COMPARATIVE JUDICIAL POLITICS BETWEEN THE USA AND TURKEY: A SPECIAL FOCUS ON DEMOCRATIZATION

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**INTRODUCTION**

The Republic of Turkey has been a democratic, secular, unitary and parliamentary public since 1923. While Turkey and the Turkish people try to achieve full democracy, the multiparty democracy was interrupted five times in Turkey. The last interruption was an unsuccessful attempt.

As an International relations student and law student, I have always been curious about democracy. When I realized Turkey’s democratic situation, I asked myself “Why can the Turkish government and the Turkish people still not implement democracy?”

Democracy and democratization are vast fields in political science. To understand the situation of Turkey’s democracy, I decided to compare it to the democratic system of the United States of America, the worldwide leader in democracy. In this regard, I have three questions:

1. How is the United States of America the leader of democracy, whereas Turkey has always been failing to achieve democracy?
2. What do the Turkish government and Turkish people have to do to sustain democracy in Turkey?
3. What are the differences in the judicial process between these countries?

The judicial processes include many different positions in these two countries. Reliability for legal systems and order, stabilization of legislation and equality for everyone would bring democracy. In this regard, I will try to understand the differences of the judicial process between Turkey and the USA, and these legal systems with parties will be searched by qualitative and quantitative methods to reveal stabilization on democracy.

These three questions are important questions for Turkey’s stabilization. In the last few years, half of the public, graduate students, writers, journalists and even scholars think that Turkey will shift to radical authoritarianism. Although these ideas are discussed in Turkey, the Turkish public took a stand against a coup on July 15th, 2017. So, whether Turkey will guarantee democracy or not, Turkey’s democracy must be compared with the leader of democracy. Secondly, there are no comparisons or any written research about democratization in Turkey. Comparative politics is a new field in Turkey. Some scholars compare any topics in political science between Turkey and the European Union; however, there is no specific comparison for democratization between Turkey and United States.

Researching any field of political science could be challenging. There are two reasons for this. Firstly, like democracy, most of the values in political science are intangible. Democracy first appeared in ancient Greek times. In the modern systems, we could identify democracy as a system of governments. Although it has existed for thousands of years, still there are no specific criteria to measure democracy. As it is mentioned above, even though the USA is known as the leader in democracy, there is no specific data to prove that. This could be the most challenging problem for social science. Secondly, comparing needs much data. Surveys, government reports and decision makers’ applications could be considered for these types of data, but these data sometimes could be non-public or may not be saved. Further, accessing some government data in Turkey is especially hard.

Despite the fact that there are some challenges in order to answer the above the questions, finding possible answers will reveal many important results.

This discussion shows that understanding Turkey’s democratic position is necessary to understand the USA’s democratic position, but there are many indexes to measure democracy. By first discussing democracy and measurement indexes of democracy, then examining comparative politics and judicial comparative politics, and finally comparing the judicial systems that are in America and Turkey, a better understanding of Turkey’s democratic position will be obtained.

**WHAT IS DEMOCRACY?**

Democracy is a system which allows every citizen to vote and elect its governmental officials. However, elections are not enough to call a country democratic; there are more qualities which make a democratic country. Although several indexes are published by international institutions according to their own various definitions, democracy is generally measured by credible international institutions on five categories: electoral process, executive-legislative relations (functioning of government), political culture (corruptions, lack of press freedom), judiciary and public-government relations (Eckhardt, 1991).

While democracy is a popular form of government in the contemporary world, there are still some authoritarian or semi-democratic (hybrid regimes) countries in the world (Ekman, 2009). In comparison to democracy, authoritarianism is a form of government characterized by a strong central power and limited representation for citizens. While democracy allows citizens to take the control over their government, authoritarianism and totalitarianism systems allow the head of government to hold all control in their hands. In a democracy, the people are sovereign. People are in charge of their government because they elected the government by voting.

Authoritarian regimes and the democratization process has attracted political scientist scholars for decades. After the democratization process began in the world, scholars shifted their studies to how authoritarian governments develop into democratic ones. However, numerous democratic countries have begun to turn towards authoritarianism. There can be many reasons behind this transition such as the economy, politics, and judicial process. A pioneer of the study of authoritarian systems of government, Luan J. Linz, examines authoritarian regimes in four characteristics: Political pluralism, legitimacy, social mobilization and shifted executive power (Francisco & A., 2001).

Comparison of the democracy with other systems of government is not the main topic of this research; however, this comparison can provide us with a better understanding of what we gained with democracy. Democracy enhanced humankind and made people satisfied by approaching a human-centered governance. It keeps away the citizens from primitive governance, from collapsed kingdom and sultanate systems. For example, thanks to democracy, people have been able to express their wishes, desires, and opinions more comfortably and confidently. Respect for personal rights, freedom of expression, equal rights under the law, the superiority of law, majority rule, and free-fair elections are the most important things that democracy provides us. All these rights are guaranteed by judicial systems; however, all judicial systems cannot provide such assurance.

The American constitutional system is known as having the most prominent separation of powers. In this system, government has several branches and these branches have their self-power. However, the important thing is power is shared among them. Besides, each branch can challenge another branch’s power. There is not necessary to examine all branches checks on the other branches. Because this paper presents importance of judicial branches’ checks and balances, it is unavoidable to mention effect of judicial branches on other branches. The judicial branch of the USA checks on legislature by reviewing the judicial process, whether they held their seats on good behavior, and convicting legislatures which cannot be diminished. It checks on executives by reviewing the judicial process, and the chief justice sits as President of the Senate during presidential impeachment (Burns, James; Peltason, J.W;Cronin, Thomas and Hall, 1997). The idea that judicial systems’ checks and balances are powerful leads us to analyze the systems of the USA and Turkey in this research. Before clarifying checks’ and balances’ effects on democracy, judicial systems of each country will be analyzed. My hypothesis will be the following: the judicial systems in which the checks and balances are represented on a powerful basis have much more protected democracy, or fundamental rights, compared to other systems.

Although there is no specific measurement of democracy, reliable institutions are fixed in place which categorize some indexes as fundamental features of democracy. One of these reliable institutions is the “Economist Intelligence Unit” (EIU, 2016). The Economist Intelligence Unit’s measurement of democracy is based on a state of political freedoms and civil liberties (Kekic, 2007). Laza Kekic states: “All modern definitions, except the most minimalist, also consider civil liberties to be a vital component of what is often called “liberal democracy”” (Kekic, 2007, p. 2). Civil liberties include basic human rights; freedom of speech, expression and the press; freedom of religion; freedom of assembly and association; and the right to due judicial process. All these rights are accepted not only by the UN Charter but also by International agreements. This indicates that the judicial process is one of the main criteria to measure democracy. Further, the belief of that judicial politics is a guardian of all other rights, makes it more important than other criteria.

 EIU’s 2016 indexes show that, while America must be considered as fully democratic, Turkey must be considered as a hybrid regime. While America’s averages score is 8.12, Turkey’s is 5.45 in the last 10 years.



Source: Economic Intelligence Units; Accessed: October 2017



Source: Economic Intelligence Units; Accessed: October 2017



Source: Economic Intelligence Units; Accessed: October 2017

**WHAT IS COMPARATIVE POLITICS?**

Comparative politics has been on the rise since the beginning of the 20th century; however, it is possible to say that before its rise there were many scholars or sociologists who were interested in comparative politics before the modern era. While great writers and philosophers like Socrates, Machiavelli, and Hobbes discussed politics, they had also addressed comparative politics.

Comparative politics is basically a subfield of political science. Until the beginning of the 19th century, comparative politics was not even discussed. Comparative subjects were just analyzed within sociology, law, or philosophy classes. After examination of political science as a special field of education, comparative politics also had gained its reputation during the 1920s and 1930s. Because the regimes had collapsed during these years around the world, comparative politics came into prominence. Scholars tried to understand the reasons behind it after World War II.

 Regardless of the popularity of comparative politics, a number of political scientists published a report which specifically focused on the lack of comparative politics (also known as the traditional approach) in 1952 (Millet, 1952). This debate brings its attention to behaviorism as a solution to the traditional approach. After the effect of traditional approach, behaviorism increased; the method of comparative politics has expanded ever since. For the result, social scientists began to research new subjects like political culture and political socialization (Sayarı, 2016, pp. 8–9).

 One of the criticisms about traditional approach of comparative politics was that this approach could not be grounded in theory. According to this criticism, scholars had tried to solve this problem with system theory and structural-functionalism, especially David Easton’s article, “An Approach to the Analysis of Political Systems” (Easton, 1957, p. 384), which introduced system theory. System theory had occurred as the main concept of comparative politics. Concurrently, Gabriel A. Almond also suggested his theory, Structural-functionalism. In his article, “Comparative Political Systems” (Almond, 1956, p. 391), he suggested that, “how the application of certain sociological and anthropological concepts may facilitate systematic comparison among the major types of political systems operative in the world.” His suggestion veers in the direction of comparative politics. So, comparative politics has been able to compare the differences and similarities between two countries.

 Democracy has grabbed attention of political scientists after the disintegration of the system of colonization since World War II. This disintegration brought with it two new aspects to comparative politics: political development and modernization. Thus, almost all scholars had employed the fundamentals of democratic institutions in their articles at that time.

 After the 1970s, political development and modernization had changed their stances on dependency theory. All the theories had not been touching on international actors and their effects on their countries before dependency theory was accepted. International actors, their effects and their relations with each other would have been a subject of comparative politics along with dependency theory.

 Nowadays there are two influential theories in comparative politics. One is rational choice theory and the other is new institutionalism. While the economic theory has introduced the economic actors to comparative politics, new institutionalism has dealt with interactions among institutions.

 In short, comparative politics is a subfield of political science: “As a subject of study, comparative politics focuses on understanding and explaining political phenomena that take place within a state, society, country, or political system” (Lim, 2010, p. 3). As mentioned above, comparative politics has been altered since its beginning. It focuses on not only domestic politics but also international politics, political institutions, conflicts of countries, economic actors, political economy, social factors, and other structural institutions. Because of its extensive framework, this essay will discuss judicial politics from a comparative perspective with a special focus on democratization between the United States of America and Turkey.

**WHAT IS COMPARATIVE JUDICIAL POLITICS?**

Dyevre mentions that “The area of judicial politics has long been neglected by political scientists outside the United States” (Dyevre, 2010, p. 297). But the last 20 years have witnessed significant changes in political science. European courts trainers and judges are interested in this issue. In addition, judicial politics, on its own, is on its way to becoming a subfield of comparative politics. Although many developments have taken place in the European countries in the last 20 years, other countries are still not much interested in the sub-field of political science.

 The topics of comparative judicial politics include judicial independence, litigation and legal mobilization, judicial behavior, strategic decision-making, the global spread of judicial review, and judicial careers. However, the focus of this subfield is comparative on all these issues.

 I will discuss judicial independence showing the differences of the governmental systems in both Turkey and the USA. As a result, the meaning of comparative judicial politics in this article is the comparison of judicial independence.

**LITERATURE REVIEW**

 After the Soviet Union felt apart, constitutional debates emerged in Eastern Europe. While processors of new countries were looking for a constitution which would bring them Western values and democratic stabilization, numerous political scientists and political observers were encouraging decision makers to recognize a constitution like the United States Constitution, the oldest such document with the fewest amendments in its history (Katz, 1994). While these ideas were discussed, Professor Katz mentioned that “The history of American Constitution confirms the various approaches taken rather than the application of a universal pattern. It is not the form of democratic constitutionalism but its practical application that must be universal” (Katz, 2009). It is impossible to say all governments can be exactly the same; however, international values create basic rules to have democracy for each country. Although there are still autocratic countries, democracy is a popular form of government. Even though these countries claim to be democratic, the political system does not consider them fully democratic unless they meet basic international criteria. One of the criteria for being considered a democratic country is that the nation needs to be governed by rule of law (“Comparing Governments,” 2015). Under favor of laws, governments treat citizens equally.

 In an ideal world, each judicial system creates equality and protects citizens’ freedoms. According to Juan Carlos Botero and Rafael La Porta, “Judicial systems around the world are perceived to be in crisis” (Botero, Porta, López-De-Silanes, Shleifer, & Volokh, 2003). Because rules of law do not apply how they are written, Mehmet Ocaktan agrees with Botero and Porta. He claims that not only the application of rules of law creates crisis but also the creation of legal system has an effect on democracy (Ocaktan, 2017). Adnan Kucuk makes a contribution to Ocaktan’s ideas. He says that while powerful legal systems protect citizens’ rights, checks and balances protect democracy (Kucuk, 2004). The United Nation Declaration adopted in 2012 focuses on constitutions as they are the fundamental piece of countries to ensure democracy, and this report says judiciary acts as the guardian of the rule of law (Tommasoli, 2012).

 Some of the scholars support these ideas with economic ideas. They believe that judicial systems are the heart of the states, and when it builds in democratic essentials, they would generate economic growths (Root & May, n.d.). Although economic perspective is not related to this paper, Root’s ideas show more judicious systems means more democratic institutions, which means more freedom to citizens.

Other than these ideas, numerous scholars claim that when judicial systems are supported by powerful checks and balances, we claim democracy is under protection of judicial system (Madison, 1996). According to one of The Economist’s writers, the political statements which are experienced in this last year prove this idea. Because the USA has powerful checks and balances system, the US president cannot do whatever he desires (The Economist, 2017).

As it indicated above, democracy includes many ideas in itself. In this paper based on these ideas, I will try to provide a support for them analyzing legal systems and application of checks and balances in the USA and Turkey.

**METHODOLOGY**

 The methodology of political science is a way to make research more scientific in social sciences. Methodology not only makes research scientific but also identifies abstract concepts and enables understanding same concepts on everyone's side. Of course, when we talk about methodology, it is not possible to talk about a single method. As in all other sciences, different research methods in political science will emerge. The first segregation of political science method is known as qualitative and quantitative method. While the qualitative method focuses on observation, in-depth interviewing, and second-hand documents analysis, the quantitative method focuses on surveys, secondary data, and statistics. The best way to utilize this research would be by a combination of quantitative and qualitative methods. I will use journal articles taken from databases and websites. I believe the qualitative method will give me more information.

Secondly, I will gather a few indexes together to demonstrate Turkey’s and USA’s statistics about their democracy. This quantitative method will assist me in seeing the big picture of this project.

**JUDICIAL SYSTEMS**

 The aim of the law is to establish justice in the community. In the presence of justice, it is impossible to deny that people live in peace and prosperity, because justice is the solution to all kinds of chaos. Through justice, people are able to reach for their rights and live within an order. To the extent that countries can achieve justice, states’ length of time will be prolonged with their life. In this case, what is the fairness of the states?

When we look at the developing countries and their communities, we realize that the legal system is almost completely developed. The universal values and general principles of law are at the highest level in these societies, and these countries are governed by democracy, in comparison to the underdeveloped countries. As mentioned above, democracy not only allows the free-fair elections but also lets the people use their rights and freedoms individually. The protection of rights hinges on the existence of a fair structure of states. All of these discussions demonstrated that judicial systems have an effect on democracy. If so, analyzing both Turkey’s judicial system and USA’s judicial system should present how the USA is a leader of democracy.

**USA**

There are basically two judicial systems in the USA law. The first is the state judicial system and the second is the federal judicial system. In fact, these arise from the constitutional system. The United States is a community where 50 different states gather together under the name of one federal state. Each individual state has its legislative, executive and judicial powers within its borders and its own sovereignty. Although there are essential differences between the federal courts and the state courts, they have some common features (University of Baltimore, n.d.).

Every judicial system has a number of original jurisdictions in which the cases were originally filed and tried. The judicial powers of the courts are separated from each other in terms of geographic and subject matter. Each system also has an interim appeal court. Every court system also has a supreme court that hears appeals from the appellate courts. Objections to the Supreme Court are usually under discretion; the court may choose whether to consider the appeal.

1. **Federal courts.** The US Constitution is the main source of the US Supreme Court. Further, the US Constitution gives Congress the power to establish lower federal courts. These state courts hear all judicial problems, requiring a national judiciary in the federal level as necessary. Thus, supervisory power can be provided at the federal level.  Therefore, Article III of the Constitution (“USA Constitution Article III,” 1787) provides for a Supreme Court and gives Congress the power to establish other, lower courts.

 US district courts are the primary courts in the federal system. There are 94 district courts in the nation. Each province has at least one regional court. District judges hear individual cases. Some of the district courts are experts in their subjects (Nolan & Thompson Ii, 2014)

US circuit courts are in the next phase. There are 12 of these regional interim appeals courts located in different parts of the country. Panels composed of three judges hear appeals from district courts. A party may resort to the appeal clause as a basis for the right to appeal. If the verdict is uncertain, it does not have any appeal in the criminal case (U.S Embassy, n.d.)

At the top of the Federal Court system is the US Supreme Court, which consists of nine judges sitting together to hear the cases. Federal Judicial Center mentions that “In its discretion, the US Supreme Court may hear appeals from federal circuits courts and the highest state courts if the appeal includes the US Constitution or federal law.”(Federal Judicial Center, n.d., p. 1).



Source: (Federal Judicial Center, n.d.)

 The most essential feature of federal courts is that they have the authority to interpret and enforce the Constitution of the United States and all laws approved by the Congress. This authorization ensures that all citizens enjoy equal conditions under the same federal laws (Administrative Office of The U.S Courts, n.d.).

          **B. State court systems.** The structure of state court systems differs from state to state. Each state court system has unique characteristics; however, they still have common characteristics in general. A judge presides over minor civil and criminal cases in most of the states. Besides, states also have general jurisdiction trial courts that are called circuit courts or superior courts, presided over by a single judge. Some courts are experts in their subjects. Therefore, they hear from specific cases. All states have their highest court that serves as an appellate court. Many states also have an intermediate appellate court that hears appeals from the trial courts. They are called a court of appeals (Federal Judicial Center, n.d.).

**C. Courts administration**. The separation of powers securing the independence of the judiciary is apparently visible. Through the structure of powerful separation of powers, the judicial branches of the federal and state governments control the administration of the courts without a doubt.

There is general administrative responsibility for the 27 members of the federal judiciary. The federal jurisdiction also has major authorities to produce policies related to the government's jurisdiction operation. The federal judiciary receives help from numerous committees, including federal judges, sometimes state court judges and lawyers. One of the critical responsibilities of the federal judiciary is to propose amendments to the procedural rules used by all federal courts (Administrative Office of The U.S Courts, n.d.).

Congress consists of three administrative sections within the judicial branch: Administrative Office of the United States Courts, Federal Judicial Center and US Sentencing Commission. While the administrative office operates daily tasks of courts, the Federal Judicial Center organizes training programs for judges and court personnel. Finally, the USA Sentencing commission consults to the federal judges for exercising criminal sentences (Nolan & Thompson Ii, 2014).

**D. Judges.** The methods of being chosen and terms of all federal judges are clearly stated in the American Federal Constitution. Federal judges are appointed by the President of the United States and confirmed by the Senate with the majority of votes. Judges serve their country throughout their lives. When judges come into the office, their wage cannot be lowered thereafter. Federal judges can only be impeached because of serious offenses. The only way to take remove them from their position by impeachment. When judges are impeached by the House of Representatives, they have a chance to defend themselves in a trial conducted by the Senate. Only seven judges have been impeached in US history (“Impeachment - Facts &amp; Summary - HISTORY.com,” n.d.). The protection of the judges on their duties allows them to be independent from political or external intervention (“What is Judicial Independence | The Judicial Learning Center,” n.d.).

The method of selecting state judges varies from state to state and may differ from state to state depending on the specific type of courts. The most widespread system of electing state judges are elections in which the judges are nominated by the independent commission, which includes legislators, lawyers, judges, and lay citizens. The only necessary thing other than its honorable qualification is that they have to practice at least one year as a lawyer (Denver, 2017).

Although there is no system for training and examination to select a person as a judge, candidates generally are appointed depending on their experience. However, after selected as a state judge or federal judge, they take continuing education throughout their lives (Trevor et al., n.d.).

**E. Prosecutors**. Prosecutors of the federal system are associated with the US Department of Justice. Prosecutors are appointed by the president and confirmed by Senate. Like their colleagues, the attorney general of the USA is appointed by the president and confirmed by Senate. The federal prosecutors are also called lawyers of the USA because they take part in defending a state’s rights in a trial (“Trump cabinet: Senate confirms Jeff Sessions as attorney general - BBC News,” 2017).

Every state’s citizen elects their attorney general by elections. The prosecutors of states are also elected by citizens. Other than federal and states prosecutors, there are persecutors in different regions of states (Federal Judicial Center, n.d.). These are called district attorneys.

**F. Lawyers**. According to the US judicial system, adversarial system, lawyers are one of the main parts of this system. Therefore, lawyers are responsible for collecting legal arguments and evidence for their clients. Based on a lawyer’s defense, the jury and judge reach a decision. In the USA, there is no undergraduate level law school for those who want to be a lawyer. Most states require a law degree (Juris doctor) for three years after attending a four years college and obtaining a university degree. After completing the college degree, one needs to get a good score on the general exam, called LSAT (Law School Admission Council) to be accepted by any law school. After completion of law school, they have to take a bar exam which is held by each state separately. Some states allow lawyers to become a lawyer in another state based on their bar membership.

**TURKEY**

The Republic of Turkey has a unitary system regarding administration. When local administrations are taken into account, it is desirable to say that they have relatively no power compared to the executive, legislature, and judiciary branches which are the primary functions of the country. In other words, Turkey’s cities and provinces come after the central administration. Cities and provinces’ administrations provide services, and the government is represented by the governors and city governors in those places (Aksel, 2013a). Compared to the USA, this may be the main difference between them. Because Turkey has no states, Turkey’s judicial system does not have two separated judicial systems. Under article 9 of the Constitution, the judicial power is exercised by “independent courts on behalf of the Turkish nation” (“Constitution of the Republic of Turkey,” n.d.). There are six higher courts with separate jurisdictions: High Court of Appeals, Council of State, Constitutional Court, High Military Court of Appeals, High Military Administrative Court and Court of Jurisdictional Disputes (Ministry of Justice, n.d.).

 While one of the higher courts, the council of the State, hears appeals of administrative trials or trials between government entities and the audit court audits state institutions, the Court of Cassation hears appeals from criminal trials. After 2004 parliament approved legislation that there will be regional appeals courts in order for the high court's caseload to lessen. This would allow the judiciary to operate more efficiently (U.S Department of State, 2012). These regional appeals courts are active since June 2016.

**A. Judicial courts.** There are two forms of judicial courts, civil peace courts (*sulh mahkemeleri*) and the civil courts of general jurisdiction (*asliye hukuk mahkemeleri*). The civil peace courts are the lowest civil courts in Turkey with a single judge. All cases which are assigned by the Code of Civil Procedure and other laws are accepted in here. The civil courts of general jurisdictions are the basic courts. Their jurisdiction covers all civil cases other than those assigned to the peace courts.

**B. Criminal courts.** Before 2004 the penalties were divided into light and heavy sentences. Although there is an amendment to the criminal law in 2004, the criminal courts’ names are given according to the penalties they were entitled to pass. Penal courts of general jurisdiction (*asliye ceza*) are courts with a single judge deciding on light sentences. The heavy penal courts (*Central Criminal Courts*) consist of three judges with a public prosecutor. The heavy courts are entitled to over five years of imprisonment for offenses and crimes involving a penalty of being under the jurisdiction of these courts.

**C. The constitutional court.** The main mission of Constitutional Court of the Republic of Turkey (*T.C. Anayasa Mahkemesi*) is to examine laws and decrees with the power of the constitution of Turkey and the Rules of Procedure of Turkey’s Parliament constitutionality.

Before the 2017 amendments to Turkey’s constitution, The Constitutional Court was composed of 11 regular and four substitute members. With the amendments, the court has 17 regular members. Their term of office is 12 years. 3 members will be nominated by a court of cassation; 3 members will be nominated by the council of state; 1 member will be nominated by the military court of cassation; 3 members will be nominated by the higher council of education; 4 members will be nominated by the top executives and lawyers and reporters of constitutional courts; 2 members will be nominated by the court of accounts; and 1 member will be nominated by the legislators. All nominations must be approved by the president. Decisions are made when the seventeen members convene. The decisions Constitutional Court’s decisions cannot be amended in any manner, and their application cannot be delayed.



SOURCE: Turkish Judicial System by Aksel, Ismail

**D. Judges.** Because Turkey does not have a jury system, sentencing for both criminal and civil trials are rendered solely by a judge. Judges can serve as a criminal judge, a civil judge and an administrative judge. There is an exception for administrative judges. Administrative judges must get a law school degree; they are selected by either law schools or faculties of social sciences, which include law courses in their program.

Judges are not elected by elections or appointed by the president; they have to pass the central written exam and oral exam which is held by Ministry of Justice, Justice Academy of Turkey and supreme courts. When one passes the exam, they become candidate judges. Candidate judges need to take two years of training in the courts and the Justice Academy of Turkey. After 2 years, they are accepted by The High Council of Judges and Prosecutors as judges or prosecutors. After acceptance, judges are separated into 4 levels. According to levels, judges need to get some experience by years and by files. Aksel mentions; “For example, members of supreme courts can only be appointed from among the judges at first level” (Aksel, 2013b).

**E. Prosecutors.** Like judges, prosecutors have to get a law degree from a law school. After one’s graduation, they have to take the general exam to be a prosecutor as judges. In regard to both judges’ and prosecutors’ training, recruitments and personal benefits are systematized in parallel to each other. The differences between them are that the prosecutor is the person who serves as a prosecution in criminal proceedings. They can be called lawyers of the country. They are not appointed by the president or are not elected by the public. After their 2 years training with judges, they are assigned to serve as judges in cities in Turkey. Their personal benefits are protected by HSYK.

**F. Lawyers**. Lawyers in Turkey are regarded as a public service and self-employment. Lawyers, like judges and prosecutors, are the foundational elements of the judiciary system. They freely represent the independent defense. Lawyers are allowed to work in state institutions and their private businesses.

Lawyers receive the same education as judges and prosecutors. They have to graduate from law schools. After graduation, their training takes one year. Half of this year must be completed at courts, and the other half they have to work beside a lawyer who has 5 or more years’ experience in the field.

**Independence and Politicization of the Judiciary**

After comparing judicial systems in both Turkey and USA, I have demonstrated that there is no evidence for the US to have more democratic grounding in their system. It brings us to deeply reexamine the independence of both countries. It can be said that the independence of the judges come to an end because of politicization of the institutions and the judiciary in Turkey. This situation arises by interfering with the judicial process inappropriately or unjustifiably by political actors. In some cases, because of personal attitudes of individual judges, formal, legal, and structural arrangements may be brought in place to prevent the courts from acting independently. Although this political influence is not new in Turkey, it is clear that after AKP (Justice and Development Party) the political influences on judges are more explicit than past times. There is a tradition that when a party comes to power, they take control of everything including the judiciary. This deeply rooted tradition helped the AKP government, in power for 15 years, take more control in the judiciary.

As a result of institutional reforms and criminal applications initiated by the executives, the executives began to take control of the judiciary since 2014. Executives have taken steps towards purging the judges perceived to have affiliations to interests other than those of the governing party. The government accused a pro-associated Gulen Cemaat (known as an Islamist-social movement) of being a terrorist group. The government claimed the Cemaat by taking part of all ministries. Because of this allegation, the government, including the Ministry of Justice, have justified the arrest, prosecution and disciplinary measures against judges since 2014 as a purge of Cemaat interests, which had sought to infiltrate and seize control of the judiciary, as well as other core State institutions, to further their own interests (Ministry of Justice, 2015). The AKP government took advantage of this situation and got an under control the Ministry of Justice. These controls have been creating an unprecedented level of pressure, distrust, fear, and division in Turkish Judiciary. Without these explanations, nothing can be found to prove that the Turkish legal system suits democracy. According to European Commission, “There are alarming signs that this has already led to manipulation of the judicial system on political grounds, including to target government opponents, or to criminalize and prosecute criticism of the government” (Human Rights Watch, 2015, p. 9,23,64).

As reported by the UN Basic Principles on the independence of the judiciary, “Judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason” (United Nation Office if the Human Rights, 1985, Chapter 2).

The President’s last expressions and statements against freedom instill fear in the public and Turkish democracy. After the Turkish Constitutional Courts gave the decision to release two journalists, considering their rights to liberty and freedom of expression, the president stated, “I do not respect Constitutional Courts following decision about the journalist” (BBC Turkce, 2016).

In this environment, we can say that judicial systems are purported to be compatible with democracy; however, as tradition shows, the Turkish government does not lead the system to work perfectly. Contrary to Turkey, because the separation of power between the government and the judiciary in the USA is the foundation of the system, the judicial system is a supporter of the democracy (Milliyet, 2016). The United States’ system is parallel to a universal system. As stated in UN Basic Principles: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. All governmental and other institutions must respect and observe the independence of the judiciary” (United Nation Office if the Human Rights, 1985, pt. 1).

**The influence of the Executive on the HSYK**

Because the Turkish Constitution was written by the military after the coup in 1980, it had so many restrictions on freedom until 2010. Stating that situation, the AKP government under the leadership of Erdogan made changes to the constitution in 2010. The goal was to make Turkey more democratic and more respectful of human rights. However, by reversing the gains from the constitutional reforms, the government undermined the independence of judicial system.

According to the 2010 constitutional amendments, the head of the HSYK and former Undersecretary of the Ministry of Justice will retain their position; however, their election (which is stated above) only depends on the president from that day. The majority of judges will be appointed by their colleagues. If they would like to keep their seat, they need to show a candidate who has parallel ideas to the government. Before these amendments, HSYK had more power on elections. HSKY has opposed the AKP government. In either case, because of traditional politicization in Turkey, there was no powerful checks and balances system. It did not oppose the controversial discussions in this issue contradicting the international guidance on the formation of the Judicial Councils but put an electoral system in the HSYK by all the ranks of the judiciary—a significant majority of HSYK members and their peers following international standards. Before accepting these amendments, the HSYK consisted of only seven regular and five full members, with only two substitute members. All of these have been appointed by the Chief Public Prosecutor by nominees nominated by the Supreme Court of Appeals and the Council General Assemblies. After the 2010 amendments to the Constitution, the Ministry of Justice's influence on the composition of the HSYK was theoretically rather limited. Importantly, the 2010 Constitutional amendment established the administrative and budgetary autonomy of the HSYK from Execution. The HSYK has its budget and own staff and building according to the High Council Act of Judges and Prosecutors adopted in 2010.

There was another legislative amendment in 2014. These amendments allowed the ministry of justice to take control of the HSYK. It took away the independence of the judiciary. Although the HSYK made a statement and criticized the government decision on the HSYK, the 2014 amendments had given power to the Minister of Justice to become ex officio president of the HSYK.

With these amendments, the power of the president for disciplinary investigations of judges was increased. The minister of the judiciary also had the power to make new appointments for the judges. Despite all of this, the constitutional court of Turkey had abolished these amendments based on article 159 of the constitution of Turkey.

In 2014, elections of HSKY members were made. The observation showed that the Ministry of Justice affected the elections. As reported by International Commission of Jurists (ICJ), that election-platform was used for government supports. As a result of these allegations, members of HSYK can be thought that they are the supporter of the AKP government. The ICJ’s report, the political environment, and the judge’s decisions support this result. It is necessary to accept that no judiciary independence exists in Turkey not because of judicial system but because of the influence of government on the judicial system.

Contrary to Turkey, the US system is correlated to international standards. Although the judges are appointed by the president in the US, the approval of the Senate is a must. This checks and balances system protects the judicial independence. After selection of the judges, they work lifelong. It allows that they do not need to follow any side party’s side. This year, 2014 roves that the president has almost no power on the judicial system. The judge had stopped the prohibition of the entrance from seven countries based on the constitution. With the independence of the judiciary, the USA protects its democracy.

**Conclusion**

The independence problem of the Turkish judiciary has been continuing for many decades. As it is claimed in my hypothesis, some of the writers and researchers indicate because Turkey’s judicial system is not enough to maintain democracy, Turkish democracy is about to disappear. However, my research demonstrates that there is no problem with the Turkish judicial system; rather, the problem is the politicization of the judicial system. After 2014 the governing body of the judiciary and the independence of the HSYK has diminished. The Ministry of Justice holds all power in its hands. This has serious consequences for judicial independence. Because judicial independence means the protection of democracy, Turkey’s democracy was compromised when judicial independence was weakened.

Although my hypothesis was falsified, the research shows that the most important effect of the judicial system on democracy in judicial independence.

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