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Report

Turkey's Constitutional Referendum: Streamlining the Democracy or Consolidating One-Man Rule?

Ahmed Al Buai and Resul Serdar Ataş***

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Among the backers of the AK Party and Erdogan, there is a strong and growing negative sentiment against European countries [Cagan Orthon/Al Jazeera]

Abstract

As Turkey stands on the cusp of a new constitutional epoch, there is a tendency in some quarters to view Turkey's pending constitutional amendments as a mechanism that will steer the country away from representative democracy and toward a more totalitarian regime. Those who oppose the reforms argue that the suggested reforms will inaugurate an era where Erdogan solidifies his hold on power, making the Turkish presidency even more powerful than the American executive. In this scenario, the president would dominate the other administrative, legislative, and jurisdictional powers and fortify himself against any accountability, severely undermining the government's system of checks and balances.

This paper argues, however, that a close inspection of the proposed amendments reveals that—while they redefine the relationship between the legislative, executive and judicial powers—the amendments will preserve the system of checks and balances intact. Some critics argue that Turkey's problems stem from the current government's practices not from the constitution itself, and thus there is no genuine need to change the structure of governance. However, it is doubtful that a constitution drafted by a group of putschists in the aftermath of the 1980 coup can meet the needs of Turkish current era.

Introduction

The current constitution of Turkey has been modified more than 16 times since its approval in November 1982,⁽¹⁾ but the pending amendment has encountered an unprecedented internal and external media clamor.

On 21 January 2017 the Turkish Grand National Assembly (TGNA) endorsed a package of constitutional reform with 339 votes—nine more than the 330 required. "This is a

betrayal to the parliament,” said Kemal Kilicdaroglu, Turkey’s main opposition leader. “Our people will undoubtedly foil the game that was played in parliament.” Despite claims of a “game,” the 18-article constitutional amendments were passed by the required three-fifths majority in parliament in a democratic and transparent manner. Each article of the bill was put to vote in the 550-seat parliament, where the ruling Justice and Development Party (AK Party) holds 317 seats. With the support of Nationalist Movement Party (MHP), lawmakers approved the proposed draft that will be presented to the public for a nation-wide referendum.(2)

Almost immediately, some European and international media outlets launched fierce campaigns portraying the proposed changes as if Turkey is tottering down the path of dictatorship and one-man autocracy. Le Monde published an article titled “Turkey facing Putinization” in which the author argued that if the coming referendum passes, Erdogan’s powers will definitely eclipse the parliament’s powers, just as Vladimir Putin has done in Russia.(3) Meanwhile, a columnist for Berliner Zeitung wrote an article titled “The Turks knuckle under,” where he pointed to a number of surveys that state only 15% of Turkish voters are familiar with the essence of the proposed constitutional reform. He added that there is a widespread state of panic among critics because they are afraid to end up in jail. The writer questioned how fair a constitutional referendum could be conducted under the state of emergency that has persisted since the July 2016 coup attempt.(4)

In Turkey, Ali Bayramoglu, a well-known writer and columnist who recently left his 15-year job as a columnist for the pro-government daily Yeni Safak, wrote an article “Will the presidential referendum kill Turkey’s democracy?” in which he claimed that the constitutional reform contains all the elements necessary to move Turkey away from the fundamental models of a pluralist, democratic state of law and convert it into a majoritarian dictatorial state.(5)

In a nutshell, there exist a wide range of articles arguing that Turkey, which used to be a healthy democracy, is inching terrifyingly close to tyrannical rule under its existing ruling party. These critics almost unanimously consider Erdogan’s mounting power to be a cause for concern because he is codifying autocracy through democratic tools.

This is not, however, AK Party’s first move to amend the constitution. The AKP came to power in 2002 and since then has initiated 10 amendments to the constitution that was drafted after the military coup of September 1980. The last referendum took place on 12 September 2010, where 57.88% of the voters voted in favor of the proposed changes while 42.12% voted against the package.(6) What makes the coming constitution unique is that it entails larger changes: the substitution of the current parliamentary system with a presidential one.

Why is constitutional change needed in Turkey?

Erdogan consistently states that the current system of governance is ineffective because it does not meet the needs of Turkey's fast-paced growth. Erdogan maintains that because he is Turkey's first publicly elected president with 52% of the vote he cannot accept the ceremonial nature of the presidency.⁽⁷⁾ A constitution that was drafted in the aftermath of the 1980 coup is not believed to mesh with the needs of a new Turkish era. The suggested change for the whole system is believed to be necessary for several reasons:

1. In theory, it's believed that the Turkey is governed under the parliamentary system. In fact, however, the system is a combination of presidential and parliamentarian. This indefiniteness created grave problems at crucial moments in recent history. Supporters of the reforms point to France where, following different versions of parliamentary systems, the country ultimately created a presidential system around Charles de Gaulle.⁽⁸⁾
2. Most importantly, a presidential system would end the constitutional dilemma of the duplication of executive powers and the overlapping of the president's and the prime minister's powers.
3. Rationalizing the parliamentary system in Turkey proved to be inadequate and ineffective. The presidency system would secure the political stability of the country. It will save the executive power (government) from the withdrawal of confidence.
4. If the people vote 'Yes' to the presidential system, Turkey would be saved from the burden of coalition governments, which are blamed for bringing nothing to the economy but recessions, high inflation rates, and bankruptcy.
5. It gives the president more room to appoint competent professionals and technocrats apart from the parliament and away from partisan affiliations and polarizations.
6. It will restore the essence of the parliament, which would start effectively practicing its natural task in drafting and passing legislation and regulations.
7. Amid increased national and regional insecurity, the country has become in need of effective and swift executive decisions to combat the imminent threats.

A growing country like Turkey needs to re-demarcate its constitutional boundaries. It is either a parliamentary system (like Germany and Italy), where the executive power acquires democratic legitimacy from the parliament, or a presidential system (like France

and US), where the president is the head of government and the legislature does not bestow democratic legitimacy to the government.(9)

President Erdogan and his supporters believe that a presidential system akin to the models in the United States or France would help them avoid the coalition governments that hampered their progress in the past. The opposition parties believe that the current model or a reformed parliamentary model best suits Turkey. They believe the problem is not in the constitution but rather in the practices of the government. They do not share Erdogan's vision for progress, so they do not want to make his efforts more efficient.

Ultimately, it is the Turkish electorate that will decide. It is the duty of political parties, intellectuals, and media outlets to make sure that voters are enlightened with impartial assessments so that they can freely decide.

Refuting opposition standpoints

"This is not a move to change the system, this is rather an attempt to introduce one-man rule," said Turkey's main opposition leader, Kemal Kilicdaroglu of the CHP.(10) Opposition parties argue that the suggested reforms will inaugurate an era of totalitarian rule and bolster Erdogan's hold on power to the extent that he will be even more powerful than the American executive. Under the new constitution, the president will be eligible to run for two more terms; theoretically presiding over Turkey as an extremely influential executive until 2029. The amended constitution, if endorsed, would not be retroactively in effect; it only starts with ratification and new elections. Thus, president Erdogan is qualified to run for new two terms.(11)

a. Administrative objections

The opposition states that there's nothing fundamentally wrong with interchanging parliamentary system with a presidential one. However, the timing and context are the real problems. The opposition parties believe that the timing is the most pernicious element of the proposed change. The proposal was officially introduced for debate and discussion six months after the failed coup in July 2016. Critics argue that the changes lack the required community consensus and political compatibility. The draft constitution has so far received support from the Nationalist Movement Party (MHP) and has passed through parliament without the help of the other parties.

However, it is well known that the draft has been on the table since 2002. The ruling AKP has asked the main opposition party (CHP) to offer its own version of the constitution so that they could negotiate the change based on CHP's version. In order to keep the atmosphere of compromise and consensus, AKP made sure that the representation of the parties' committee that drafted the reform package was not chosen

based on their representing ratios at the parliament, but rather they were equally chosen.

b. Checks and balances

A second criticism is that the proposed presidential system violates the critical tool checks and balances, which preserves the balance of powers between each branch of government. Under the proposed version of the constitutional reform, it is argued that the president dominates over the other administrative, legislative, and jurisdictional powers and fortifies himself against any kind of accountability. For example, to refer the president to the constitutional court for any impeachment, the consent of at least 400 out of 600 deputies will be required. The opposition also believes that there will be no intervention by any state or legal body in areas under the president’s control, which is a clear prescription of dictatorship.⁽¹²⁾ Moreover, the opposition parties argue that under the changed system the presidency would have more constitutional powers that enable him to dissolve the parliament and call for an early election at will.

However, the suggested draft concentrates more on the essence of the relationship between the legislative, executive, and judicial powers and the main characteristics of a presidential system that keeps the crux of checks and balances between. In this context, there are two crucial issues that are fundamentally vital: Article 116 stipulates the timing of parliamentary and presidential elections—there will be concurrent parliamentary and presidential elections and both can call for early elections, although in parliament it will require a three-fifths majority. Furthermore, to guarantee the validity of checks and balances, the parliament must approve presidential decrees and the procedure for budget preparation is also guaranteed.⁽¹³⁾

Article 116: Renewal of elections of the Grand National Assembly and the presidency	
The current version	The proposed version
In cases where the Council of Ministers fails to receive a vote of confidence under Article 110 or falls by a vote of no-confidence under article 99 or 111, if a new Council of Ministers cannot be formed within forty-five days or fails to receive a vote of confidence, the President of the Republic, in consultation with the Speaker of the Grand National Assembly of Turkey may decide to renew the elections.	New elections can be called either with a three-fifth vote of the Grand National Assembly or by the President’s decision. The elections are held together. Both the president’s and the Grand National Assembly members’ terms are five years.

The parliament’s existing right known as “interpellation,” which is a practical and symbolic mechanism to halt the order of business and request explanation, is abolished in the new draft. The opposition claims that the parliament will not be able to question the government or demand that cabinet ministers appear before it to answer inquiries. Theoretically, the new system enables the parliament to supervise the cabinet ministers. However, it does not authorize the lawmakers in the parliament to call a vote of confidence. Even in the point of questioning and investigating ministers, it only bestows them the right to issue a written question. But examining the current and proposed versions of Article 98 reveals that parliamentarians will still enjoy the right to question ministers.

Article 98: The Grand National Assembly’s information acquisition and supervision	
The current version	The proposed version
The Grand National Assembly of Turkey shall exercise its supervisory power by means of question, parliamentary inquiry, general debate, censure and parliamentary investigations.	The Grand National Assembly of Turkey shall exercise its supervisor power by means of parliamentary inquiry, general debate, parliamentary investigations and written questions.

A major change in the constitutional draft is the power of the president to appoint ministers. Naturally, those ministers will execute the president’s agenda, which has been granted legitimately directly by the nation in a free and democratic election. Nonetheless, the parliament has the right to supervise the ministers and investigate them through parliamentary inquiries, general debate, and written questions.⁽¹⁴⁾ The American executive has the same power to appoint secretaries.

c. Presidential powers

Another critical point under the new amendments is that the Turkish president would be the direct chairman of his political party. The opposition argues that this grants the president the full right to practice direct control over nominating MPs and handpicking them. Consequently, he will stack the parliament with his own loyalists. Yet, to put things in broader context, the American president is practically the head of his party and this did not make him a dictator who dominates the selection of congressional nominees. It is a stretch to say that the Turkish president would be involved in the choice of 600 deputies distributed in 81 provinces.

The opposition has also expressed concern over the hegemony of the president over the Council of Judges and Prosecutors and the independence of the judiciary. They argue

that according to Erdogan’s party’s proposed constitutional amendments, the president can choose the head of the Supreme Board of Judges and Prosecutors, the body in charge of all appointments. They add that the president will choose half of the board’s members. And finally the president will appoint 12 of the 15 members of the constitutional court—Turkey’s highest court that oversees impeachment hearings.(15)

In the US presidential system, the president appoints federal judges and senior federal prosecutors. President Trump recently sacked the acting attorney general, removing her as the nation’s top law enforcement officer after she rebelliously declined to preserve his executive order terminating the nation’s boundaries to refugees and people from predominantly Muslim countries.(16) Therefore, the executive in one of the beacons of democracy has the right to preserve or fire his prosecutors. As long as they perform their duties as expected, they can do their jobs comparatively in an autonomous manner. The same logic could be applied in the Turkish system. The president will be able to appoint just four out of the 13 members and undoubtedly, he would prefer to not have any kind of conflict with the judiciary system. If such a disagreement erupts, the president knows well that it might harm the image of the state.

Article 159: The High Council of Judges and Persecutors	
The current version	The proposed version
The High Council of Judges and Prosecutors shall be composed of 22 regular and 12 substitute members; and shall comprise three chambers. The members are elected for four years. Four regular members by the president, three regular, three substitute members by the court of cassation, one regular one substitute member by Turkish academy of justice, seven regular four substitute members by judges and prosecutors.	The High Council of Judges and Prosecutors shall be composed of 13 regular members; and shall comprise two chambers. The council’s four members are appointed from among judges and prosecutors by the president. Seven members are appointed by the Grand National Assembly. The minister of justice is the head of the council and the undersecretary is its natural member.

Another controversial article concerns the president’s criminal liability. The opposition argues that Article 105 stipulates that two-thirds of the parliament must vote to launch an investigation against the president, while three-fourths of the deputies must vote to make him appear before the constitutional court. The main opposition party believes that since the ruling party would, by default, be the president’s party, and the president is entitled to choose almost half of the prosecutors and judges, then the notion of summoning the president to appear before the constitutional court would practically be

impossible. However, supporters of the amendment argue that the political stability and the position of the presidency should not be easily violated.

Article 105: the president’s criminal liability	
The current version	The proposed version
<p>No appeal shall be made to any judicial authority, including the Constitutional Court, against the decisions and orders signed by the President of the Republic on his/her own initiative. The President of the Republic may be impeached for high treason on the proposal of at least one-third of the total number of members of the Grand National Assembly of Turkey. And by the decision of at least three-fourths of the total number of members.</p>	<p>A motion for initiating an investigation of the president on allegations of a crime must be given with an absolute majority of the members of the Grand National Assembly.</p> <p>In case an investigation is opened. The investigations are carried out by a 15-member committee made up of the political parties in the parliament in proportion of their power.</p> <p>The Grand National Assembly can take the decision to send the president to the Supreme Court with two thirds of its members’ secret votes.</p> <p>A president under an investigation cannot take the decision to take the country to elections.</p> <p>A president’s term is ended if he/she is sentenced to a crime which is among the conditions of presidential eligibility.</p>

Conclusion and outcome scenarios

The objections raised by the amendments’ opponents should have been negotiated and discussed during the sessions of the constitutional committee. The opposition party had the chance to offer their perspective and conduct awareness campaigns to inform the public on their position, however the parties chose to refuse to join the sessions. The opposition’s primary stances stem from two fundamental points. First, they base their criticisms on the personality of president Erdogan, not on the amendments themselves. Second, the opposition parties are acting out of a concern of self-preservation; they have deep concerns over their political future. They are fully aware that if the people endorse the constitutional reforms, their chances of becoming a ruling party will go out the window. Primarily, because their chances to nominate a person who would defeat Erdogan is nearly null.

Track record of Turkey's referendums

The pending referendum will be the seventh referendum in the history of the Turkish Republic.⁽¹⁷⁾

- 9 July 1961 Constitutional referendum. It was approved by 61.7% of voters, with an 81.0% turnout.
- 7 November 1982 Constitutional referendum. The new constitution was approved by 91.4% of voters, with a 91.3% turnout.
- 6 September 1987 Constitutional referendum. The changes were narrowly approved by 50.2% of voters, with a 93.36% turnout.
- 25 September 1988 referendum. The proposed changes to the constitution would have led to the 1989 local elections being held a year early. However, they were voted down, with 65% of voters against. Turnout was 88.8%. This was the only referendum resulting in a "No".
- 21 October 2007 referendum on presidential elections and amendments to certain articles of the constitution was approved (68.95% Yes, 31.05% No).
- 12 September 2010 referendum on amendments to certain articles of the constitution was approved (57.9% Yes, 42.1% No)

If voters choose Yes...

If voters endorse the proposed amendments, a number of outcomes will follow.

1. The new system will take effect in 2019 and in the interim Turkey will be governed by a transitional government until the elections of 2019.
2. Concurrent elections will take place in 2019. In March 2019, municipal elections will be held and in November 2019 synchronized presidential and parliamentary elections will be held. At this point, the new presidential system will be put into effect.
3. President Erdogan will preside over his party and will be able to restore his partisan powers immediately in the aftermath of the referendum. He will enjoy the full authority to run for in-party elections and participate in party meetings and activities.
4. The referendum aftershocks would cast a shadow on two main opposition parties, CHP and HDP, and subsequently this could lead to a diminished number of their representatives in parliament.
5. A call for CHP in-party election would be likely as many in the party would question why the current leader failed to succeed in any of the recent electoral contests.
6. AK party's semi-partner, Turkish-nationalist MHP's leader, Devlet Bahçeli, is anticipated to be nominated as one of the president's deputies. Bahçeli would most likely decline the offer because his party will not continue to be an independent party if he accepts the offer.

7. It is uncertain what will happen to the pro-Kurdish HDP, whose co-chairs are currently detained because of their connections with terrorists who perpetrated criminal attacks against Turkish targets.

If voters choose No...

If Turkish voters decide to vote against the bill, inevitably the outcome will be different.

1. The constitutional changes will be shelved. It would be relatively difficult for the ruling party to reintroduce the bill in the short term.
2. Snap election will likely take place as both President Erdogan and MHP leader Devlet Bahçeli have explicitly called for early elections in case voters turn down the proposed reforms. As usual, CHP leader Kemal Kilicdaroglu has thrown down the gauntlet by proclaiming that his party is well prepared for an early election.
3. The outcome will politically benefit the leaders of CHP and HDP who would see improved chances in any coming new parliamentary election. The backlash will be more negative on MHP, as the party is already facing serious problems as voices are calling for in-party election.
4. MHP would most probably undergo a political turmoil that might eventually lead to a political rift that leads to divisions. Bahçeli's support for AKP's proposal was met by in-party opposition due to the MHP's long-standing opposition to the presidential system. Bahçeli himself was heavily disparaged for the abrupt U-turn. Many videos have circulated where he staunchly opposes the presidential system juxtaposed with speeches where he endorses the same system.
5. If such a political rift occurs, an early general election would most likely mean the MHP will fall below the 10% election threshold and lose its chances to join the parliament as a political party again.
6. The left wing of MHP would probably slide toward CHP, while the conservative wing may defect AKP.

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Ahmed Al Buai** is TRT World editor at large and *Resul Serdar Atas** is TRT World managing editor.

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