

## Reforming Security and Justice sectors between Algeria and Turkey

### اصلاح قطاعي العدالة والأمن بين الجزائر وتركيا

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#### الملخص:

ما من شك أن هناك عناصر مشتركة عديدة جمعت بين الجزائر و تركيا فيما يخص قطاعي العدالة و الأمن، على الأقل قبل بداية الألفية الثالثة، فكلا البلدين عرفا الانقلابات العسكرية، حيث أدارت السلطات العسكرية قطاعي العدالة و الأمن.

غير أن تركيا حققت قفزات نوعية فيما يخص إخضاع العسكريين لسلطة المدنيين المنتخبين، و نحن كأجانب ملاحظين، نرقب نتائج كل ذلك في الانقلاب العسكري الأخير الذي فشل، ومن المؤكد أن الوصول إلى هذه النتيجة لم يكن بالأمر الهين، فقد تداخلت لتحقيق ذلك إصلاحات سياسية، قانونية و اقتصادية.

و يستهدف هذا المقال استكشاف الإصلاحات السياسية و القانونية للوصول إلى عدالة مستقلة و قطاع أمني تابع بالكامل لسلطة المدنيين المنتخبين، و لا شك أن الجزائر في أمس الحاجة إلى مثل هذه التجربة، وهو إذ يقارن بين تجربتي تركيا و الجزائر، يربط كل ذلك مع التحول الديمقراطي في كلا البلدين، و قد ركز المقال على قطاعي العدالة و الأمن من منطلق كون هذين القطاعين من أعمدة الأنظمة الاستبدادية، و يشكل إصلاحهما مدخلا مهما من أجل نجاح أي تحول ديمقراطي.

**الكلمات المفتاحية:** إصلاح قطاع العدالة، إصلاح قطاع الأمن، التحول الديمقراطي، الجزائر، تركيا.

#### Abstract:

There is no doubt that the justice system and the security sector between Turkey and Algeria have many common elements, At least before the beginning of the third millennium, The both Countries have known military coups, where the actual military authorities have ruled the judiciary and security.

But Turkey has made giant strides in subjugating the military to the elected civilian, We, as foreigners, see the result of all this in the failed military coup. But this way has not been easy. It has been intertwined to achieve its impressive results: political, legal and economic reforms.

Through this Article, I would like to explore Turkey's legal and political reforms to reach an independent judiciary and a "security sector" fully subordinate to the elected civil authority, and there is no doubt that Algeria is in dire need of this experience.

I claim that this is the first research of this topic will study and compare between Turkish and Algerian cases focusing on justice and security sectors, and especially linked all that with democratic transition, and the Article's creative aspect is that it combines two important sectors that represent the stick of tyrannical regimes: the justice and security sectors, whose its reform is seen as opening the way to genuine democratic transition.

**Key words:** Reforming Justice Sector, Reforming Security Sector, Democratic Transition, Algeria, Turkey

## 1- Introduction:

There is no doubt that the justice system and the security sector between Turkey and Algeria have many common elements, At least before the beginning of the third millennium, The both Countries have known military coups, where the actual military authorities have ruled the judiciary and security.

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The paper focuses on studying the Turkish experience and comparing it with international standards on security and justice sectors reforms, and examine the possibilities of applying this to the Algerian situation.

Through the title of the research it is clear that several fields of knowledge overlap in, as: the sciences of law (especialy: international law, Constitution law, Administrative law), management science (especialy: governance, quality Management), security sciences, Political Science ( especialy: Democratization, Political systems).

The completion of this paper will ensure the preparation of the academic ground for the transfer of the Turkish experience to Algeria in relation to the subject of the research.

As for methodology, the paper is based on the need to review the literature written in English, Arabic and French.

This paper will combine as research methodology: descriptive, analytical, historical, comparative methods.

This paper is feasible because it stems from attempts to explain the success of Turkey economically and politically and linked it to the reform of the justice and security sectors, with reference to relevant international standards and to diagnose the situation of Algeria and describe ways of benefiting from the Turkish experience.

The paper is also useful because it stems from a reality that has been achieved in Turkey to an unfulfilled hope for Algeria.

## 2- Literature Review and Theory :

Methodologically, it is essential for any researcher in the field of security and justice reform, to begin by the United Nations perspective, as an international standards, in this context we refer to the report of the Secretary-General on SSR (A/62/659), which defines the security sector as “ a broad term often used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security in a country. It is generally accepted that the security sector includes defence, law enforcement, corrections, intelligence services and institutions responsible for border management, customs and civil emergencies. Elements of the judicial sector responsible for the adjudication of cases of alleged criminal conduct and misuse of force are, in many instances, also included. Furthermore, the security sector includes actors that play a role in managing and overseeing the design and implementation of security, such as ministries, legislative bodies and civil society groups. Other non-State actors that could be considered as part of the security sector include customary or informal authorities and private security services”.

Based on this definition, security sector reform is a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law<sup>1</sup>.

With regard to Justice Sector Reform, the EU directives and practices on this issue are considered as most important reference in our research, where there are dozens of documents that address on the EU advancing priorities such as independence and impartiality of the judiciary, effectiveness and efficiency, and administration.

After identifying international standards, it is very useful to address the historical development, and the current description of the justice and security sectors in Algeria and Turkey, in order to detail this point, there is a several references written in English, French and Arabic languages<sup>2</sup>.

The main part of this paper focus on the process of reforming security and justice sectors between Turkey and Algeria, subject which we can find dozens of reports, articles and books written around it, in English language concerning Turkish system, and in Arabic and French languages concerning Algerian system. For examples: the work of Meltem Müftüler-Baç entitled: Judicial reform in Turkey and the EU's political conditionality , published on Maxcap working paper series No. 18, January 2016, within this work the author try to investigate the process of judicial reform in Turkey in the last 15 years, with a focus on the reversal of such reforms since 2013. To do so, the paper asks whether and to what extent these reforms as well as their changing pace and direction have been driven by the political conditionality of the EU and its credibility, on the one hand, and the domestic costs of adaptation, on the other. While the European Union accession process mattered greatly for the Turkish political transformation, it has been by no means the sole determinant of political changes. There are multiple factors shaping Turkey's initial compliance with the EU's political norms, and later their reversal including political costs of adaptation and veto players. The paper aims to explore this (mis)fit and the extent to which the EU's credibility in its membership conditionality mattered in terms of Turkey's path of reforms. The key proposition in the paper is that the EU's lack of credibility combined with increased domestic material costs of judicial reforms at home triggered the backsliding and the reversal of judicial reforms in Turkey. It not only sheds light on the interplay of the EU's credibility and

the high domestic costs; the paper's findings also challenge the emphasis of the literature on EU conditionality and the EU's role as an external anchor even when accession negotiations stalled as in the Turkish case.

There is also a very important study published by the International Commission of Jurists in Switzerland, in 2016, entitled Turkey: the Judicial system in peril, this paper analyses the current state of the independence of the judiciary and prosecution service, and threats to the security and independence of lawyers in Turkey, in light of applicable international law and standards. It draws on a research mission to Turkey conducted by the International Commission of Jurists (ICJ) in December 2015. The mission visited Istanbul and Ankara, and met with lawyers, NGOs, associations of judges, bar associations, the High Council for Judges and Prosecutors (HSYK), and the Ministry of Justice, as well as academic experts and international organizations.

In Algeria, there is a few resources written on the topic of Justice reform, in arabic and french languages, despite the intensive propaganda by the government for marketing its formal reforms in the justice sector, any way, we can mention some references like the article written by Dr. Tachour Abdelhafid in Law, Society and Authority Journal, entitled : Justice Reform in Algeria: Perspectives and Prospects, which deals with the issue of justice reform in terms of international experience in this area, first addressing the experience of the Council of Europe in general, and then the experience of the Netherlands as a model for outstanding reforms in Europe. And then to the Algerian experience in the area of justice reform and evaluation of these reforms.

We have also an article entitled : The independence of the judiciary as the most important right to litigate, written by Dr. Mesrati Salima, in the Journal of Jurisdiction, which focus on the technical concepts that ensure the reform of justice sector.

Generally, the literature dealing with Security Sector Reform is more prolific than those dealing with the reform of justice sector, perhaps because of the monopoly of the use of violence given by the form of the modern State, to the security services, so making more important for researchers.

For the literatures on security sector reform in Algeria, we find a good study realized by Khellaf Mohamed and Boustila Samra in arabic language, entitled : Reform Security Sector : Study on Algerian experience, published in Algerian Review for Security, No 8, 2016. Then its authors try to say how is the security sector reform pererspective support the democratic transition in Algeria? This study relies on the social logic for analysis, if we thought that security sector institutions has a social structure, and has their own inter-subjectivity background of roles such us ( arrest, eavesdropping, physical liquidation, investigation...), institutions can learn and mature, the physical liquidation in nineties era became in Algerian case unconvincing, and has been changed to containment. And as results this study argues that several problems like: statehood, military then civil, civil society withdrew, the selectivity of security sector the raison of uncompleted reform.

Concerning literatures on Turkish's SSR, it is clear that the references dealing with Turkey are more than those of Algeria, due of many reasons, we will explain it bellow. As example of most important reference on the topic of SSR, we find the study of Onur Sazak and Nazeli Selin Ozkan entitled : Turkey's Contributions to Security Sector Reform (SSR) in Conflict-affected Countries published on 2016 by Istanbul Policy Center, we find also an extensive study of 128 pages entitled : Democratic Oversight of the Security Sector : Turkey and the world, written by a group of authors

under the supervision and the edition of the Geneva Center for the Democratic Control of Armed Forces (DCAF), this study focus on the openness of the security bureaucracy to the control and participation of civilians in terms of ‘transparency’, ‘accountability’ and ‘superiority of civilian constitutional system’, this is the key words of the new democratic understanding. However, in order to make this tendency a reality, we need more institutions and activities encouraging “confident, well informed civilians with capacity” to come forth. control and oversight environment among the civilian and the military units of security bureaucracy and representatives of public, media and independent strategy or civil society organizations. The objective of prioritizing democratic civilian principles over the security bureaucracy does not simply mean an abstract target of democratization or a mechanical fulfillment of the requirements of the European Union. We need to solve problems such as the lack of cooperation, or the existence of destructive competition between the units of the security sector/bureaucracy, their lack of productivity and their isolation from the public. Concurrently we could hope to establish a model whereby there would be cooperation, dialogue and negotiation between civilian politicians and security bureaucracy, and that this relation will be based on sharing equal information. We are in a transition period into a system and practice giving priority to the principle of parliamentary political system, without ignoring the importance of military perspectives in formulating defense and security policies and evaluating new threats. This book and this meeting shall be considered as constituting a seemingly small, but substantively giant step towards this objective.

Adding to the above two references, it is necessary to cite another two important references, the first was written on 2010 by Hale Akay and had the title: Security Sector in Turkey: questions, problems, and solutions. The second entitled : Turkey’s Security Sector after July 15: Democratizing Security or Securitizing the State ? written by Metin Gurcan and Megan Gisclon, recently in 2017.

### 3- Hypotheses :

Several centuries ago, Ibn Khaldun said: Justice is the foundation of ruling, and within modern concepts we can say that the Justice Sector gives to us the best index to evaluate political systems in any State, and in the transition periods from tyrannical regimes to democracy, there is no doubt that the efforts should focus on reforming justice sector, in addition to that, reforming security sector, which used usually by tyrannical regimes to practice repression and intervention in political life, without any tools of subjected it on oversight and accountability.

This paper is based on the hypothesis that it is impossible to achieve any democratic transition without strict review and reform of the security and justice sectors.

Internal and external actors play a prominent role in supporting democratic transition, which is at the forefront of internal (domestic) factors : the presence of an active civil society and a vibrant political class, as well as in the forefront of external factors we find the supporting regional blocs, in the sense of the factor of geography and geopolitical alliances, and it is noted that Turkey provides the two factors, while Algeria was not lucky in this context, here we can adding two hypotheses for this paper.

The first concerns the impact of the fragility of civil society in Algeria and the total collapse of the political class over the past 20 years, in addition, there are no regional blocs supporting democracy, and there is no doubt that the League of Arab States is not the appropriate incubator, all this has negatively affected any reform of the justice and security sectors in Algeria.

The second concerns the strength of civil society in Turkey, the existence of a strong political class, and the supportive regional framework, which is a requirement for accession to the European Union. This has a positive impact on the reform of the justice and security sectors.

## Methodology and Data Collection:

As for methodology, this paper is based to review the literature written in English, Arabic and French, and will combine as research methods between:

- Descriptive method: To describe the current structure of the security and justice sectors between Turkey and Algeria, as well as to read the relevant legal texts.
- Analytical method: We use it to analyze the content of texts and procedures adopted in reforming the justice and security sectors
- Historical method: By reviewing the historical development of the security and justice sectors, the history of military coups, attempts at democratic transition, the development of civil society and political forces, the attempts of Turkey's accession to the European Union
- Comparative method: In order to compare Algeria and Turkey on the issue of security and justice reform, on the one hand, and the comparison of the two experiences with international standards on the other.

To realize that methodology approaches, we propose this work plan of 8 points:

- 1- Security Sector between Turkey and Algeria: Origin and History.
- 2- Justice sector between Turkey and Algeria: Origin and History.
- 3- The impact of military coups on the security and justice sectors in Turkey and Algeria.
- 4- Security Sector Reform (SSR) within International standards.
- 5- International standards for the governance of the justice sector
- 6- Reforms of the justice sector between Turkey and Algeria
- 7- Security sector reforms between Turkey and Algeria
- 8- Why did Turkey advance and Algeria was delayed?

## 4- Analysis and Discussion of the Findings :

### 4.1- Security Sector between Turkey and Algeria: Origin and History:

In order to discuss the issue of security sector reform in Algeria, it is necessary to return to the roots of the civil-military conflict, even before Algeria's independence, during the seven years of the Algerian war of liberation from France, between the Algerian National Liberation Army (ALN) and the National Liberation Front (FLN), conflict which was resolved after the independence in favor of the ALN who took over the new State and formed a civil government reflecting its political line. However, the only task of the one and only party, the National Liberation Front (FLN), was to manage the symbolic gains from the liberation war. But all issues of political importance were decided by the military leadership<sup>3</sup>,

With an overview of Algeria's history after independence, we can conclude that Algeria has been managed for many years outside the popular will and outside the principle of political legitimacy by the military and security institutions, except for the brief political opening between 1989-1992, then of course, under the control of the military and security over power, it is impossible to talk about any effectiveness of the justice sector.

With regard to the history of the security sector in Turkey, we mention that between 1918 and 1923, Turkey was in a state of emergency. The Ottoman state was occupied and in financial crisis, the Istanbul government was suspended, and most of the army had been disbanded. The new parliament founded in Ankara in 1920 enacted many laws and established a number of institutions that were given emergency powers to overcome this state of emergency, setting in motion developments that turned the state into a national security state. It proclaimed martial law, and created institutions such as special military organizations, Independence Courts ...ext, some of which were inherited from the Ottoman state. While initially an outcome of the unique conditions of the liberation era, this structure would persist after the establishment of the Republic in 1923, preparing the infrastructure of today's politics.

There are three main reasons why the Republic became a national security state. First, the leaders who built the military and civil bureaucracies of Republican regime were composed of people who experienced both World War I and the Turkish War of Independence. Because of the traumatizing effect of the long wartime years, these leaders continually felt the necessity for security and for preventing the trauma from happening again. The second reason involves the revolutionary process that began with the declaration of the Republic. This process not only altered the characteristics of a state that had reigned for 600 years, but also the regime's relation to the country's cultural and political structures, pushing the regime to secure its preservation and protection. The Sheikh Said revolt (1925), which occurred in the first years of Republic, fed this security perception; additionally, the economic depression of the 1930s, World War II, and the ensuing Cold War kept it alive<sup>4</sup>. Third The impact of successful and unsuccessful military coups (1961, 1971, 1982, 2016) on democracy and public life.

The influence of all these emergency conditions caused the ruling elite to put off expanding rights and freedoms in the legal sphere.

#### **4.2- Justice sector between Turkey and Algeria: Origin and History:**

After its independence in 1962, Algeria continued to follow the French judicial system, with progressive work on the development of an Algerian judicial system, which its features began to be clear since 1965, the judicial system at that time was characterized by a unified judicial system, where judicial duality between administrative and civil courts was abolished until 1996, and after this date judicial duality was restored.

Algeria officially announced the start of the reform of the justice sector, with the establishment of the National Commission for the Reform of Justice in 1999, which lasted seven months and prepared a report on its work<sup>5</sup> (details of the actual reforms, and whether they are real reforms, below).

In Turkey, The 1924 constitution did not include a constitutional review procedure. Modernization efforts marked the initial stages of the Turkish Republic. This period started in 1923 and began "the process of modernization which is mainly about building a nation state with [a] secular identity. The constitution of 1924 focused on the nationbuilding process. It was regarded as fundamental in nature. Starting with the Constitution of 1960, "Constitutions opted for a centralized review system by giving this task to a special court rather than to general courts. This special court, the Constitutional Court, gives final rulings on cases it decides. When it "annuls a law, it cannot act as the legislature and lead to a 'new practice. Thus "the Court is not allowed to interfere with the legitimate margin of appreciation of the legislature".

The 1950s marked the beginning of a multiparty era. The majoritarian party system threatened Turkish politics from the 1950s to the constitution of 1960. A Turkish constitutional review originated

from the reaction to the abuse of the legislative majority in 1950. The Democrat Party, which won Turkey's first democratic election, evolved to be a repressive party. The constitution of 1961 was designed to transform Turkey "from a majoritarian democracy into a pluralistic democracy". It included "the supremacy of the constitution, the separation of powers and support for a pluralistic and participatory society". It also "strengthened the independence of the judiciary."

However, the constitution of 1960 "also granted a constitutional role to a new National Security Council (MGK) of military officials". The National Security Council "effectively shared executive power with the elected Cabinet".

The constitution of 1980, following the military coup and created by the military government, was "characterized by an authoritarian constitution and remarkably tight constitutional discipline". It was known to change the existing 1961 constitution, which was regarded as more liberal than the 1980 constitution, then the 1982 constitution eliminated Parliament from the process, which it transferred to the President. Claims criticizing the Court's activism included the number of party closure cases it approved and its excessive activity in other court cases. Furthermore, critics gave the closure of twenty-eight political parties as a primary source of concern. The constitutional amendments of 2010 also changed the selection procedure for judges.<sup>6</sup>

#### **4.3- The impact of military coups on the security and justice sectors in Turkey and Algeria:**

We can not imagine any justice sector achieving the principle of justice and fairness, nor a security sector subject to accountability and oversight under military coups, artlessly, because the military coups as a whole is a major crime affecting the social contract under which the modern republic State was founded, the impact of military coups can be likened to vertical incursions that deeply break into the body of any political community, so by extrapolating contemporary history, most military coups are followed by civil wars or popular revolutions.

Military coups embody the rupture between the ruler and the ruled, and the gap between them is widening over time, in a manner that makes it impossible to carry out any sectoral reforms as long as the problem of major political legitimacy is not resolved, for example, military coups have tended to concentrate the three powers, and to control the judiciary power in particular, as a sword against its opponents, Military coups regimes also tend to establish a military and security doctrines hostile to the people.

The result is that there are no reforms for any sector, including the justice and security sector, without democratic transition, the comparative study between Turkey and Algeria provides conclusive evidence of this result, in terms of the political changes that have taken place in Turkey since 2001, led to the gradual subordination of military and security authorities to civilians elected by the people, and when the power of military coup is weakened in favor of civilians, judicial reform will be easier, but the absolute control of civilians in the defense and security sectors was only achieved after the failure of the military coup in 2016, and this is a real breakthrough for Turkey, where it entered the ranks of countries immune to military coups, and one of the important observations to be made here is that Turkey's civilian elites have taken advantage of Turkey's accession to the EU in order to limit the role of the military and security establishment in political life.

This route has stalled in Algeria because of the absence of regional blocs in support of democracy, Indeed, Algeria's international ties, especially with France, were supportive of the strong influence of the military in the Country.



Internally, the Algerian political forces have been unable to make a qualitative leap, and to achieve a breakthrough that would push any democratic transition, and the country is still living the consequences of the military coup of 1992.

Among the important observations that can be recorded in the comparison between Turkey and Algeria is that the trial of the perpetrators of military coups and the activation of the path of transitional justice are indicators of democratic transition, this is what happened in Turkey through the trial of Kenan Evren, the chief responsible for the 1980's military coup, and the trial of dozens of perpetrators for the failed 2016's military coup, While in Algeria, a process of formal reconciliation was activated, providing a legal cover for impunity for perpetrators<sup>7</sup> of crimes against humanity during the so-called Black Decade of 1992-2002.

#### **4.4- Security Sector Reform (SSR) within International standards :**

Briefly, SSR is a specific steps towards the creation of a security sector that is efficient, effective and accountable and operates according to good governance principles.

In details, a number of efforts have been made to develop universally applicable definitions that could guide SSR activities wherever they are envisioned and performed. The latest attempt at coining a widely accepted definition of the nature of SSR is provided by the 2008 report of the UN Secretary-General, "Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform"<sup>8</sup>, the report offers a solid framework for a comprehensive and coherent approach by the United Nations and its member states towards SSR, reflecting shared principles, objectives and the basis for common guidelines for the design and implementation of SSR. The report emphasises that « Security sector reform describes a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law »<sup>9</sup>.

The UN definition was preceded by the OECD Development Assistance Committee's (DAC) work towards developing what amounts to a slightly more comprehensive and demanding definition of SSR in terms of its coverage of actors, processes and principles. The OECD/DAC Handbook on Security System Reform, a much-referred-to standard elaboration on the concept of SSR, calls for a holistic approach to reforming the roles and tasks of all state and non-state institutions and actors that contribute to the provision of security for the state and its people. According to the OECD/DAC, the following actors and institutions make up a country's security sector – and may thus be subject to reform efforts:

- Core security actors, including the armed forces; police service; gendarmeries; paramilitary forces; presidential guards; intelligence and security services (both military and civilian); coastguards; border guards; customs authorities; and reserve and local security units (civil defence forces, national guards and militias).
- Management and oversight bodies, including the executive, national security advisory bodies, legislative and select committees; ministries of defence, internal affairs and foreign affairs; customary and traditional authorities; financial management bodies (finance ministries, budget officers and financial audit and planning units); and civil society organisations (civilian review boards and public complaints commissions)<sup>10</sup>.

- Justice and the rule of law, including the judiciary and justice ministries; prisons; criminal investigation and prosecution services; human rights commissions; ombudspersons; and customary and traditional justice systems
- Non-statutory security forces, including liberation armies; guerrilla armies; private security and military companies; and political party militias <sup>11</sup>.

The main objectives of security sector reform are twofold. First, reforms are designed to develop an effective, affordable and efficient security sector, for example by restructuring or building human and material capacity. Second, reforms facilitate democratic and civilian control of the security sector, for example through strengthening the management and oversight capacities of government ministries, parliament and civil society organisations<sup>12</sup>.

#### **4.5- International standards for the governance of the justice sector:**

The justice sector includes all agencies and actors, state and non-state, involved in the delivery, management and control of justice systems. This is a broad definition, recognizing that each country has a political and legal system, as well as its own standards, cultures and historical traditions, which will affect in their own way the composition and functioning of the justice sector.

The justice sector consists of the following elements:

- The Judiciary and Related Staff and Agencies: Eg. These include courts and magistrates, as well as lawyers, defense and prosecution services, practitioners of national law, lawyers orders, legal assistance and programs in public representation, legal assistants, court staff (such as bailiffs and court bailiffs) and military justice systems, as well as alternative dispute resolution mechanisms such as certain courts, mediation services and community dispute resolution mechanisms, where they exist.
- The executive authorities responsible for the administration and management of the institutions of justice: Eg. in the first place a Ministry of Justice which operates independently of the judicial authority; but also the administrations responsible for finance and auditing agencies that also contribute to ensuring the efficiency and accountability of the sector.
- The institutions responsible for controlling the justice sector: Eg. parliamentary committees and oversight bodies such as judicial councils, judicial services and law commissions, as well as oversight institutions with broader mandates such as mediation institutions, human rights commissions and anti-corruption commissions.
- Law enforcement agencies: eg. police services, regulators, border and customs authorities, intelligence services, civil emergency services and sometimes commercial security service providers.
- The agencies responsible for the enforcement of sentences and post-prison reintegration: eg. prisons, correctional and correctional authorities (including administrators and supervisors); health services (including mental health) and social services specific to the justice sector; and the authorities responsible for supervising preventive detention and community sentences, which often include customary and traditional authorities or commercial security service providers<sup>13</sup>.

The justice sector should be subject to the same standards of accountability and efficiency in the delivery of public services as other public sector organizations, which means that:

- The judiciary is independent of other branches of government: the administration of justice officials have functional independence from the rest of the government. They are not forced to make political decisions, and are not fired or sanctioned for applying the law in a consistent and impartial manner.
- The judiciary does not make political decisions: although it may have an influence on the law through its interpretation of the law, the evolution of jurisprudence and its power of judicial review, belongs to the legislature (and the executive, depending on the context) to enact laws.
- The justice sector ensures equality before the law: this means that access to justice is the same for everyone and that the law is applied in the same way to all persons, including men and women of all backgrounds as well as all members of the government and security services.
- The justice sector must be impartial, transparent and fair in all its functions: delays, corruption and discrimination are some of the most common issues facing the justice sector.
- The justice sector must make effective and efficient use of its resources: it must have the means to fulfill its mission, but this does not remove the responsibility of justice sector actors to use resources with caution<sup>14</sup>

#### **4.6- Reforms of the justice sector between Turkey and Algeria:**

Officially, the justice sector in Algeria waited until 1999, until the National Commission for the Reform of Justice was formed, which worked for 7 months to produce a report that included the following elements:

- Situation of justice sector.
- Recommendations for improving the justice sector.
- Urgent measures in support and protection of human rights.
- Facilitate access to judicial institutions.
- Rehabilitation of the system of training and qualification.

From 1999 to the present, the developments in the justice sector can not be denied, since the sector has been digitized and many structures have been completed or ameliorated (courts and tribunals, especially administrative courts), raise the level of training of the new judges by extending the duration of training at the Higher School of the Judiciary, and to allocate training courses for all judges, develop the procedural system through the enactment of the Code of Civil and Administrative Procedures, and with it to enshrine the principle of jurisdiction's duality, which has been stalled for many years, Improving the physical conditions of detainees through the adoption of a new prison reform law, amendments to the Penal Code and the Code of Criminal Procedure to prevent the automatic use of penalties for deprivation of liberty, activating the role of the judge to implement the penalties in order to reflect the policy of social reintegration of prisoners, enactment of new laws regulating the relationship of certain professions related to the functioning of the justice sector<sup>15</sup>.

But this vast arsenal of formal reforms has not solved the problem of justice in Algeria, the judicial power remains fully subordinate to the executive power, where all judges are appointed by the

President of the Republic, and the High Council of Justice<sup>16</sup> controls the places of work of judges and their transfer, Although the 2016's last constitutional amendment stipulated that the judges are not permitted to transfer their places of work, the amendment related the application of this to the amendment of the Organic Law of the Judiciary<sup>17</sup>, which has not yet been done.

We conclude that the effective way to reform the justice sector in Algeria is to break its link with the executive power by weighing the balance of elected members of the High Council of Justice.

In Turkey, Judicial reform sits at the center of the attempts to join the European Union. There are two key issues underlying judicial reform in Turkey: one concerns the independence of the judicial system, and the other concerns the upholding of the principle of the rule of law.

Since 1998, both political and policy conditionality are highly visible in the Turkish context through informal and formal channels. The EU's Progress Reports are the key tools which formed the basis of the road map for judicial reform. At the same time, the EU officials were in constant political dialogue with their Turkish counterparts, specifically through the Reform Monitoring Group, the Delegation offices in Ankara and also through the Ministry of EU Affairs, originally the Secretariat General for EU Affairs, from 2001 to 2011. However, according to the EU Delegation in Ankara, political dialogue with the Ministry of Justice directly on judicial reform is more productive, as the involvement of the Ministry of EU Affairs as an intermediary increases bureaucratic impediments.

The EU supported the transformation of the Turkish judicial system with financial assistance and through twinning mechanisms. Turkey benefitted from the Pre-Accession Financial Instrument from 2001 to 2006 and the Instrument for Pre-Accession Assistance (IPA) after 2007. It actively participated in the twinning projects and the EU's Technical Assistance and Information Exchange instrument (TAIEX) program. The twinning projects in Turkey have been operational since 2002, with the highest level of concentration in the judicial sector. A significant percentage of the financial assistance for Turkey both under the IPA I and IPA II were for judicial reform - approximately 15-17 percent in each year and financial period.. This is a clear signal regarding the EU's priorities towards Turkish reforms. The EU's IPA I (2007-2013) and IPA II (2014- 2020) were the key instruments of the EU's assistance for Turkey's judicial reforms after 2006. The EU relied on these financial instruments to signal its commitment to Turkey's accession process, despite the mixed signals coming from its members.

The first step of the EU seeking to transform the judicial sector in Turkey was directed towards the reform of the 1982 constitution. The 1982 Turkish constitution - which replaced the 1961 constitution - was the most recent constitution outlining the separation of powers and legal structures in Turkey. Article 9 of the 1982 constitution clearly states that "judicial power shall be exercised by independent courts on behalf of the Turkish Nation". Various articles of the 1982 constitution (137 to 140) spell out the independence of the judiciary and the key principle of separation of powers. Article 138 in particular guarantees the independence of the judiciary in Turkey and guards the principle of separation of powers .

The second step in assessing the EU's influence on Turkey's judicial reform is to trace the structural changes in the judicial institutions. The main organs of the judiciary are the courts, the Supreme Council of Judges and the Prosecutors, the Court of Cassation, the Council of State and the Constitutional Court. The Council of State is the highest judicial organ for administrative matters and the High Court of Appeals is the highest organ for justice and home affairs. The Constitutional Court is responsible for supervising and enforcing that all laws, decrees and rules conform to the 1982

constitution. It also has tutelage powers over the political behavior in Turkey, specifically in controlling the behavior of the political parties in line with the basic legal founding principles of the Turkish Republic. These two aspects - amending the 1982 constitution and the restructuring of the domestic judicial organs - constitute the basis of judicial reform in Turkey.

The EU's influence on Turkish judicial reform can be assessed differently across three distinct periods: from 1999 to 2006, from 2007 to 2013, and from 2013 to present. In all of these different periods, while the EU accession process was on track, it seems that there were different sets of external and internal factors that led to the adoption of judicial reforms.

#### **4.7- Security sector reforms between Turkey and Algeria:**

Turkey, because of its peculiar historical conditions, is a country where the military has played a dominant role in its politics. With several military interventions in its modern history, Turkey has been recognized as a unique example of civil-military relations given that its democratic institutions have persisted and co-existed with the politically active military.

Reforming civil-military relations and steps to eliminate military tutelage in Turkey began in 2001 when a constitutional amendment civilianising the National Security Council (NSC) was enacted. This involved increasing the number of civilian members of the NSC and changing the Secretary of the NSC from a military position to a civilian post, envisaged to be appointed by the elected political leadership. The amendment established that the NSC would serve in an "advisory" role to the Cabinet, rather than formulate policies on its own. This shift in core security roles launched a process to narrow the military's authority in the state decision-making bodies. This process can be characterized as an effort to crowd out military authority in the public administration and political arenas thus decreasing the potential power of the military to dictate social, economic and security policies. Another action to eliminate military tutelage took place in 2002, when the long lasting State of Emergency, declared in 1987 in Turkey's Southeast region due to military operations against Kurdish separatist militancy, was abolished. This was a major shift in policies that was shaped by the statist security approach of the Turkish Armed Forces (TAF). Because, previously, the State of Emergency allowed the TAF to undertake domestic security tasks, respond to the issues only militarily on account to national security and thus dominate policy formulation in social and economic domains. Furthermore, the TAF had delivered some public services in the villages of Southeastern Turkey, such as health and education, in order to maintain people's trust and keep them away from Kurdistan Worker's Party (PKK)'s separatist militancy.

The initial involvement of Turkey in security sector reform (SSR) as a 'local owner' was in 2003, when Turkey became a member of the Geneva Centre for the Democratic Control of Armed Forces (DCAF). It was a turning point in that Turkey's political leadership committed to democratic control of armed forces both at national and international levels carrying it to political agenda, which is an unprecedented initiative to tackle military tutelage and cope with praetorian tradition. Besides, the cooperation of Turkey's Economic and Social Studies Foundation (TESEV) with DCAF as a civil society organization has supported the process as a policy transfer agent. One should also take into account the positive effect of Turkey's European Union (EU) Accession and Discussion process in 2000's following the EU's first Progress Report in 1998 on Turkey's progress towards accession that highlighted the civilian control of the military. After the EU's adoption of the European Security and Defence (ESDP) Support to SSR Concept in 2005 and the European Commission Support to SSR

Concept in 2006, criticism of Turkey was then framed by the SSR approach in EU circles, broadening the discussions regarding accession negotiations on Turkey's civil-military relations issues so as to address not only the National Security Council but also its national security approach and policies, development issues, and human rights in a comprehensive manner. The political leadership sought to advance what it called a "democratization" process in the security sector using EU accession as a means to legitimize and rationalize administrative and political reforms in the state apparatus. This reform agenda included actions to limit Turkish Armed Forces's authority, such as eliminating military members in the Board of Higher Education, Radio and Television Supreme Board, Higher Board of Communication etc.

From then on, an implicit process of security sector reform (advancing democratic civilian control of the (TAF) has been referred to as "democratization" process by the political leadership to build local ownership both in the state and civil society. During this process, a major step to decrease the authority of TAF in the state apparatus was an amendment to the TAF's Internal Service Code narrowing its mission mandate to matters of warfare, curtailing its praetorian role in regard to the secular character of the regime. This was called the "neutralization" and "depoliticization" of the TAF, distinguishing between its statist ideology and its commitment to respect the political will of the civilian government. It is, after all, the TAF's traditional role as protector and guard of the regime that has been seen as the root cause of military interventions.

This cumulative reform process has produced a generation of security associates and a strong public awareness that has responded strongly to the last attempted military coup in 2016<sup>18</sup>.

In Algeria, the decline in the role of security institutions, as a key actor in politics and economy, can not be seen as a consequence of a reform of the security sector, but because of the struggle of groups in power, Where civil- military relations can be divided into four basic phases :

- The stage of military control over politics directly (from the 1965 coup to 1989): the stage in which Algeria ruled by two military men, Houari Boumediene and his successor, Chadli Benjdid.
- The short-term pluralism phase (1989-1992): a stage in which Algeria was known a political opening and democratic electoral competition, quickly ended with the 1992 military coup.
- The stage of the control of the intelligence apparatus (1992 - 2015): This phase was marked by the absolute control of the intelligence apparatus over politics, economy and all walks of life in Algeria, until 1999, when Bouteflika came to power, and then began the process of gradually weakening the intelligence services until the year 2015, where the head of intelligence was removed and the entire institution system was dissolved.
- The stage of conflict between the three groups (Army - Presidency - Tizi Ouzou group) : from 2015 until now.

We note that the most important factor preventing the launching of a security sector reform program in Algeria, is the election fraud, the destruction of civil society and political forces,

#### **4.8- Why did Turkey advance and Algeria was delayed?**

Two months ago I was in Beirut at the summer school for critical studies of security. I attended a lecture by Dr. Yazid Sayigh, who brought to my attention the talk about the formation of an Anatolian

elite in Turkey. This is why the reason for the weighting of the Justice and Development Party (AKP) on the popular and official level. Dr. Yazid's observation reinforced my conviction that research on the subject of democratic transition and the reform of the justice and security sectors is not simple, but rather involves a set of knowledge fields, the more diverse the experts from different disciplines, the more fruitful the study will be.

We can summarize the reasons Why did Turkey advance and Algeria was delayed, in the following elements:

- Turkey is a country that has not been subjected to total occupation while Algeria has occupied for 132 years.
- The modern state in Turkey is relatively old, established in 1923, while Algeria became a state only in 1962.
- The accumulation of anti-military-coup experience in Turkey is richer than that of Algeria's experience, as well as the number of military coups in Turkey (4 successful coups and one failed) is more than that of Algeria (2 successful coups).
- Turkey's accession to the European Union provided an appropriate platform for many reforms, including reform of the security and justice sectors, while Algeria lacked the supportive regional framework, and Algeria's dependence on France is a hindrance to any real democratic transition.
- The role of transformations at the level of the elites in force: In Turkey, a process of profound transformation of the control of the " Alawite elites and Salonic elites " to the sensitive centers in the state, to the control of the Anatolian elites on those centers, which open the way to the Justice and Development Party, as represent the Anatolian elite. In Algeria, Kabyle elites whose close to France still dominate the sensitive positions in the State. But there has been a popular and official movement that emerged three years ago to weaken Kabyle elites in sensitive state posts.

## 5- Conclusion:

It is clear that the EU's rejection of Turkey and the obstacles to its accession will affect the reform of the security and justice sectors, but Turkey's internal factor is now more influential than the external factor, although it has two aspects of influence, negative and positive, I am talking specifically about the repercussions of the failed military coup in 2016, the amendment of the constitution and the transformation of the presidential system, which culminated in Erdogan's election as President of the Republic under the presidential system.

Actions taken within the context of a state of emergency will undoubtedly have a negative impact on the reform of the justice and security sectors, but it is the natural reaction to major crises, after all, if the democratic system fell and the military coup succeeded, there is no room to talk about any reform for decades. The positive side of the events in Turkey is the fortification of the state against future military coups, and the strengthening of civilian authority over the military under the roof of democracy and popular legitimacy.

By talking about popular legitimacy, Algeria's train has not yet been put in place, the Algerian people did not have the opportunity to run free and fair elections, except in a short period, which ended with the 1992 coup, and it is still a long and difficult road, for democracy first, and its ramifications, including reform of security and justice.

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7 - Most of them belonged to security and military bodies.

8 - UN Secretary-General, ‘Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform’, Report of the Secretary-General, UN Doc. A/62/659-S/2008/392 (New York: United Nations, 3 January 2008)

9 -*Ibid*, par. 17.

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13 -DCAF, le secteur de la justice, document d’information , p.2.

14 -*Ibid*, p.3.

15 -طاشور عبد الحفيظ، مرجع سابق، ص. 95.

16 -Headed by the President of the Republic. the Minister of Justice is the Vice-President, he number of members of the Council appointed by the President of the Republic is 09, while 10 judges are elected from different levels, this means that the President of the Republic controls decisions in this body that controls the appointment, transfer and control of judges, because in case of equal votes, the president's vote is likely. See : Organic Law N° 04-12 related to the composition of the High Council of Justice, its work and powers, of September 6, 2014, in Official Journal of Algerian Republic N° 57.

17- Article 166, Algerian Constitution Amendment of 2016.

18 -See : Metin Gurcan and Megan Gisclon, “Turkey’s Security Sector after July 15: Democratizing Security or Securitizing the State ?”, Turkish Policy Quarterly, Vol 15, N° 4, Winter 2017.