# Is This President Erdogan's Last Term in Office? A Note on Constitutional Interpretive Possibilities

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Recep Tayyip Erdogan was elected as president in 2014. In 2018, he was elected to the same position for a second term. The Turkish Constitution, aside from one exceptional case, is clear in its command that no-one may serve as president for more than two terms. Is this, then, President Erdogan's last term in office? The short answer is *maybe*. What makes a definitive *yes* answer to the question posed impossible is, among others, some "creative" interpretations of the Constitution that are motivated by a desire to grant President Erdogan the longest term in office – possibly until 2033.

The burgeoning literature on democratic decline can be easily summarized as a set of narratives revolving around the doings of charismatic leaders. The best-known protagonists include Viktor Orbán in Hungary, Vladimir Putin in Russia, Donald Trump in the United States, and Erdogan in Turkey. These leaders, the literature argues, have captured democratic institutions by resorting to and/or implicitly sanctioning the use of legal and extra-legal mechanisms (though that is an overstatement in President Trump's case). The literature's pessimism toward the future is based on the assumption that these men will continue to dominate the political scene in their respective countries (aside Trump, who can serve as president for two terms at most, given the virtual impossibility of amending the U.S. Constitution to modify the two-term rule in the Twenty-second Amendment).

## From Prime Minister to Turbo President

President Erdogan has been the most important figure in Turkish politics since 2002, when his Justice and Development Party won the general elections in a landslide victory. The landslide was, in part, the doing of the 10 percent election threshold, which disabled many minority parties from winning seats in the legislature. Formally assuming the office of prime minister in 2003, he continued to serve as prime minister until 2014, when he was elected president. He has served as president since 2014. In 2018 he was reelected for a second term, this time with more expansive powers, thanks to a package of amendments to the Constitution in 2017.

The 2017 amendments abolished the office of prime minister and established what some dub a "turbo-presidency." Many of the president's already-existing powers were expanded and some new powers were created, along with new responsibilities. Noticeably lacking, in contrast, was a corresponding increase in effective constitutional checks against presidential power. The question thus arises of how, given the current political climate in Turkey, the amendments will affect the powers of the presidency relative to the other branches of government.

Many of the parliamentary checks on presidential power remain mere embellishments of the constitutional text, given that the current Parliament is composed largely of members of President Erdogan's party. It is thus wishful thinking to anticipate that parliamentary powers will be deployed to curb executive overreaches. The potential to evade term limits is a case in point.

Under the current Turkish Constitution, as amended in 2017, there are three provisions concerning the president's term in office: Article 101(2), Article 116(1) and 116(3). In relevant part they read:

> ***Article 101(2)***: *"The President of the Republic's term of office shall be five years. A person may be elected as the President of the Republic for two terms at most."*

> ***Article 116(1)***: *"The Grand National Assembly of Turkey may decide to renew the elections by three-fifth majority of the total number of its members. In this case, the general election of the Grand National Assembly of Turkey and the presidential election shall be held together."*
>
> ***Article 116(3)***: *"If the Assembly decides to renew the elections during the second term of the President of the Republic, he/she may once again be a candidate."*

The first provision is clear in its wording: a person may be elected only twice as president. The amendment not only bars more than two consecutive terms, but it also totally prohibits anyone from serving as president in the aggregate for more than two terms. The second provision concerns the possibility that parliament will dissolve itself (referred to as "renewal of elections"), in which case it will also dissolve the presidency, and new parliamentary and presidential elections will be held. The third provision builds on the second and seems to provide an exception to the first provision establishing a maximum two-term limit. If the Grand National Assembly decides to renew elections during the second term of a president, which it may do without cause and by a 3/5 majority of all its members, then it appears that a president who is in his/her – although I'm afraid *his* for the foreseeable future – second term may run for president once again, that is, for a third term.

A justification for this exception could have been to make sure that a president who has had only a limited chance to implement his policies while in office (most likely because of an adverse Parliament) has a third chance to effectuate his policies, if and when Parliament decides to dissolve itself, which automatically triggers the renewal of both parliamentary and presidential elections. The irony is that given Turkish political realities, this function of checking the president's power could be used by an "executive-friendly" Parliament under the de facto control of a charismatic president to evade the two-term limit.

## "Creative" Constitutional Interpretations

This is my interpretation of the ground rules that will control any legal dispute involving a president's term in office. But other more "creative" interpretations are also possible. In the absence of early elections, a question that will inevitably be discussed as Erdogan's second term in office draws to an end in 2023 (2018 [the date of Erdogan's election for the second time] +5 [length of term] = 2023), the centennial of the Turkish Republic, will be presidential term limits. The following scenarios, when that time comes, will be on the table:

1. Scenario I: Erdogan as president until **2023**: Erdogan completed his first term as president in 2018, when he was elected for a second time. Thus, in 2018, upon his re-election, he started his second and final term in office, which will end in 2023. This is the most straightforward interpretation.
2. Scenario II: Erdogan as president until **2028**: If Parliament decides to call for a renewal of elections during President Erdogan's second term, he will have one last opportunity to run for president. Let's assume that in a strategic move to allow Erdogan to run for a third term, Parliament renews elections right before his second term ends – sometime in 2023. Elections are renewed, Erdogan runs for president for the third time under Article 116(3) of the Constitution, and wins. 2023+5 = 2028; he remains in power until then.
3. Scenario III: Erdogan as president until **2028** (but for different reasons): President Erdogan, according to one view, started his presidency in 2018 somehow "afresh" and "anew," due to the 2017 amendments. On this view, 2018 should be considered the beginning of his first term in office, not the second. The argument, undoubtedly motivated by a desire to grant President Erdogan the longest time possible in office, goes something like this: the 2017 amendments changed the government structure in Turkey by abolishing the office of prime minister and

dramatically expanding the powers of the president—ordinarily a symbolic and ceremonial position under a more-or-less standard parliamentary system. It would therefore not be implausible to view the 2017 amendments as creating a new office of the presidency, equipped with different powers and obligations than its predecessor. As a result, President Erdogan's first term as president, between 2014 and 2018, could not be counted toward the two-term limit. Instead his election in 2018 under the new government structure should be considered his first term in office and, assuming the absence of diminishing electoral support and early elections, 2023-2028 should count as his second and final term in office. Under this view, Erdogan would be able to serve constitutionally as president until 2028. This view is predicated on an assumption I think erroneous: that Erdogan's presidency between 2014-2018 should not be counted toward the two-term limit. Although it is a distorted interpretation of the Constitution, some government supporters are likely to try to popularize this interpretation.

4. Scenario IV: Erdogan as president until **2033**: if the view I just articulated under (3) takes hold, further unanticipated consequences could ensure. President Erdogan would have started his first term in office in 2018, (2018+5 = 2023; 2023+5 = 2028) and 2028 would mark the end of his second, and not third, term. What if Parliament were to decide to renew elections as per Article 116(1) of the Constitution right before President Erdogan ended his second term (as per scenario 3) in 2028? Under the exception to the two-term rule provided in Article 116(3), he would have the opportunity to run once more. If he were to win, he would assume the office of president in 2028 for a third, and not fourth, term, and could be president for five more years. Thus, under this view, 2028 + 5 = 2033, would mark President Erdogan's last year in office.

## Strategic Maneuvering by Parliament

All of the scenarios set out above assume that the political climate in Turkey will continue to favor the ruling party and that no early elections will take place because of declining electorate support. But even if the political climate does not change, considerable strategic maneuvering by Parliament would have to occur in order for elections to be renewed right before Erdogan's second term in office (whether that is 2023 as under scenario (2) or 2028 as under scenario (4)) to allow him to run for a third term under the exception provided by the Constitution. Alternatively, for institutional or reputation-related reasons, even a "loyal" parliament could refuse to dissolve itself solely or even primarily to give any president a third term, though this seems like a weak possibility. Only time will tell whether the distorted interpretation of the Constitution sketched above under scenario 3 will gain any traction. For it to take hold, not only would the Justice and Development Party have to retain its strength, but the Constitution and its above-cited rules concerning presidential term limits in office would have to remain constant. I will therefore end by taking notice of the frequency with which the Turkish Constitution has been amended and suggest that all bets are off if a constitutional amendment changes the rules.

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