

Turkey's Fight Against Corruption: A Critical Assessment

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This paper aims to analyse Turkey's anti-corruption policy in the context of the country's integration with the European Union (EU). It examines the major corruption scandal in December 2013 as a case to assess whether Turkey is well equipped to confront the expanding political corruption. It starts by setting the scene of the scandal of last December, arguing that after the revelation of the corruption scandal, the cases essentially got bogged down and had negligible political consequences. The scandal led to the dismissal of certain police and judicial officials, but the charges against the remaining 53 suspects in this major corruption case have been dropped by the Public Prosecutor. The paper seeks to explain this corruption scandal in the context of the current legal anti-corruption framework, assessing the framework's inadequacies and how these could be remedied. As will be underlined, despite the improvement of the legal framework to combat corruption, there has been little or no implementation of a series of administrative measures issued by governments and major anti-corruption treaties signed after the economic crisis of 2001.

1. An Overview of the Recent Corruption Scandal in Turkey

Turkey's political setting was recently shaken by two successive waves of police operations conducted by the Financial Crimes and Battle Against Criminal Incomes Department of the Istanbul Security Directory on 17 and 25 December 2013. In the first wave, the police detained 47 people and confiscated 17.5 million dollars. In addition

to many officials from the Housing Development Administration (TOKI), the Ministry of Environment and the District Municipality of Fatih, high-level figures related to a number of important ministers in the current government were detained.¹ The investigation found Egemen Bağış – Turkish Minister of EU Affairs at the time – to be a potential suspect for bribery in conjunction with Reza Zarrab, an Azeri businessman with Iranian origins residing in Istanbul and with business affiliations with another Iranian citizen, Babek Zencani. Moreover, police found 4.5 million dollars at the residence of Süleyman Aslan, general manager of Halkbank, and another 750,000 dollars at the residence of Barış Güler, son of Muammer Güler, Turkey's Minister of Interior. The court ordered the arrest of 14 people including Barış Güler, Kaan Çağlayan, Süleyman Aslan and Reza Zarrab on counts of bribery, corruption, fraud, money laundering and smuggling gold. In total, 91 people were detained in this investigation.

According to the Istanbul Public Prosecutor, two of the three probes launched on 17 December related to violations of construction laws and the coastal law. Civilians and public officials were accused of malpractice and bribery. In the first raid, the Azeri businessman Zarrab

¹ These included: Barış Güler (son of the Minister of Interior, Muammer Güler); Kaan Çağlayan (son of Economy Minister, Zafer Çağlayan); Oğuz Bayraktar (son of the Minister of Environment and Urban Planning, Erdoğan Bayraktar); Mustafa Demir (the mayor of the district municipality of Fatih); Ali Ağaoğlu (a prominent real estate businessman and owner of one of Turkey's largest construction companies); Süleyman Aslan (the general manager of Halkbank); and Reza Zarrab (an Iranian businessman residing in Istanbul).

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was accused of running a crime ring, paying bribes to Cabinet members to cover his money transactions while securing Turkish citizenship for his relatives and affiliates participating in the alleged crime ring. Zarrab was accused of transferring gold to Iran in exchange for money in 2012 with the help of his relations with a number of top Turkish politicians. After the money was seized in Russia, Zarrab used Turkey's state-owned bank Halkbank to send and receive money. As mentioned above, police seized 4.5 million dollars in cash as part of a fraud and bribery raid in Süleyman Aslan's house. According to police, the illegal transactions with Iran could amount to almost \$10 million. The second probe relates to illegal construction permits given to firms in exchange for bribes. Within the framework of this probe, police detained Oğuz Bayraktar (the son of Environment and Urbanization Minister, Erdoğan Bayraktar), construction tycoons Ali Ağaoğlu, Osman Ağca and Emrullah Turanlı and public officials Sadık Soylu (adviser to the Minister of Environment), Mehmet Ali Kahraman (General Manager of the Environment Ministry), Murat Kurum (Emlak Konut GYO General Manager), Ali Seydi Karaoğlu (TOKİ Istanbul estate department head), Turgay Albayrak (Environment Ministry planning official), Yavuz Çeli (TOKİ city planning branch head) and 14 others. The third probe included allegations of construction permits given to a firm by Istanbul's Fatih Municipality, despite reports showing that this construction would threaten the safety of the newly built *Marmaray* tunnel crossing the Bosphorus. Thirty-two people including Fatih Mayor Mustafa Demir and Sevinç Doğan (the owner of the RCI architecture and design firm) were among those arrested. It was alleged that a gang worked with the municipality to get permission for construction projects on protected natural sites within the municipality's borders.

Another investigation was planned for 25 December. The list of suspects included Prime Minister Erdoğan's sons, Bilal and Burak Erdoğan, and a number of Al-Qaeda affiliates from Saudi Arabia such as Sheikh Yaseen Al-Qadi and Osama Khoutub. Police officers in the Istanbul Security Directorate, newly appointed by the government after the first wave of investigations, refused to carry out their orders however and the Deputy Director of Public Prosecutions did not approve the new operation. Prosecutor Muammer Akkaş, the man behind this second investigation, was dismissed on the same day. Moreover, at midnight on 7 January, the government removed 350 police officers from their posts, including the chiefs of the units dealing with financial crimes, smuggling and organised crime, and prevented the prosecutor and police from conducting their investigations. Prime Minister Erdoğan, claiming that he was the ultimate target of the corruption probe, described the corruption investigations as a "judicial coup." After their sons were detained in relation to the probe, the three ministers whose names were cited above resigned and on 25



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December 2013 Erdoğan had to reshuffle his Cabinet, replacing 10 ministers. From the beginning of the investigation, the government started a purge in the police force, sacking dozens of police chiefs, including Huseyin Capkin, Istanbul's Chief of Police.

Blaming the investigation on an international conspiracy and threatening the American Ambassador in Ankara with expulsion, Erdoğan also accused Islamic community leader Fetullah Gülen of being behind the investigation. The detainees of the corruption probe were subsequently released but the purges continued and even extended as Erdoğan launched a revenge campaign targeting followers of the Gülen community, many of whom are said to hold key positions in the secret services, the police and the judiciary. While the opposition Republican Peoples Party (CHP) and the Nationalist Action Party (MHP) accused the government of trying to influence the judiciary to cover up the corruption scandal, the Justice and Development Party (AKP) proceeded to win local elections in Turkey on 30 March 2014 and Erdoğan was subsequently elected President of the Republic on 11 August 2014. While the corruption scandals seem to have affected the AKP's vote share and Erdoğan's popularity, as shown by the results of both local and presidential elections, their effects were not sufficient to create a major overhaul in Turkish politics, let alone a full-blown government crisis.

It seems that Erdoğan's strategy of personalising the crime investigations while describing them as an international conspiracy against his person and his party succeeded in convincing voters to rally behind him while the main opposition parties were unable to challenge Erdoğan in the elections. On 22 July 2014, more than 100 members of the police force were detained in a large-scale operation in 20 provinces based on allegations of spying and illegal wiretapping. However, as had been the case previously, the operation was widely believed to be an act of revenge by the government against the corruption probes as most of the police officers detained were involved in the major graft operation of 17 December. The suspects were accused of falsifying official documents, abuse of authority, illegal wiretapping, illegally obtaining

documents related to state security and violations of communication privacy.

Since the graft operations of December 2013, the government has claimed the existence of a “parallel structure,” referring to Gülen community members in the bureaucracy aiming to overthrow the AKP regime. Prime Minister Erdoğan appointed penal judges, referred to as “super judges,” to carry out a legal operation against them. With extraordinary powers granted through a recently approved omnibus law introduced by the AKP, these judges have broad powers over investigations and the rulings of other courts. More than 40,000 police officers, civil servants, judges and prosecutors have been reassigned for no official reason other than their suspected links to the Gülen community.² Often described by observers as a “witch hunt,” the arbitrary reassignments seem likely to be yet another example of the government’s attempt to take revenge on the police cadres involved in the corruption investigation of 17 December 2013. Finally, the Public Prosecutor, arguing that the evidence was not admissible in court as it was not collected legally, dropped the charges against the remaining 53 suspects, including the sons of former ministers and Turkish-Iranian businessman Reza Zarrab.

As the corruption scandal got bogged down in the sand, it became a symbol of wider problems in combating corruption in Turkey, raising the question of whether Turkey is well equipped to confront the expanding political corruption in the country on the structural level.

2. An Assessment of Turkey’s Fight Against Corruption

The formulation of a decisive anti-corruption policy in Turkey is particularly linked to the country’s deteriorating economic and political situation in the early 1990s. Turkey’s collapsing economy, culminating in the financial crisis of 2001, coupled with the emergence of a European perspective with the EU decision at the Helsinki Summit in 1999 to officially accept Turkey as a membership candidate, played an important role in this process. The *Transition Program to a Strong Economy in Turkey*, issued in April 2001, stressed the need to strengthen good governance through preventing politically motivated interventions in the economy. The financial crisis was a breaking point in Turkey’s fight against corruption. In the aftermath of the crisis Turkey moved to ratify major international and European conventions in the area of preventing corruption and increasing transparency and adopted anti-corruption policies in key areas such as the banking and energy sectors. The financial crisis showed that the government, media, energy, construction and

health sectors were the most affected by corruption. Turkey has since become more receptive to outside pressure not only in the areas of democracy and human rights but also in such areas as public administration reform and the struggle against corruption. Before 1999 there was already a sufficient legal basis to prosecute corruption in Turkey, with three legal arrangements being of particular relevance: the Law No. 4422 (30 July 1999), providing measures to fight against Interest Based Crime Organizations; Article 313 of the Turkish Penal Code (13 March 1926), penalising any kind of organisation established to commit crime; and the Law No. 1918 (7 January 1932), related to the Banning and Prosecution of Smuggling Activities. Moreover, The Law No. 3628 on Asset Declaration and the Struggle against Corruption and Unlawful Actions (19 April 1990) and the Law No. 4208 on Money Laundering (13 November 1996) can also be considered in this context.

When assessed from a long-term perspective since 2001 crisis, Turkey appears to have made significant progress at least in the formal policy-making and implementation realms. In addition to recognising international commitments in this area by signing and ratifying a series of important international treaties, successive Turkish governments mainly formed by the AKP have established various agencies focused on the fight against corruption, such as the Financial Crimes Investigation Board (MASAK). In particular, the EU accession process brought Turkey’s anti-corruption strategy to the forefront of the government’s policy agenda and pushed it to engage in reforms meant to strengthen the integrity of bureaucratic and political structures.³ Under EU pressure, Turkey entered international commitments in the fight against corruption by signing the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as well as the Council of Europe Criminal Law Conventions on Corruption. Turkey also participated in the monitoring of anti-corruption measures, affected by the OECD Working Group on Bribery in International Commercial Transactions. Since 2007, Turkey has fully implemented all but one of the recommendations made by the OECD Working Group on Bribery by re-establishing an anti-bribery law on corporate liability, which will hold Turkish companies accountable for bribery in their international business transactions, actively enforcing the Turkish offence against foreign bribery, adopting specific legislative and regulatory provisions, including instituting new laws to protect whistle-blowers. Moreover, Turkey has also ended tax deductions for foreign bribe payments and promoted awareness and training courses on the dangers of bribing foreign public officials in international business

2 Günel Kurşun, “Corruption, Police and Detentions”, *Today’s Zaman*, 7 September 2014, http://www.todayszaman.com/columnist/gunal-kursun/corruption-police-and-detentions_357948.html.

3 European Commission, *Regular Reports on Turkey* (2004, 2005, 2006, 2007, 2008, 2009, 2010), <http://ec.europa.eu/enlargement/countries/strategy-and-progress-report>.

deals.⁴ Beyond economic concerns and the necessity of administrative reform, security concerns have also played a crucial role in boosting anti-corruption policy. Reports by the Department of Anti-Smuggling and Organized Crime underlined that corruption takes place in two major areas: public procurements in which public resources are exploited for personal gain, and corruption by criminal organisations that seek to launder large amounts of money and avoid criminal proceedings.⁵

While Turkish authorities can therefore draw on a large range of institutional and legal frameworks to combat corruption in the country, the main problem still revolves around the proper implementation of these laws. Despite these institutional improvements, the 2008 *Global Integrity Report*, providing an integrity score for countries based on an analysis of twenty international datasets from the World Bank, United Nations, UNDP and Transparency International among others, scored Turkey as “69-Weak.” The latest Global Integrity report on Turkey, dated 2010, shows no major change in the country’s situation, scoring Turkey as “68-Weak.”⁶ The latest report underlines that the legal framework score of Turkey’s integrity system is relatively good with a score of “75-Moderate;” however, the report also shows that Turkey is particularly lacking in the implementation realm with a dramatic score of “57-Very Weak.”⁷ The report particularly underlines the extremely weak situation in terms of the media’s ability to report on corruption with a score on “55-Very Weak.” The report points to the limited effectiveness of anti-corruption mechanisms in the implementation phase, despite legal improvements.

The *Corruption Perceptions Index* (CPI) of Transparency International produced similar results. Turkey’s score increased from 3.6 in 2001 to 4.6 in 2008 and remained 4.4 in both 2009 and 2010 until it decreased to 4.2 in 2011. In its meeting held in Paris on 16-19 March 2010, the OECD Working Group on Bribery concluded that Turkey’s progress in its efforts to combat bribery in international business deals was impressive. This is particularly due to the expanding amount of legislation related to the fight against corruption. The CPI report shows Turkey

moving from the rank of 61 in 2009 to 56 in 2010, but in 2011 it returned to the position 61 out of more than 175 countries. All these indexes and similar reports demonstrate that corruption has been a widespread phenomenon in Turkey and continues to be a major problem in the country. With this score of 61 in 2011, Turkey is still better placed compared to the Balkans states, Central Asian countries and some EU member states such as Greece, Italy, Romania and Bulgaria.⁸ However, this started to change as Turkey scored 49 in 2012⁹ and 50 in 2013,¹⁰ approaching highly corrupt countries. In its progress report of 2013 *Assessing Enforcement of the OECD Convention on Combating Bribery*, the Transparency International situates Turkey among the 20 countries with limited or no implementation category.¹¹ Underlying that there have been six investigations commenced in Turkey since 2009, Transparency International asks Turkey to do the following: provide adequate funding and staffing for enforcement activities; establish effective reporting channels and procedures for protection of whistleblowers both in private and public sectors; and provide for independent reporting channels to build enough trust to receive reports from whistleblowers and from companies that have been victims of extortion and solicitation of bribes.

Over the past years, however, there has been an observable paralysis and backwards slide in Turkey’s fight against corruption, a trend that became particularly visible after the start of the accession negotiations in October 2005. This actually relates to the declining EU leverage over Turkey. As in all other areas of political reform, the open-ended nature of the accession negotiations and the referendum clause added to them have had an important impact on Turkey’s fight against corruption. The EU was not able to recover its declining credibility among the Turkish public, and politicians benefited from this. The previous reforms were done under time pressure and the expectation of starting (and concluding) the accession negotiations with the EU. Especially after the start of the accession negotiations, the negative signals coming from EU circles including the idea of offering an ill-defined “privileged partnership” as an alternative to full EU membership contributed to the EU’s declining legitimacy in Turkey. The situation worsened with the suspension of the eighth negotiation chapters in December 2006 as a result of the Greek Cypriot veto. Another chapter related to Turkey’s convergence towards European economic criteria was suspended by the French veto. The declining

4 “OECD: Türkiye rüşvetle mücadelede adım atıyor”, in *Radikal*, 26 March 2010, http://www.radikal.com.tr/ekonomi/oecd_turkiye_rusvetle_mucadelede_adim_atiyor-987793; OECD Working Group on Bribery in International Business, *Turkey: Follow-up Report on the Implementation of the Phase 2 & Phase 2bis Recommendations*, 19 March 2010, <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/44866155.pdf>.

5 See reports for 2008 and 2009 in the Turkish Department of Anti-Smuggling and Organized Crime (KOM) website: <http://www.kom.pol.tr/Sayfalar/Raporlar.aspx>.

6 “Integrity Scorecard: Turkey 2008”, in *The Global Integrity Report 2008*, <https://www.globalintegrity.org/global/the-global-integrity-report-2008/turkey>.

7 “Integrity Scorecard: Turkey 2010”, in *The Global Integrity Report 2010*, <https://www.globalintegrity.org/global/the-global-integrity-report-2010/turkey>.

8 Transparency International, *Corruption Perceptions Index 2011*, <http://shar.es/1X2uga>.

9 Transparency International, *Corruption Perceptions Index 2012*, <http://shar.es/1X2ucc>.

10 Transparency International, *Corruption Perceptions Index 2013*, <http://shar.es/1X2uCb>.

11 Transparency International, *Exporting Corruption: Progress Report 2013 Assessing Enforcement of the OECD Convention on Combating Bribery*, 7 October 2013, <http://shar.es/1X27me>.

emphasis on anti-corruption policy in Turkey also was affected by this negative climate in Turkey-EU relations.¹²

Conclusion

While the ambiguous character of relations between Turkey and the EU negatively affected Ankara's efforts in the anti-corruption realm, there are other reasons caused by the particularities of Turkey's politics and political structure as well. We can underline the following points: lack of coordination among the major institutions responsible to fight corruption; very strong immunity regulations for leading public officials making it impossible to hold them legally accountable for their actions; asset disclosure records of officials unavailable to public; virtually non-existent whistle-blower protections; and the intimidation and harassment of journalists investigating corruption.¹³ Currently, the role of the media in overseeing the government's activities, which was a crucial matter in the aftermath of the 2001 crisis in order to set the agenda for clean and good governance, has been extensively weakened. The gradual consolidation of the one-party government led by the AKP was the primary reason for the political involvement in the cases reaching such extreme levels. There are various symbolic cases that illustrate how the AKP government "fights" corruption by systematically forcing the opposition media outlets into a blackout, which often comes in the form of self-censorship.

Furthermore, the parliament can establish investigative commissions to examine corruption allegations concerning Cabinet ministers for the Prime Minister. A majority vote is needed to send these cases to the Supreme Court for further action. This particularly highlights the problems related to the Financial Crimes Investigation Board (MASAK) and other inspection agencies: almost all the public institutions have to preserve their own integrity. In its assessment of Turkey published in October 2011, the EU underlines that "there was no increase in the strength or independence of institutions involved in the fight against corruption, which are not sufficiently staffed."¹⁴ Together with the extensive

immunity rights granted to deputies and senior officials, financing political parties and funding elections continue to be the central themes of corruption allegations.¹⁵ In addition to the lack of progress in the implementation of two major sets of GRECO recommendations on "Incrimination" and "Transparency of Party Funding," there has been no progress concerning the transparency of financing political parties, their auditing still remains very weak and there is no legal framework for auditing election campaigns or the financing of individual candidates.¹⁶ Devoting significant space to the latest corruption cases and the importance of a proper and fully transparent investigation into the corruption allegations in its latest conclusions on Turkey, the European Commission stated that "the response of the government following allegations of corruption in December 2013 has given rise to serious concerns regarding the independence of the judiciary and separation of powers."¹⁷

In conclusion, we also have to underline the lack of coordination among the bodies dealing with combating corruption, causing major loopholes in this context. In Turkey, the chief executive bodies dealing with anti-corruption policies are various and include the Inspection Boards in the Prime Ministry and the Ministry of Finance, the Ministry of Justice and the Ministry of Interior. There are special branches in the State Planning Office and the State Supervision Institute in the President's Office. Currently the Prime Ministry's Inspection Board is responsible for investigating major corruption cases. Nearly every state agency has its own inspector corps responsible for investigating internal corruption. However, as underlined above there is actually no real centre for anti-corruption policy like we see in some accession countries to the EU in Central and Eastern Europe. The central problem appears to be the lack of coordination among the existing mechanisms and bodies of anti-corruption. This prevents the formulation of a coherent strategy and decisive governmental effort towards this specific goal.

12 Interviews conducted by the author with public officials in the EU branches of various ministries in Ankara.

13 "Integrity Scorecard: Turkey 2010", cit.

14 European Commission, *Turkey 2011 Progress Report* (SEC(2011)1201), 12 October 2011, p. 19, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011SC1201>.

15 Transparency International, *Overview of Corruption and Anti-Corruption in Turkey*, 27 February 2014, <http://shar.es/1X24Tg>.

16 European Commission, *Turkey 2011 Progress Report*, cit., p. 19.

17 European Commission, *Enlargement Strategy and Main Challenges 2014-15* (COM(2014)700), 8 October 2014, p. 27, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52014DC0700>.