

Analysis

August 30, 2010

Summary: On September 12, Turkey will hold a referendum on proposed amendments to its constitution. The proposed changes are aimed at broadening the constitution's democratic content, expanding and reorganizing the Constitutional Court and the High Council of Judges and Public Prosecutors, and making the architects of the 1980 military intervention subject to prosecution. The need to change many features of the 1982 constitution might have provided the opportunity for the government and opposition to demonstrate agreement on the basic characteristics of the political system, even while disagreeing on policy matters. However, Prime Minister Erdoğan appears to have wanted to exploit the constitutional changes to further polarization, which he feels has worked well for him. Irrespective of the outcome of the September 12 referendum, constitutional reform, rather than serving as an opportunity for integration, has created yet another occasion for reinforcing the deep cleavages in Turkish politics.

A Background to the Constitutional Referendum: Reinforcing the Politics of Polarization

by İliter Turan

Turkey's politicians usually take a break from their routine in August and enjoy a vacation. But in a departure from tradition, they are on the campaign trail these days, speaking at several rallies a day under the harsh summer sun. The issue that has driven them to town squares in provincial centers is a campaign to influence voters to support or reject amendments to the constitution through a referendum scheduled for September 12. The proposed changes are numerous, but the voters have been asked to vote a blanket "yes" or "no." The opposition, which questions the desirability of some of the changes, has turned the occasion into a test of support for the ruling government, hoping to challenge its electoral mandate if the outcome is a rejection or weak approval.

The Legacy of Military-Devised Constitutions

The Turkish constitution is rigid by nature, a detailed document characterized by highly-specific provisions. This rigidity is the legacy of military governments that have twice — in 1961 and 1982 — devised constitutions with several goals in mind. The first is the routine function of describing the

institutions of government, their relations to one another, and their functions, powers, and limits. The second objective relates to the fear that unrestricted liberties might lead to chaos. Therefore, while individual liberties are acknowledged, there are detailed restrictions on exercising them. Until 1995, for example, the 1982 constitution barred civil society organizations from political activity. Appropriately, the section on individual liberties is entitled "Rights and Obligations of Citizens."

The third goal is preventing elected politicians from sacrificing the fundamental values on which the republic was built for votes. In particular, secularism is to be defended against the "ignorant" masses who can easily be deceived by politicians trying to exploit religion for political gain. This is achieved by creating institutions outside the scope of governmental intervention, including some with powers to correct the "problematical" outcomes of electoral politics. The Constitutional Court, for example, whose members are appointed for the most part by judges and state agencies, has the power to bring to trial and sanction parties that are alleged to have used religion for political ends.



Analysis

The fourth goal is preserving the political autonomy of the military to allow it to exercise general oversight over politics. To that end, the military is given powers to defend the system against “internal” as well as external threats while the National Security Council enjoys greater powers than it would in other democracies. Finally, the military addresses the concern that it should not become the target of political retribution after a return to civilian politics. The 1982 constitution, for example, contained provisions that exempted the junta from judicial accountability.

Bogged down in detail and designed to ensure that political problems that precede military interventions do not recur, Turkey’s military-devised constitutions have often come under criticism immediately following the restoration of civilian politics. Some have criticized them for not being sufficiently democratic, while others, on more practical grounds, have alleged that they do not meet specific needs. While consensus often emerges on the need for constitutional change as civilian rule is consolidated, there is never a corresponding consensus on what is to be changed or how. Amending the constitution requires a qualified parliamentary majority, necessitating sustained efforts to achieve consensus between the government and opposition. It is to the credit of the Turkish parliament that, despite difficulties in achieving inter-party agreement, it has amended the 1982 constitution seven times between 1993 and 2007. Most of these modifications were intended for it to conform more closely to the European Union’s standards of democracy.

Amending the Turkish constitution

There are two ways in which the Turkish constitution may be amended. If a change is approved by a two-thirds majority of the Assembly, it takes effect once the president signs it into law. On the other hand, if the vote is more than three-fifths but less than a two-thirds majority of the whole house, the amendment is submitted to a public referendum. Most recent amendments have been ratified in the parliament. In 1987, however, the governing Motherland Party of Turgut Özal opted to submit the restoration of political rights to pre-1980 political leaders to a referendum, which passed.

In 2007 the Justice and Development Party introduced an amendment to have the president of the republic elected

in a popular election after the parliament failed to choose a president. The Constitutional Court had ruled that a quorum of two-thirds of the house was needed for the first two rounds of voting. The opposition boycotted the initial rounds, thereby preventing the parliament from getting past the first two rounds, after which the requirement became a simple majority. The governing party called for elections in July 2007 and won an impressive victory. The election was then concluded in the manner the government party desired, but the constitutional referendum was nevertheless held and the change ratified.

Bogged down in detail and designed to ensure that political problems that precede military interventions do not recur, Turkey’s military-devised constitutions have often come under criticism.

In retrospect, the experience of the 2007 presidential election may have been a watershed event. After this initial experience, Prime Minister Erdoğan chose appealing to the voters as a way of overcoming the resistance against his political choices by both the parliament and such state institutions as the Constitutional Court. Inclined to think that a party enjoying parliamentary majority should reign unconstrained by other institutions and confident of his appeal to voters, Erdoğan proposed further changes to the constitution. Although it is said to be good politics for constitutional changes to be prepared by consulting with the opposition, all sides have been uncooperative. The result has been the reconfirmation of the basic bifurcation of Turkish society between the modern-secular-statist and traditional-religious-anti-state camps.



The Proposed Changes: A Mixed Bag

The set of proposals under consideration are of three kinds. Some are aimed at broadening the constitution's democratic content. These include, among other things, positive discrimination in favor of children, women, and the

Prime Minister Erdoğan chose appealing to the voters as a way of overcoming the resistance against his political choices by both the parliament and such state institutions as the Constitutional Court.

handicapped; the introduction of ombudspersons; collective bargaining for public servants; and the removal of some restrictions to which labor unions are currently subject. Other changes relate to the expansion and reorganization of the Constitutional Court and the High Council of Judges and Public Prosecutors, the two major institutions of the judicial system. The role of the president and the government is enhanced in the appointment of individuals to these bodies. Finally, the architects of the 1980 military intervention become subject to prosecution.

After these proposed changes were made public, the Republican People's Party's wholesale opposition became more nuanced. Deniz Baykal, then the party president, said that he would be willing to support all the changes, except those pertaining to the judiciary. Provisions aimed at democratization could then be ratified in the parliament without a referendum. The RPP argued that the changes concerning the judiciary gave the government and the president (who generally agrees with the government) the ability to reorient the judiciary to make it more compliant with government preferences. The prime minister has often complained that the courts narrow down the mandate electoral majorities

have given him. Conversely, the opposition has employed the court system as a means of frustrating government policies.

Eventually, the prime minister declined cooperation offers, insisting on submitting the entire package to a vote. This may have been borne out of fears that a referendum focused exclusively on the judicial system would not generate sufficient interest, possibly even facing defeat. However, more likely, Erdoğan may have wanted to exploit the constitutional changes to further polarization, which he feels has worked well for him. This logic has been supported by other events. There are few references to the constitutional provisions in the campaign. Instead, low-level personal attacks between the prime minister and the new leader of the RPP Kemal Kılıçdaroğlu dominate the headlines, with the prime minister trying to frame the debate in the traditional mold between "state elites" and "elected politicians." The RPP leader, for his part, has tried to show that Erdoğan's coterie has enriched itself through politics.

How do the voters view this campaign? While it is tempting to say that the referendum appears to be a popularity contest between the government and opposition, polls indicate that each party has non-negligible minorities who plan to vote against traditional party positions, defying easy analysis. The 'yesses' have the upper hand but not by much. The head of the polling agency, Adil Gür, has cautioned that in a highly polarized environment, voters may be reluctant to reveal their genuine preferences, and that developments in the interim that have little bearing on constitutional change may affect the voters' mood. The ongoing trial of

Voters may be reluctant to reveal their genuine preferences; developments in the interim that have little bearing on constitutional change may affect the voters' mood.



Analysis

several retired and serving high-ranking officers for allegedly plotting a military takeover, the intensification of acts of violence by the PKK, and the demands of “democratic” autonomy by the ethnic Kurdish Peace and Democracy Party are but some of the factors that may influence public sentiment.

The need to change many features of the 1982 constitution so as to render it more democratic might have provided the opportunity for the government and opposition to demonstrate that they could agree on the basic characteristics of the political system, even while disagreeing on policy matters. As it has turned out, they are in agreement on very little. Irrespective of the outcome of the September 12 referendum, constitutional reform, rather than serving as an opportunity for integration, has created yet another occasion for reinforcing the deep cleavages in Turkish politics.

İlter Turan, Professor, Bilgi University

İlter Turan is currently a professor of political science at Istanbul’s Bilgi University, where he also served as president between 1998-2001. His previous employment included professorships at Koç University (1993-1998) and Istanbul University (1964-1993), where he also served as the chair of the International Relations Department (1987-1993), and the director of the Center for the Study of the Balkans and the Middle East (1985-1993). Dr. Turan is the past president of the Turkish Political Science Association and has been a member of the Executive Committee and a vice president of the International Political Science Association (2000-2006). He has served as the program chair of the 21st World Congress of Political Science in Santiago, Chile, July 12-16, 2009. He is board chair of the Health and Education Foundation and serves on the board of several foundations and corporations. He is widely published in English and Turkish on comparative politics, Turkish politics, and foreign policy. His most recent writings have been on the domestic and international politics of water, the Turkish parliament and its members, and Turkish political parties. He is a frequent commentator on Turkish politics on TV and newspapers.

About GMF

The German Marshall Fund of the United States (GMF) is a non-partisan American public policy and grantmaking institution dedicated to promoting better understanding and cooperation between North America and Europe on transatlantic and global issues. GMF does this by supporting individuals and institutions working in the transatlantic sphere, by convening leaders and members of the policy and business communities, by contributing research and analysis on transatlantic topics, and by providing exchange opportunities to foster renewed commitment to the transatlantic relationship. In addition, GMF supports a number of initiatives to strengthen democracies. Founded in 1972 through a gift from Germany as a permanent memorial to Marshall Plan assistance, GMF maintains a strong presence on both sides of the Atlantic. In addition to its headquarters in Washington, DC, GMF has seven offices in Europe: Berlin, Bratislava, Paris, Brussels, Belgrade, Ankara, and Bucharest.

About the On Turkey Series

GMF’s On Turkey is an ongoing series of analysis briefs about Turkey’s current political situation and its future. GMF provides regular analysis briefs by leading Turkish, European, and American writers and intellectuals, with a focus on dispatches from on-the-ground Turkish observers. To access the latest briefs, please visit our web site at www.gmfus.org/turkey or subscribe to our mailing list at <http://database.gmfus.org/reaction>.