

Analysis

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Summary: The campaign underway before the Turkish referendum on constitutional amendments has been intense. While the results of the referendum will have important implications for the powers of the presidency and the make up of the Constitutional Court, the struggle between the government and the opposition is not about defending or opposing the current constitution. It may be considered a struggle between different versions of a “Good Society” as envisioned by different political forces. Turkey is experiencing a legitimacy crisis whereby the secular credentials of the AKP are called into question by the opposition on the one hand, while the conservatives, the AKP elite included, question the commitment of the opposition parties to civilian supremacy over the military command on the other. A *kulturkampf* that reinforces the crisis of legitimacy, which in turn undermines trust between the major actors in Turkish politics, now defines the political atmosphere in Turkey.

The Turkish Referendum: Democratic Consolidation or Political Conflict?

by Ersin Kalaycıoğlu

The long-standing Turkish *kulturkampf* between secular-modernist and traditional, conservative and Sunni Muslim values has once again come to define the main issues on the political agenda. When it first came to power in 2002, the Justice and Development Party (AKP) government acted with caution; its approach resembled a form of good governance. It tested the waters on such issues as criminalizing adultery, legalizing the *türban*,¹ and turning forested areas into residential zones. It only altered its initial positions when it ran into a torrent of criticism. However, with the start of the election process of the president of the republic in the Turkish Grand National Assembly (TBMM) in 2007, the style of the AKP government began to change dramatically. Its leader, Prime Minister Erdoğan began to emphasize legislative supremacy and his personal representation of the national will (*milli irade*), and made references to the Democrat Party (DP) of the 1950s as its ideological prede-

cessor. From 2007 onwards a majoritarian style of discourse and conduct that substituted good governance with anger, accusations, and confrontations began to characterize the actions of the AKP leader and his followers.

The decisions of the Constitutional Court in 2007 and 2008 on the quorum of the TBMM for the election of the president of the republic, the legal status of the *türban*, and the AKP constituting the focal point of activities to undermine secularism, seemed to contribute further to the development of that style of politics. The political milieu was also influenced by the sweeping arrests of former military commanders, officers on duty, journalists, rectors of universities, non-Muslim clerics, businesspersons, and trade union leaders in 2007. Those arrested were charged with establishing an organization, allegedly called Ergenekon, to topple the AKP government. The AKP acted as if it believed that there existed a grand conspiracy of the secular political elites as well.

It is a matter of fact that the AKP and other parliamentary parties have fallen completely apart over the Ergenekon court cases and a host of other political

¹ *Türban* refers to a style of wearing a headscarf that covers a woman's hair, ears, neck, shoulders, and bosom. Several court cases have resulted from female students insisting on donning the *türban* at medical and nursing schools instead of nurse uniforms. It seemed as if they are not alone in this struggle, with many men also supporting them at rallies and demonstrations. They have made attempts to register the *türban* as a legal right, which the Turkish administrative courts and eventually the European Court of Human Rights (ECHR) have rejected.



issues. In fact, the decision of the Constitutional Court concerning the AKP in 2008 delivered an indelible blow to the secular credentials of the AKP. It is also a matter of fact that the AKP has been struggling to cast doubt over the democratic credentials of its main opponents, the Republican People's Party (CHP) and the Nationalist Movement Party (MHP). In the meantime, on several occasions, the opposition parties have declared that they do not trust the AKP and its leadership. Therefore, it seems as if Turkey is experiencing a legitimacy crisis whereby the secular credentials of the AKP are called into question by the secular opposition on the one hand, while the conservatives, the AKP elite included, question the commitment of the CHP and the MHP to civilian supremacy over the military command on the other. A *kulturkampf* that reinforces the crisis of legitimacy, which in turn undermines trust between the major actors in Turkish politics, now defines the political atmosphere in Turkey.

Expanded Courts and an Uncertain Presidency

By March 2010, the AKP had moved toward an overhaul of several articles of the 1982 Constitution.² This was not the first time that the AKP has attempted to amend it. The last major overhaul of the constitution was in 2004, as part of EU-motivated political reforms, for which the opposition political parties in the Turkish Parliament had also extended their support. However, the current constitutional amendments are opposed by all of the parliamentary opposition parties and a large swath of nongovernmental organizations (NGOs). The rest of the country seems to be split down the middle about what the referendum stands for.

The timing of the move to amend the constitution seemed to coincide with rumors about a second indictment to ban the AKP on charges of violation of Article 2 of the constitution concerning secularism. The AKP appears to have moved swiftly to deny party closures through proposed constitutional amendments. The AKP has also complained

about the “tutelage of the High Courts,” and has often declared complete distrust of them in public. The move to change the composition of the Constitutional Court and the Supreme Board of Prosecutors and Judges (HSYK)³ seems to kill two birds with one stone. If more conservative judges could be elected to serve on both the Constitutional Court and HSYK, the higher courts would become more favorably disposed toward the AKP. At the same time, there would not be enough votes to close down the party if a ban were to be motioned by the chief prosecutor at the Constitutional Court.

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The amended article concerning the Constitutional Court increases the number of judges serving on the bench from 11 to 17, while the president will have some role in appointing 14 out of 17 judges, each for a period of 12 years on the bench. However, the constitutional status of the president, which was altered by the referendum of October 21, 2007, is still unclear. It would have been much more logical to define the new status of the president first and then entrust him with new responsibilities, if that new status so required or permitted. If the new status of the president were to be just symbolic, as in Iceland or Singapore, would

² Turkey experienced its last referendum on constitutional amendments on October 21, 2007. That referendum focused on the status of the president, and the constitutional amendments were regarding the tug of war between the AKP and its opponents over the right of the AKP to name its own candidate freely for the presidency and get him elected in the TBMM. On two earlier occasions the party leaders had selected themselves as candidates and were successfully elected as presidents. There was nothing of significance that pertained to democratization per se in the 2007 referendum. However, the overall impact of that referendum, which received the approval of 70 percent of the electorate, will have a major and dire influence on democracy in Turkey for many years to come.

³ The HSYK is an administrative organ that handles the hiring, appointment, promotion, and firing of all prosecutors and judges. It had been autonomous from the executive branch of the government prior to the 1982 Constitution, but came under the influence of the Ministry of Justice since that constitution came into effect. Ironically, the EU had demanded that the minister of justice and his undersecretary be taken off that board to render it autonomous from executive rule. The current amendment would probably enhance the representational credentials of the HSYK, though the status of the minister and the undersecretary in that council would hardly be altered.



it not be awkward for the presidency to be involved in the high politics of the appointment of judges and prosecutors?

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Furthermore, in 2003 when dealing with a totally different president, the same AKP government planned a constitutional amendment, which never materialized, that would have decreased the number of presidential appointments on the same Constitutional Court. It now looks as if the AKP has different constitutional provisions for different incumbents of the presidency, making it appear partisan, ideological, and personal, and not necessarily democratically virtuous. The other 25 amendments included in the referendum are generally believed to be marginal, added on with haste and often as a form of sweetener for some lobby group to attract their support.

In the meantime, the amendment rendering party closures virtually impossible failed to be adopted by the AKP majority in the TBMM and got dropped from the list of amendments. The CHP appealed and requested that the Constitutional Court strike down the current amendments as unconstitutional. The Constitutional Court did consider the CHP's appeal, but only changed the voting procedure for the Constitutional Court and the HSYK, and took nonlawyers off the list of potential candidates for the HSYK. That decision by the Constitutional Court would make it more difficult for the president to appoint conservative members. If the referendum passes, the Constitutional Court will have more members picked by the current president from a list of lawyers, who would be elected by all the judges and prosecutors of the land, each for a period of 12 years. It is still possible that the Constitutional Court could get enough conservative members so as to be divided into two roughly equal groups of judges, conservative and secular. If that were to happen, there is a risk of judicial

stalemate, for several decisions would require more than a simple majority on the bench.

An Intensely Political Contest

The campaign for the referendum has been intense. The AKP leadership is mainly using the traditional discourse of the conservative right, condemning the authoritarian rule of the CHP in the 1940s, raising racist allusions, and emphasizing its anti-military posture and its commitment to democracy. The secular CHP campaigns on corrupt practices of the AKP, attacks the style and image of the prime minister, and pays homage to left-of-center slogans. The Turkish ethnic nationalist MHP has attacked the internationalist stand of the AKP, including its dealings with the EU and the purported influence of the United States. The Kurdish ethnic nationalist Peace and Democracy Party (BDP) has completely boycotted the referendum, even though Kurdish voters seem to exhibit a variety of opinions. The referendum campaign now runs through Ramadan, and the referendum will take place right after the *Bayram* (a three-day-long religious holiday). It seems as if the religious month has made no impact on the discourse of the political elites. However, one fact stands beyond dispute for now: the parties have not been providing much information about what the referendum is all about.

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Finally, it is also a matter of fact that since the adoption of the 1982 Constitution, not a single political party has been favorably predisposed toward it. Therefore, those who oppose the amendments are doing their best to emphasize that they are also against the constitution, though they are more opposed to the kinds of changes the AKP has proposed. Indeed, on August 9, 2010 the leader of the CHP Kemal Kılıçdaroğlu published a declaration in the influential daily *Hürriyet* arguing exactly this point. What these arguments point to is that the struggle between the government and the opposition is not about defending or opposing the current Constitution. It may be considered a struggle between different versions of a “Good Society” as envisioned by different political forces. However, that message seems too weak to be widely noticed. If these trends continue, the referendum will be little more than a vote of popular confidence for the party leaders, the government, and the opposition.

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