





## COMMENTARY


# How Should the EU Approach Turkey's "Human Rights Action Plan"?

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## 1. Background

After a series of meetings between the EU and Turkish officials concerning a revival for Turkey's EU accession process, the Turkish government has introduced a new "Human Rights Action Plan" on March 2, 2021. The Action Plan is projected to be implemented over a two-year period to strengthen the rule of law, democracy and human rights which have all weakened massively over the past several years.

Before this positive step was taken by Turkish government, several years of crisis occurred in EU-Turkey relations and the accession process. In fact, the mentioned crisis resulted mainly from various foreign and domestic policies pursued by the Turkish government. However, Turkey's actions beyond its borders became the primary reasons for the EU to fall out with Turkey.

Apart from foreign policy issues, the accession process was weakened due to severe domestic policies pursued by the Erdogan administration undermining human rights and the rule of law. In other words, Turkey's architecture of the rule of law and democracy have deteriorated gradually. In this context several core developments contributed to the decay of Turkish democracy and Ankara's binding commitments for human rights and the rule of law: (1) The Justice and Development Party's (AKP) failure in the June 2015 election, (2) the failure of the Kurdish Peace Process and re-escalation of conflict with the Kurdistan Workers' Party (PKK), (3) the transition from the parliamentary to the presidential system, which undermined the Turkey's National Assembly's role, and (4) the 2016 *coup d'état* attempt were among these core developments. Besides, the independence of the judiciary and the separation of powers principles have been undermined with judges and prosecutors appointed under intense political pressure.

Hoping that Turkey might return from some of its anti-democratic steps in domestic politics and persistent foreign policy actions, EU leaders confirmed "the EU's strategic interest in developing a cooperative and mutually beneficial relationship with Turkey" in December 10-11, 2020.<sup>1</sup> They also postponed the adoption of potential sanctions to late March 2021 in order to facilitate dialogue on a variety of foreign policy challenges including the ones related to Turkey's unauthorized drilling activities in the Eastern Mediterranean, Turkey's military presence in Libya, Syria and beyond.

As a result of positive dialogue, Ankara also stressed the importance of the relationship with the EU in January 2021. Within the scope of his visit to Brussels on January 21-22, 2021, Turkey's Minister of Foreign Affairs, Mevlüt Çavuşoğlu, met the relevant EU authorities. While these meetings were crucial for reviewing the disputed foreign policy issues<sup>2</sup>, the meetings also played a significant role in the announcement of the Action Plan.

However, Turkey's attempt of announcing the Human Rights Action Plan obtained hope for re-democratisation of the institutions and the revival of the accession process with the EU. In the targets regarding the accession process, Ankara re-stressed its enthusiasm to fulfill the EU accession process obligations. Therefore, such an announcement that can influence the rule of law and democracy in Turkey have vital importance for the relations with the EU.

<sup>1</sup> European Parliament (December 11, 2020). *Outlook for the meetings of EU leaders on 10-11 December 2020*. Retrieved on March 2, 2020 from European Parliament [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/654208/EPRS\\_BRI\(2020\)654208\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/654208/EPRS_BRI(2020)654208_EN.pdf)

<sup>2</sup> Minister of Foreign Affairs of the Republic of Turkey, (January 21-22, 2021). *Visit of Foreign Minister Mevlüt Çavuşoğlu to Belgium, 21-22 January 2021* Retrieved from <http://www.mfa.gov.tr/sayin-bakanimizin-belcikayi-ziyaretii-21-1-2021.en.mfa>

In the context of the recent and prudent EU-Turkey rapprochement, Turkey's new Action Plan is essential to be analysed due to its potential to be the starting point of reviving the EU-Turkey accession process. This plan also indicates Turkey's willingness to meet the accession process obligations. It also opens a window of opportunity to the EU to discuss cross-border matters with Turkey. Therefore, it is crucial to search answers for whether Turkey will be candid in its commitments or not? How and to whom will this Action Plan be applied? How should the EU approach to the plan?

## 2. The Current State of Play

Starting from January 2021, Turkey has endeavoured to get its relations with the EU back on track once again by discussing the disputed issues beyond Turkey's borders on the one hand and the internal issues regarding democracy and the rule of law on the other.

### Questions without answers?

Although President Erdogan called the Action Plan a new "civil constitution", in which the reforms appear to be ambiguous, it neither mentions those who have been the victims of the lawless situation nor outline how it will be applied. In other words, the announcement of the plan did not answer many questions regarding the widespread politically motivated detentions and arrests.

In that respect, there are many politicians, journalists, activists, and civilians who have been detained and arrested due to their political affiliations, particularly since the attempted coup back in July 2016.<sup>3</sup> Many were detained on charges related to the protests, terrorism, and coup d'état.<sup>4</sup> For instance, the former pro-Kurdish party, Peoples' Democratic Party (HDP), chairperson, Selahattin Demirtaş, has been jailed more than four years now. Despite the fact that the European Court of Human Rights (ECHR) issued resolutions and called for immediate action for Mr. Demirtaş to be released, Turkey refused to apply the ECHR's decision, which violated the European Convention on Human Rights including article 18 (misuse of power).<sup>5</sup>

Alongside Mr. Demirtaş case, many other instances need to be mentioned, such as the Turkish court's decision to convict journalist Can Dündar for his fundamental right to freedom of expression, human rights defender Osman Kavala<sup>6</sup>, who has been detained since November 2017, journalist Ahmet Altan and many former military officers, University professors, thousands of individuals from the Gulen community who have been accused and jailed on the 2016 *coup d'état* related charges. What is more is that since the local elections in March 2019, hundreds of local politicians, elected officials, and thousands of members of the pro-Kurdish HDP have been detained on terrorism-related charges as well.

Furthermore, the government has been continuing its political pressure in the National Assembly to remove the legislative immunity of the HDPs' MPs and pressing the judiciary in order to shut down the party. As a result of the heavy pressure from the government, Turkey's Supreme Court of Appeals approved a ruling on human rights defender and HDP's deputy Ömer Faruk Gergerlioğlu. While he

<sup>3</sup> Human Rights Watch, (Oct. 2, 2020). "Turkey: Politicians and Activists Detained". Retrieved from Human Rights Watch: <https://www.hrw.org/news/2020/10/02/turkey-politicians-and-activists-detained>

<sup>4</sup> Ibid.

<sup>5</sup> ECHR, (Nov. 20, 2018). *CASE OF SELAHATTİN DEMİRTAŞ v. TURKEY (No. 2)*, Strasbourg, Retrieved from: [https://hudoc.echr.coe.int/spa#{"itemid":\["001-187961"\]}](https://hudoc.echr.coe.int/spa#{)

<sup>6</sup> The ECHR (10/12/2019). "The Court finds a violation of Articles 5 and 18 of the Convention and calls for the immediate release of Mr Kavala, a businessman and human-rights defender who is detained in prison" Retrieved from: [https://hudoc.echr.coe.int/spa#{"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\]}](https://hudoc.echr.coe.int/spa#{)

was sentenced to two years and six months by the court's decision, Turkish parliament also expelled Mr. Gergerlioğlu's MP status on March 17, 2021. Moreover, co-chairperson of the largest Human Rights Association (İHD), Öztürk Türkdoğan, was detained on March 19, 2021. Turkey has also pulled out of the Istanbul Convention which combats violence against women. These cases have shown not only the government's reluctance to uphold the commitments made under the Action Plan but also they created a massive backsliding from the former achievements in the fields of rule of law and human rights.

Besides the continuation of anti-democratic policies, there is an absence of democratic credibility, independent legislative power, effective check and balances. The constitutional architecture of Turkey continues to centralize excessively powers to the Presidency. Therefore, without maintaining an effective separation of powers between the executive, the legislature, and the judiciary, the application of the new action plan can be arbitrary. As mentioned in the 'Turkey 2020 Report', the new presidential system preserves the rule of law over presidential decrees, and limits the legislative areas that remain under the prerogatives of the Parliament, which, in turn, lead to an ineffective legislative procedure.<sup>7</sup> These uncertainties overshadow the implementation of the plan.

In addition, the probability of the implementation of the plan is shallow. After the recent draconian measures taken against HDP and its deputies and Human Rights Association co-chairperson, the plan remained ambiguous and sceptical. In other words, the continuation of detaining politicians and human rights defenders after announcing the plan and withdrawal from the Istanbul Convention have already indicated the government's attitude.

All in all, if the Erdogan administration desires to revive the accession process with the EU, they will need to fulfil the obligations about the procedure of the Action Plan. Also, Turkish government will have to stop repressing the local courts for taking decisions on ending the detention of all politicians, journalists and civilians who have been detained on terrorism and *coup d'état* related charges without any evidence.

## Motives Behind the Action Plan

While no evidence has been shown about the implementation of the Action Plan yet, several reasons appear to be the primary objectives of the Plan, rather than pointing to the issues regarding human rights and the rule of law.

The first underlying reason is about economic concerns. Turkey has not only been facing an economic crisis for the last few years but also has not received enough investments from its partners around the world, which led Turkish authorities to reconsider the EU. In addition to that, in the context of the COVID-19 crisis, Turkey's economy has been hit as hard as any other country in the world and millions of people have become unemployed. Also, current anti-democratic actions in Turkey triggered some negative outcomes in financial markets. Thus, Turkey requires financial support in order to overcome its economic crisis, which is the most important prerequisite for President Erdogan to be re-elected in the upcoming presidential election.

Moreover, the EU's Instrument for Pre-Accession Assistance (IPA) of 2014-2020 has ended, through which Turkey has received €3.2 billion from the EU over seven years after cuts due to lack of progress

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<sup>7</sup> European Commission, ( October 6, 2020). "Commission Staff Working Document: Turkey 2020 Report" Retrieved from: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf)

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on key reforms under the IPA.<sup>8</sup> Accordingly, 41% of this assistance was allocated for democracy and the rule of law.<sup>9</sup> Turkey desires to receive this economic aid for the period of 2021-2027, as well. In this case, what Turkey could do in order to receive economic support was to announce a plan, which would comprise human rights and the rule of law at the very beginning of 2021. In that sense, the EU rapprochement could contribute to the solution in recovering from the ongoing economic crisis.

The second reason is linked to domestic politics and regaining public support. After undemocratic steps and deterioration of the economy, the AKP has started losing an important portion of its electoral support. The evidence of this statement can be seen from the elections that took place over the past decade. While the party attracted 49,83% of the votes with 327 deputies in the 2011 general election, it lost this significant power in the June 2015 elections, in which it got 40,87 of the votes with 258 deputies.<sup>10</sup> The AKP has lost a significant amount of votes in the 2019 local elections as well.<sup>11</sup> Therefore, the party needs to find a way to gain back its supporters' trust. This was one of the motives behind the adoption of the Human Rights Action Plan.

Therefore, this plan announced by the Erdogan Administration seems to repair relations with the EU, in order to support the economy and to improve the AKP's standing in domestic politics in the short term, rather than to implement reforms to strengthen the rule of law and democratic institutions in the long term.

## 3. Policy Recommendations

### How should the EU approach this plan?

Human Rights, democracy and the rule of law are three most prioritized elements for the EU's *acquis communautaire*. As mentioned in the Commission working draft "the EU is founded on the values of respect for human rights, democracy and the rule of law. These values guide the EU's internal and external action."<sup>12</sup> Thus, supporting and defending human rights and the rule of law is one of the major objectives of the EU external actions and enlargement policy.<sup>13</sup> Taking into account these priorities, the Action Plan can be perceived as an important development. But, it appears to be a failing project due to its *real intention*.

However, the EU has already witnessed such attempts from Turkey regarding democracy and the rule of law over the past several years, and "U" turns right after these attempts. For instance, an "Action Plan on Human Rights in Turkey" financed by the EU and the Council of Europe, was planned to be implemented on September 1, 2019, and expected to be completed on March 1, 2021.<sup>14</sup> Yet, Turkey has not implemented the plan at all. The case of detained politicians and journalists mentioned above can be the evidence of the ineffectiveness of the previous action plan as well. Turkey has been trying

<sup>8</sup> European Neighbourhood Policy and Enlargement Negotiations, (2020). "EU factograph on the status of implementation in Turkey" Retrieved from: [https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/near\\_factograph\\_turkey.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/near_factograph_turkey.pdf)

<sup>9</sup> Ibid.

<sup>10</sup> The results of Turkey's general and local elections. Retrieved from: <https://www.sabah.com.tr/secim-sonuclari>

<sup>11</sup> Ibid.

<sup>12</sup> European Commission. (2020, March 25). *The EU Action Plan for Human Rights and Democracy*. Retrieved January 27, 2021 from: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_490](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_490)

<sup>13</sup> Council of the European Union, (March 18, 2019). "EU Human Rights Guidelines on Non-discrimination in External Action". Retrieved from: [EU Human Rights Guidelines on Non-discrimination in External Action \(2019\).pdf \(avrupa.info.tr\)](https://www.europa.europa.eu/press-communication/infocus/2019/03/eu-human-rights-guidelines-on-non-discrimination-in-external-action_20190318_en.pdf)

<sup>14</sup> Council of Europe (no date) "Supporting the Implementation and Reporting on the Action Plan on Human Rights in Turkey" Retrieved on March 4, 2021, from Council of Europe: [https://www.coe.int/en/web/ankara/supporting-the-implementation-and-reporting-on-the-action-plan-on-human-rights-in-turkey#{"64116063":{0}}](https://www.coe.int/en/web/ankara/supporting-the-implementation-and-reporting-on-the-action-plan-on-human-rights-in-turkey#{)

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to implement such plans regarding human rights, democracy and the rule of law for years. This plan is not something new. It consists of targets that Turkey has always promised to perform over time, but it has often failed. The EU could make an analogy. Because Turkey might repeat the failure for the new plan.

Therefore, a new committee that consists of specialists such as lawmakers and legal experts should be organized by the European Commission to inspect the implementation of the new "Human Rights Action Plan" in order to see positive results over time. The new committee must provide a report of the implementation of the plan to the Commission at the end of every three months and the Commission should inspect and share its view with the public as well as with other EU institutions.

For continuation of a positive evolution, the EU should require several constitutional changes and modifications from Turkish government to guarantee the core requirements of the separation of powers before starting to implement the new plan. Without an effective separation of powers, neither judiciary can implement the plan according to the rule of law nor legislative power can participate in the further steps for the Plan. Additionally, the Erdogan administration should be urged to halt its harsh policies over democracy and the rule of law.

In conclusion, Turkey has taken steps to revive its accession process with the EU since the end of 2020. Although it has announced its first step concerning human rights and the rule of law, which are the two most important elements for the EU accession process, Turkey has not yet fulfilled its promised commitments. The EU should impose the economic sanctions that were postponed with the EU leaders' December 2020 meeting.

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