New Constitutional Amendment Proposal in Turkey: A Threat to Pluralistic Democracy!

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Turkey is at an important crossroad. 316 MPs of the ruling Justice and Development Party (AKP) offered a constitutional amendment proposal, which was accepted last week after serious debates in the Turkish parliament. A total of 339 MPs of the AKP and the ultranationalist MHP voted in favour of the amendment. And it will proceed to a referendum that will likely be held in early April. The constitutional amendment, consisting of 18 articles, has no direct relation to fundamental rights and freedoms of the Turkish people. The amendment is mainly related to the functionality of the government system.

Many people in Turkey think that the amendment proposal may lead to one of the most important constitutional challenges in modern Turkish history. Indeed, the system predicted in the amendment proposal seems to radically change the ongoing 100-year-old parliamentary tradition in Turkey. If the proposal is accepted, it is obvious that Turkey will no longer be among the Parliamentary republics. Going forward, it is not clear how the new system will evolve.

The opposition has procedural and substantial objections to the amendment. They are right for three reasons, which I also agree with.

First of all, it is not a good period for such kind of a radical constitutional amendment becauseTurkey has been in a state of emergency for six months. Nobody – only except Erdoğan- knows how long the state of emergency will last.

State of emergency obviously means that there is a threat to the people of the nation and it is obvious that national unity is important in such times. The referendum, on the other hand, polarizes and divides the society into "yes" and "no" camps, which should be the last thing the Turkish people want during the state of emergency. Furthermore, the French, Spanish and Portuguese constitutions are good examples of the prohibition of constitutional amendment during such exceptional periods in order to prevent polarization among the society.

Secondly and accordingly, the amendment does not have input legitimacy. The "new constitution" agenda is not new to Turkey. It has been widely discussed since 2007. In this context, numerous Turkish NGO's have drafted constitutional articles and many people had expressed their views on the new constitution. However, this proposal seems to have been prepared with a lot of political bargaining behind doors, ignoring all of the experiences, proposals and opinions of the NGO's.

On the other hand, the opponents could not sufficiently contribute to or criticize the amendment.This results from the fact that the fundamental rights, such as freedom of expression, freedom of assembly etc., have been weakened in the process of the state of emergency. During the state of emergency, a lot of civil servants were dismissed from their professional duties without any proper investigation.The number of dismissals from profession has reached approximately 100 thousand up to now.This produced a very common auto-censoring or chilling effect on the remaining colleagues. Currently, 147 journalists in prison have been classified as detainees. A lot of governors have categorically forbidden freedom of assembly in numerous cities. Hence, the reality is that there is no real possibility of participatory democracy and opposition to the constitutional amendment in Turkey.

Last but not the least, the amendment does not have output legitimacy. It can not be easily said that the political regime foreseen in the amendment proposal is in accord with the main telos of the constitutionalism. It is not even an exaggerated discourse to

say that the current process is "de-constitutionalism" as Prof. Gözler previously mentioned. Forasmuch as the main character of the amendment proposal is not limiting government, but strengthened government and especially the president.

When we ignore the "make-up provisions" such as increasing the number of deputies to 600, reducingthe minimum age required to be elected as deputy to 18, rewriting the neutrality of judicial bodies to the Constitution and the "conjunctional provisions" such as removing the military jurisdiction, we can list the predictions of the amendments in summary as follows:

Executive Power: The executive body will be composed of the President and his appointed vice-presidents, ministers and high-ranking bureaucrats, whose number is unclear. The President will appoint anyone he wishes as a vice president or minister or high-ranking bureaucrats and he will also be entitled to remove any bureaucrat from office and to bring an administrative investigation against any civil servant. Due to the last authority, job security of civil servants will become controversial because the scope and the limits of this authority are unclear. The parliament has no role in these appointments. On the other hand, the Council of Ministers will no longer have a collective structure.

Elections: The president will be elected with a 50% popular vote every 5 years. In other words, the "saviour leaders" will compete in elections, not the political parties, political programs or principles. Unlike the USA system, the presidential election and parliamentary election will be on the same day to deliver a parliamentary majority to the list of president, hand-picked by the president himself in his capacity as the chairman of the party and for the very reason that the system of checks and balances is going to be weakened.

On the other hand; although the government makes propaganda that the new system would end the coalition allegedly caused by parliamentarism, it will most likely cause pre-election coalitions as Lianos and Cheibub indicated.

Legislative Power: The President will have the authority to enact decree laws, which is inspired by the South American countries and the term *decretismo* was coined to describe this phenomenon. As Sartori points out, it is possible in those countries that on average a new presidential decree of statutory power can be issued every other day. The boundaries of the area of the statute and the area of the decree are not clear in the proposal. Furthermore, the annulment decisions of the Turkish Constitutional Court, of which would have 15 members and most of them appointed directly or indirectly by the president, have non-retroactive effect.

Taking into account all of these, the decree laws of President will be the central feature of the system. Accordingly, the legislative power of the parliament will become symbolic, the parliamentary negotiations and the opposition will become meaningless. Moreover, as stated previously, the executive power will not be checked by the parliament, except for a criminal investigation which requires qualified majority voting. Despite the fact that the President, alone, will have an authority to dissolve the Parliament at his will and call for new elections, the Parliament will be able to do it with qualified two-thirds majority vote. Therefore, the Turkish parliament, one of the strongest parliaments in the Parliamentary Powers Index, will most likely be weakened as it is in "delegative democracies" of Latin American countries.

Judiciary Power: The President's obligation to be impartial will be lifted and the President will be able to be a political party member. That is to say, the President will be able to control and suppress opposition within his/her party. Despite the lack of impartiality of the President, his/her right to appoint judges will be retained. Paradoxically, the President will appoint some judges of the Constitutional Court, who will be responsible for holding him to account. (Nemo judex in sua causa?) and he/she will also appoint half of the members of the High Council of Judges and Prosecutors. (Separation of powers?) It is obvious that the new provisions will deepen the crisis of judicial independence, which is already in a bad situation as ENCJ remarked.

As it is seen, the designed political regime is neither parliamentarism nor presidentialism.

Although the government calls the new political regime as a "Turkish type of presidentialism" with a populist discourse; in reality, the new regime will bring a kind of "delegative democracy", which is seen usually in the South American, sub-Saharan African and in central Asian countries. We can not call these political regimes as dictatorship, however, it produces a system of "winners-take-all losers-lose-all" without checks and balances. Accordingly, considering those experiences it can be said that if the new political regime is approved, either the president-elect dominates totally the whole system or the opposition, who is constantly excluded from the system, appeals to anti-democratic means, such as coup d'état. Both possibilities will cause great concern the for the existing democracy in Turkey.

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