011 or even earlier), rather than dialogue and compromise, reduces the effective capacity to carry out necessary reforms, and this situation puts at risk the continuity and sustainability of any possible changes.

Improving conditions for social dialogue and for the involvement of civil society – some NGOs have a remarkable capacity for bringing new ideas and supporting reformers – could help to counterbalance the weak political engagement in developing the public administration in accordance with the needs of the country.