



**SIGMA**

**Support for Improvement in Governance and Management**

A joint initiative of the OECD and the European Union, principally financed by the EU

## **ASSESSMENT**

**Turkey**

**2010**

## **DEMOCRACY AND THE RULE OF LAW**

The polarisation of politics, together with the constitutional reform process, has continued to dominate the agenda. With the exception of the political parties' closure, which has been rejected, all other constitutional amendments have been adopted by parliament. All of the constitutional amendments are rather positive for the democratisation process that Turkey needs to pursue on its way towards EU membership. Among the matters for concern is the still weak freedom of the press. In addition, the complex process of constitutional ratification through a referendum makes the future of this constitutional reform uncertain at the time of writing.

### ***Rule of Law***

Article 2 of the Constitution stipulates that Turkey is "a democratic, secular and social state governed by the rule of law". Furthermore, Turkey is served by a strong professional public bureaucracy guided by a set of values that tend to ensure neutrality, compliance, conformity and control in decision-making. Therefore, the basic aspects of a state ruled by law are established. However, the separation of powers between the executive and the judiciary is sometimes problematic, and the judicial power tends to protect more the state than it protects the citizen against the state. Furthermore, several groups, such as parliamentarians, members of government, military, top officials and civil servants, enjoy certain privileges and protection that are not necessarily all in line with the principles and values of a democratic state ruled by law. The oversight function of parliament over the executive seems to be a matter of increased attention by parliament, at least as far as budgetary matters are concerned. However, in this area the progress achieved so far in practice remains difficult to observe. In general, the dominant administrative culture tends to be too formalistic and often detrimental to the values and principles of good governance, such as openness, participation, transparency and accountability.

### ***Constitution***

The issue of moving from a constitution that was designed at a time when the country was under the control of the military towards a civilian and more democratic constitution needs to be addressed. If adopted, such constitutional reform could create a momentum and eliminate important obstacles to the long-awaited reforms concerning the organisation of the administration and its restructuring as a service to both the state and citizens. It could also create favourable conditions for the adoption of a new legal framework for administrative procedures. However, the ultimate step in the adoption of this reform remains uncertain (May 2010). Even if adopted, it also remains to be seen how the political dispute associated with the constitutional reform and the upcoming electoral period will affect the effectiveness of the reform.

### ***Parliament***

Promising initiatives have been taken by parliament to strengthen its capacity to fulfil its main functions of law-making and oversight over the executive. The Strategic Development Plan 2010-2014 that has been produced addresses some key organisational and personnel management issues. However, it is too recent an initiative to enable an assessment of progress in its implementation. A proposal for a new set of rules of procedures has been worked out with the support of the political parties represented in a parliamentary working group set up for this purpose. However, this important reform remains to be adopted by parliament in plenary session. The willingness that has been expressed to strengthen the parliamentary oversight role with regard to public expenditure, including scrutiny of budget implementation, is to be welcomed. However, the capacity of parliament to scrutinise performance monitoring and external audit reports is still insufficient. A closer interactive dialogue and co-operation between parliament and the Turkish Court of Accounts (TCA) are needed. The draft Law on the TCA, tabled five years ago, has been adopted at committee level

but has still not passed (May 2010). This deadlock is the main reason for the lack of progress that can be observed with regard to external audit reform.

### **Government**

The political reforms have, understandably, tended to shift the attention of the government away from horizontal public governance reforms. This has been the case in particular for the systems of policy-making and co-ordination, administrative procedures, civil service management, external audit and administrative decentralisation. However, there has been some further reform progress in public governance areas that are traditionally perceived as being less politically sensitive, such as public expenditure management and public procurement. Furthermore, initiatives have been taken which aim at improving the quality of legislation and introduce more widely the use of impact assessment methodology in the regulatory production system. However, important laws have tended to be amended frequently. This instability has had a negative impact on legal certainty and on the coherence of the national legal framework, which in turn may impact significantly on the business environment. It complicates further the implementation of laws and policies and may put at risk the compatibility of Turkish norms with the *acquis communautaire*. The centre of government has a key role to play in this respect by strengthening the overall regulatory and policy-making system. Attention should continue to be devoted to the quality of public services, the reduction of red tape, as well as the development of professionalism and of the institutional capacity of the centre of government to perform its key functions.

### **Public Administration**

The deficit of dialogue and openness of the administrative culture can sometimes reduce the effective capacity of the public administration to carry out necessary reforms and may put at risk the sustainability of public administration reform changes. However, the existence of an active civil society should be noted, and some NGOs, which have a remarkable capacity to bring new ideas and support reformers, are likely to push for more and better administrative reforms.

Some concerns in the civil service area have to do with the legislation, which can be considered to be outdated in some respects, with a salary system that is too complex, recruitment and training systems that have some weaknesses and, above all, the absence of an institution with sufficient power and capacity to ensure the enforcement of common standards and the uniform implementation of the rules across the civil service. However, progress has been made, for instance in the public expenditure management and control area, where the development of strategic planning and performance budgeting has continued to be implemented according to schedule. Internal audit has seen less progress, partly due to confusion between the respective roles of internal audit and inspectorate functions and limited enthusiasm by some top managers. The transition to external audit is challenging from the current basic set-up to the concept of a Supreme Audit Institution compatible with an audit aligned with the accountability concept as expressed in the Public Finance Management and Control Law. Due to the magnitude of changes required, a phased approach, a commitment to change and considerable resources will be required over a number of years to bring about reform in the TCA. The government seems committed to reform the system of public procurement, concessions and public-private partnerships with the aim of achieving full alignment with EU law. The Ministry of Finance has been assigned responsibilities to ensure the establishment of a coherent policy and to ensure sufficient co-ordination of the legislative process with respect to public procurement in order to avoid the initiation of amendments to the legislation from outside the government, which has frequently been the case in the recent past.

***Judiciary***

Administrative justice is a matter for concern, as was pointed out in Sigma's 2006 and 2008 assessments, and this situation may weaken the notion of an administration ruled by law. The backlog of cases has been increasing every year, as staff are too few and judicial offices are ill-equipped. Administrative court decisions are difficult to enforce, as there is no clear allocation of responsibilities within administrative structures and no indication of liability, despite the inclusion in the penal code of the criminal offence of contempt of court. The system needs to improve the remuneration of judges, personnel management, and especially the continuous training of administrative judges and officials in judicial offices. For citizens, the justice system as a whole and the administrative justice system in particular are regularly rated as one of their highest concerns.

***Anti-corruption Policy***

Corruption remains a concern, especially in the political sphere, even though the cases of prosecution of high-level officials have been rare. No systemic progress can be noted to prevent political corruption through new legislation on the financing of political parties and election campaigns. Expectations have been raised concerning the creation of a state body with the authority to audit election campaigns, but they did not materialise. However, over the past years, the governments have considered the struggle against corruption as a priority and progress has been made: the long-awaited national anti-corruption strategy has been adopted. The strategy incorporates important preventive provisions and addresses the issue of political corruption. An action plan has also been adopted. Some initiatives are foreseen to raise the awareness of the public and private sectors as well as of NGOs, unions and the media of this national anti-corruption strategy, with a view to increasing support for its implementation.