

Öztürk, Ahmet Erdi, and İřtar Gözaydın. "Turkey's constitutional amendments: A critical perspective." *Research and Policy on Turkey* 2, no. 2 (2017): 210-224.

Received 27 Jan 2017, Accepted 25 May 2017, Published online: 22 Aug 2017

Turkey's Draft Constitutional Amendments: A Critical Perspective

Abstract

Although Turkey has largely maintained the constitutional tradition inherited from the Ottomans, and has been ruled by the parliamentary system since its establishment, in 1923, the Justice and Development Party (*Adalet ve Kalkınma Partisi-AKP*), which is one of the most controversial political structures in Turkish political history, has changed the accustomed system into a Turkish type of presidential one. Furthermore, this important decision was taken in a plebiscite held under state of emergency conditions, after the failed coup attempt and in an authoritarian political atmosphere that has been gradually increasing for more than half a decade. In this regard, this article explains two major points; the constitutional history of contemporary Turkey with its Ottoman background, and the AKP's political journey that is a swing from hope to oppression. Yet, additionally, the article clarifies the minuteae of the amended constitution which are related to human rights and liberties. Lastly, it argues that the proposed constitution will neither reveal a new system, nor will it constitute a democratic socio-political environment and an advanced human rights constitution.

Key Words: *Turkey, AKP, Erdoğan, Constitution, Human Rights, Authoritarianism*

Introduction

Turkey never had a perfectly functioning, institutionally balanced democracy; but beyond its problematic heritage, there has been a drastic decrease in fundamental principles like democracy, freedoms, human rights and the rule of law in recent years. This is not merely a simple and superficial claim but a well-founded fact based on both domestic and international research. For instance, the 2016 World Justice Project shows Turkey as the 99th among 113 countries in its Rule of Law Index, making a strong emphasis on the political pressure exercised on the judiciary branch.ⁱ It is thus impossible to claim any status of legitimacy for the shrinking of democracy in Turkey up until the year 2017. Hence, all the anti-democratic practices had to be legitimized by utilizing exceptional cases. Now, however, all of these appeared in flesh and bones in a constitutional amendment package prepared within the first months of 2017 under the general consensus of the biggest political party in parliament, Justice and Development Party (*Adalet ve Kalkınma Partisi-AKP*) and the tiniest one; the Nationalist Action Party (*Milletçi Hareket Partisi- MHP*). The constitutional amendments were put to a vote in a plebiscite on April 16 and only 51.4% of voters were persuaded to back this constitutional upheaval.ⁱⁱ

Beyond the results of this plebiscite regarding constitutional change and the campaign period, this article argues that the 2017 constitutional amendments will not only remove the parliamentary system, but more essentially will take Turkey's constitutional memory back to zero. Moreover, the article argues that, with the new constitutional regulations Turkey is about to past the point of no return in democracy, which will have a widespread effect primarily on human rights and liberties. In order to show this general frame, this study first deals with the constitutional history of contemporary Turkey by aiming to express the memory and experience of the founding constitutions. Secondly, it mentions the AKP's story and highlights the difference between 2002 and 2017 in terms of its policies, discourses, and practices. After that it reveals how the new constitutional amendments are coherent with the AKP's changing system of policy implementation and its impact on human rights and liberties.ⁱⁱⁱ

The Brief Constitutional History of Contemporary Turkey

Even though it was not among the fundamental pieces of Ottoman and Turkish modernization, the concept of democracy began to emerge in the second half of the 19th century. The late and

slow democratization in the Ottoman era, however, gained a remarkable speed with the founding fathers of the Republic who exerted top-down reforms on it, which also meant that democracy in Turkey was established by the elites, and for the elites, thus making outside interventions much more difficult (Göle 1997). Still, the ending of single-party rule that lasted from 1923 to 1950 with a democratic election did not directly result in the system becoming relatively more democratic (Zürcher 2014). Understanding the fundamental reasons for this requires an analysis of Turkish political life in terms of democracy.

Democracy's adventure in Turkey started in the pre-Republican era, marked by the milestones of *Sened-i Ittifak* (The Deed of Alliance of 1808), *Tanzimat Fermanı* (Edict of Tanzimat Reforms of 1839), *Islahat Fermanı* (Edict of Islahat Reforms of 1856), *I. Meşrutiyet* (The First Constitutional Monarchy, 1876) and *Meclis-i Umumi* (The Constitution and General Assembly of 1876), and *II. Meşrutiyet* (The Reinstitution of the Constitution and the General Assembly in 1908). *Tanzimat Fermanı*, although presented as a grace of the Sultan, is considered a decree that guarantees the fundamental rights of all Ottoman subjects whether Muslim or non-Muslim. Created in the First Constitutional Era, the short-lived *Meclis-i Mebusan* (General Assembly) became the basis of the Grand National Assembly that was established on April 23, 1920. *Kanun-i Esasi*, declared in 1876, is also known as the first Constitutional experience in Ottoman-Turkish political life (Kayalı 1995). According to the constitution, the Sultan was extraordinary, the slightest transparency or accountability was improbable, and moreover, the mere idea of the formation of an Assembly under the authority of the ruler was beyond expectations (Weiker 1968, 456-457).

The *Teskilat-i Esasiye Law* (General Constitution) of 1921 is a substantial step towards democracy, which adopted the Rousseauian principles of popular sovereignty and unity of powers. Along this line, the parliament held all the powers including the executive branch, which emerged as a separate power from within the legislative branch (Kardam and Cengiz 2011). However, the ministers were chosen by the legislative body one by one. In general, the 1921 Constitution stands out among the first stages of the development of democracy in the transition from the Ottoman sultanate to the Republican regime, in terms of establishing sovereignty on a "secular"^{iv} basis like people or the nation instead of God.

The other reforms complementing the principle of national sovereignty were the abolishing of the sultanate regime on November 1, 1922 and the declaration of the Republican regime on

October 29, 1923. The law that announced the new regime and changed the constitution also introduced the system of the parliament electing the president from among its members, the president appointing a prime minister to be also confirmed by the parliament, and the cabinet of ministers being established by the prime minister (Koçak, 2005).

The biggest step towards the principle of a secular state was made on March 3, 1924 with the abolishing of the Islamic caliphate in addition to some other major reforms (Öztürk 2016, 625). Individual and political rights and freedoms were established in the 1924 Constitution within the framework of citizenship of a single political society or nation. Both of these initial constitutions regulated the concept of “national sovereignty” entrenched within the existence of the parliament, asserting that the best way to secure the rights and freedoms of the citizens is the unconditional use of sovereignty by the parliament in the name of a nation that is assumed to be a single political body. On April 10, 1928, a constitutional amendment removed article 2 declaring Islam to be the official religion, and article 26 granting parliament the responsibility of implementing the Sharia and in 1937, the principle of laicism was installed in the constitution together with the other principles (republicanism, nationalism, etatism, populism, and revolutionist), thus sealing the secularization process (Gözaydın 2008, 159-165).

The 1924 Constitution’s national sovereignty principle, which gave the parliament unconditional and unshared authority, was turned into a tyranny of the majority in the Democrat Party era in the 1950s; thus creating serious issues in the areas of freedom and rights for the opposition (Ahmad 1991, 11-13). As a result, the 1961 Constitution written after the first military coup against the Democrat Party government included a reinterpretation and reregulation of national sovereignty and national will in a way to limit the powers of the political authority and reinforce social rights in addition to civil liberties (Belge 2006, 653-664). It was decided that national sovereignty would be exerted not only through parliament, but also through other mechanisms established in the constitution and always in a way compliant with the principles of the constitution. These mechanisms that were given the authority to share the exertion of national sovereignty included the Cabinet of Ministers, the Presidency, the Supreme Court and independent courts, while the parliament itself was divided into two as the House of Legislation and the Senate in order to create a power balance within the legislative body. Additionally, the Constitutional Court was established in order to check that the laws were in compliance with the constitution. The 1961 Constitution, in short, was a transition from “a constitutional order that collects all the power in the hands of the parliament” with “an

understanding of majoritarian democracy” to “a checks and balances” system attempting “to balance the power of the parliament through various constitutional institutions and civil society organizations” reflecting “an understanding of pluralist democracy.” (Özbudun 1993, 13-14).

The amendments made to the 1961 Constitution after the March 12, 1971 military coup eased the restriction of freedoms while hampering the executive operations. The dual structure of the parliament was ended, and the executive branch was made more powerful vis-a-vis parliament and the judiciary (Demirel 2005, 250-252). When the 1982 Constitution was written following the military coup in 1980, the President was made more powerful specifically against the government in order to create a balance in the executive branch. The President’s position of monitoring and supervising the execution of the constitutional order was strengthened against the ruling party and the parliamentary majority. Following the major improvements especially on social rights in the previous constitution, the 1982 Constitution and its later amendments further developed and expanded individual rights and freedoms (Üskül 2006, 31-35). For example, the framework of freedom of thought and expression was expanded. And it was made a rule in the constitution that, with respect to human rights, the laws should abide by the international agreements that Turkey signed.^v

In short, what we see throughout the history of the Republic is a struggle to establish a representative parliamentary democracy, where popular will finds its place in the political system by way of the deputies elected by the people. Even the single-party rule until the mid-1940s does not negate this generalization, nor the short-term military inventions as they did not lead to a fascist or socialist type regime of totalitarian dictatorship. The adoption and establishment of the separation of powers -which is a common feature of liberal democracies, the installment of judiciary control to a great extent, the securing of basic rights and freedoms in the constitution, and the founding of the constitutional court are also additional achievements of democracy in Turkey. Furthermore, after 1960, this liberal parliamentary democracy gained a more pluralist and libertarian nature that emphasized checks and balances.

AKP in Turkish Politics: A Dream, A Struggle, Then a Tool of Oppression

AKP was founded in 2001 and was to create a heritage of unprecedented electoral success in Turkish political history. It is near-impossible to evaluate this political success without mention

of the performance of its founding leader who has always maintained the role of major decision-maker. Even when he became President and had to cut off all partisan ties, Erdoğan did not relinquish the grip he had on his party. Despite AKP's roots in political Islam, the party's leadership claimed it had changed and started playing to the centre-right of the political spectrum. Defining themselves as conservative democrats, the ruling elite of the party started making policies that compromised the secular system of the country, embraced a West leaning neo-liberalism and created significant momentum for European Union (EU) membership, and eventually crafted the party with a reformist vision.

AKP's 2002 victory owed a great deal to the emergence of a new middle class made up of conservative small-business owners in Anatolia. Market-friendly liberals and left leaning secularists also celebrated its victory over the ultra-secularist Kemalist bureaucracy mainly because of a successful management of the economy and EU reforms (Çarkoğlu 2002, 30-41). The Kemalist elite, however, has always been skeptical about the real intentions of Erdoğan and created a rather disorganized opposition: the Turkish Armed Forces, high judiciary and Republican People's Party (*Cumhuriyet Halk Partisi-CHP*). This loose coalition acted in tandem in the Presidential elections of 2007, a time when the Turkish political arena was shaken by a new kind of military intervention; e-memorandum (*e-muhtıra*) (Aydınlı 2011, 227-231). The Turkish Armed Forces officially warned the AKP government via its website. It was also a war of symbols that the wife of Gül [Presidential candidate] wore the headscarf, which was considered a threat by the abovementioned secularist coalition. Large demonstrations, called *Republican Meetings*, were organized by opposition groups, at which hardline secularist sentiments entwined with ultranationalist and anti-Western messages were aired (Çınar 2011, 107-112). Erdoğan and his party were targeted by the tutelary bureaucracy, judiciary and military, only to come out stronger. With a contra-declaration the government stated that the General Staff was accountable to government and reminded the Army of its position in the Constitution. The disorganized secular coalition had failed; Gül was eventually elected President and the AKP increased its votes by 10 percent in the 2007 general elections. Once again Erdoğan was a victim of the tutelary system and he had won against it (Balcı 2007, 237-242).

Rather than becoming a hero in the eyes of pro-democracy groups and increasing his charisma and democratic legitimacy in Western capitals, Erdoğan opted to change the system concerning

the election of President via a referendum. This would later prove to be a well-calculated move because he had been able to get his comrade, Gül, elected as President and paved the way for a Presidential system. The President therefore was going to be elected by a popular vote and only for 5 years. Representing the people's will directly, the President became much stronger, in terms of popular legitimacy, if not in legal-Constitutional terms. The amendments were approved by an overwhelming 68.95% majority. The crisis-turned-opportunity had helped Erdoğan to change the system and facilitated his personalized rule by loading the Presidency with much needed legitimacy for an executive President (Selçuk 2016, 572-574).

Until 2010, the AKP had declared that despite being the elected government, they lacked absolute control over the military and civilian bureaucracy. There was an unspoken understanding in the party elite on the need to take over the bureaucracy and major state apparatuses. AKP had realized the unaccountable power of high bureaucracy in the Turkish state structure the hard way. Relying on a referendum in 2010 that he won by 58% and a following general election in 2011 by 49.5%. Erdoğan knew that he was popular enough to take on the Kemalist bureaucracy. Furthermore, he had an implicit agreement with the Gülen Movement to dismantle the bureaucratic monopoly of the well-established secular elite. Fethullah Gülen publicly declared his position and urged his followers to support the amendments framed by the AKP (Öztürk 2014, 114). The amendments were an incoherent mixture; while some of them promoted universally accepted norms of liberal democracy and human rights, others were controversial and therefore created a heated public debate. The referendum was the greatest challenge of the AKP against bureaucratic tutelage up to that time. However, Erdogan regret from most changes of referendum in high judiciary because the referendum had made the judiciary more resistant to the encroachments of the executive.

Another challenge for the AKP was the *Ergenekon* and *Balyoz* cases. The allegations were extremely serious in both cases: High ranking officers of the Turkish Armed Forces had planned military interventions multiple times. The suspects were mostly military officers and they had been jailed while their trials were pending. The AKP government had established prosecutors with special authorities for these cases and Erdoğan publicly declared himself to be “the prosecutor of these cases”^{vi} blurring the line between the executive and judiciary. All the while, Gülen-affiliated news organs supported the trials as much as the pro-government media and this created a widespread perception of an alliance between the Gülen Movement and AKP

government. The alliance was not limited to popular support; the AKP was able to utilize the influence of the Gülen Movement in the judiciary to dismantle the Kemalist tutelage (Öztürk 2014, 115).

The period between 2013-2016 was full of social and political turmoil which was utilized by Erdoğan and the AKP as a pretext for a less lawful and more personal rule. One of the critical issues was the Gezi Park Protests which started on 27 May 2013 when excavators attempted to demolish Taksim's Gezi Park, a rare urban green space in downtown Istanbul. The government, with an executive decision, wished to replace Gezi Park with a reconstruction of the historical Halil Pasha Artillery Barracks that would host shopping malls and residences. The protests, which were started to save the park and therefore Taksim Square by a group of environmentalists, later turned into a nation-wide uprising with almost 3 million participants and protests in 79 cities across Turkey. There were 11 deaths and almost 8,000 injuries in 13 cities.^{vii} Demonstrations brought together people from very different camps, including liberals, socialists, EU supporters, nationalists, Kurds, social democrats, secularists as well as pious individuals that opposed the policies of the AKP. For many protestors, it was not only about a park; but about having a voice, saving democracy, freedom of opinion and diversity. Police brutality provoked anger amongst protestors and Erdoğan publicly admitted that he personally gave orders to the police chief himself. He then called the protestors "a bunch of bandits" (*birkaç çapulcu*).^{viii} Erdoğan also threatened the participants with a civil war by taking his supporters to the streets to respond to them in violence.

The second crisis of 2013 stemmed from a corruption investigation that included Erdoğan, four ministers of his cabinet and their relatives: the 17-25 December alleged corruption scandal.^{ix} Having not denied at first the alleged corruption, Erdoğan utilized the pro-government media and attacked the prosecution claiming that the judges, prosecutors and police officers were affiliated with the Gülen Movement and that the whole effort was a judicial coup aimed at ousting him. Within days, all the prosecutors and leading police officers involved in the investigation were re-assigned and the case was practically stopped. Then phone recordings which were collected legitimately throughout the investigation as evidence of corruption were leaked to the internet. Erdoğan then denied their legitimacy and started a campaign claiming the recordings were manufactured and that they were either dubbed or montaged (Saatçioğlu 2016, 133-146). Erdoğan and the AKP managed to mobilize his supporters with an anti-Gülen

rally. Although corruption allegations were identified and documented by the Turkish National Intelligence Agency, the prosecution was successfully portrayed as a coup against Turkish democracy, therefore a threat for the whole country.

Gezi Protests and the corruption investigations had posed a great challenge for Erdoğan and the AKP. It had become clear that there was a significant public resistance against their authoritarian policies. Furthermore, they had gone through a split with their biggest consolidator, the Gülen Movement. With a less-than-democratic but popularly successful management, they came out stronger from the two crises. The new target was changing the political system from parliamentary democracy to presidential rule. Parliament had already passed a law which foresaw the election of the President by popular vote in 2012. Representing the popular will directly, the President would have a much greater legitimacy as an executive actor. If Erdoğan was elected President, he would transcend the Prime Ministry and continue leading the cabinet as long as the AKP remained in power.

The AKP then continued its political success, winning the local elections in 2014 (Çarkoğlu 2014, 99-103). Afterwards, Erdoğan declared his candidacy for President and won more than 52% of the votes, being elected the 12th President of Turkey for a period of five years. Since the President had to be non-partisan according to the Turkish Constitution, Erdoğan was obliged to leave the chair of AKP *de facto* and *de jure*. However, he continued to lead his party *de facto* to the point of organizing rallies for it. In the process of the June 2015 elections, he campaigned for 400 seats for the AKP in Parliament and used a rather interesting tone; ‘give me 400 seats in Parliament and this issue will be solved in peace’.^x However, AKP lost its parliamentary majority at the June 2015 elections, for the first time in its political journey. It had lost about 5 percent of its votes because of the negative effects of the corruption investigations and Erdoğan’s ascension to Presidency (Kemahloğlu 2016).

Despite the fact that the results of the June 2015 election pointed to a coalition government, none of the political parties other than the CHP and HDP (*Halkların Demokratik Partisi*-Peoples’ Democratic Party) wanted to establish one. The AKP government then started some disproportionate military operations in the predominantly Kurdish South-eastern cities against the PKK (*Partiya Karkerên Kurdistanê*- Kurdistan Workers’ Party) and declared a regional

state of emergency with the consent and order from Erdoğan. In the following process, explosions took place in Ankara and Istanbul claiming the lives of more than one hundred people. Erdoğan was more than ready to jump in as the saviour of the people and called for a firm fight against terrorism including ISIS (Islamic State of Iraq and the Levant) and PKK. The atmosphere of insecurity played into his hands, as he claimed he was the only leader strong enough to defend the country. With the fight against terrorism Erdoğan got bolder, more nationalistic and less accountable. His firm stance paid off and once again the AKP got the majority in the November 2015 elections.

After all these events the military coup attempt of 15 July 2016 only created even more social and political trauma. To the best of public knowledge, a medium sized group of flag officers of the Turkish army attempted a coup *d'état* against Erdoğan and the AKP government. Although the leading group of the plotters called themselves the “Peace at Home Council” there was no clarity about who the members were. Publically, Erdoğan used his popularity and called people onto the streets. The attempt had started about 8-9 pm and was over before the morning, claiming 265 lives and leaving 2,797 people wounded. All four political parties in Parliament stood united against the coup attempt. Within the first hour, Erdoğan accused the Gülen Movement as being behind the attempt.^{xi}

Five days after the attempted coup, the AKP government declared a state of emergency for three months, which would subsequently be extended three times. The government then started ruling the country with statutory decrees. The justification for the state of emergency was that the conditions were grave and the government needed to take swift and effective measures. Due to the shock and trauma of the failed coup the first weeks went by without any opposition to the government and its measures. Erdoğan constantly claimed that the people and the state of Turkey were facing an existential threat and that the measures were dedicated to their survival. Therefore, the extraordinary and extra-legal measures should have been evaluated in this context. Law was not enough to remove the threat and Erdoğan was the one to decide what the exception was as the ruler of the country. However, the measures far exceeded the justifiable scope and were not easy to link with the coup attempt: Within the first three months of the state of emergency, 35 medical establishments, 934 private teaching institutions, 109 private student dormitories, 104 foundations, 1,125 associations, 15 private universities, 19 unions, 45 newspapers, 15 journals, 18 TV stations, and 29 publishing houses, most of which were run by

the Gülen Movement, were closed down. More than 111 thousand civil servants were fired from public institutions. More than 7 thousand of them were employed in the judiciary, while 10 thousand were army officials and about 50 thousand in the education ministry. 2,500 journalists lost their jobs. More than 36 thousand people were arrested.^{xii}

Since they were no longer a threat, Erdoğan turned his attention to pro-Kurdish groups. In the post-coup process, all pro-Kurdish print and visual media organs were shut down.^{xiii} The autonomy of the judiciary was lost altogether and prosecutors were acting like persecutors of the opposition. The co-chairs of the pro-Kurdish Peoples' Democracy Party were arrested along with 10 other members of parliament.^{xiv} Municipal mayors of many Kurdish majority cities and districts were arrested and administrators were appointed in their place.^{xv} The people who obtained their positions by popular vote were being replaced by appointed bureaucrats. Another crackdown in the post-coup process affected the oldest newspaper in the country: *Cumhuriyet*. *Cumhuriyet*'s secular and Kemalist line of publication positioned the paper in opposition to Erdoğan's Islamism. A group of columnists and editors of *Cumhuriyet* were arrested with the accusation of aiding the PKK and Gülen Movement.^{xvi} The accusation was less-than-convincing because it is very difficult to juxtapose PKK and the Gülen Movement. It is nearly impossible to link *Cumhuriyet* with any of the two, let alone the three of them acting in tandem. The coup attempt had turned out to be a gift from God^{xvii} for Erdoğan, who was using it to surgically remove the opposition that would resist the Presidential system.

The Proposed Constitution and its problems: Timing, Context and Human Rights^{xviii}

The most obvious instrumentalisation of the post-failed coup emergency was ordered by Erdoğan; the new constitutional draft that sought to change the parliamentary regime of Turkey into a presidential one, clearing the way for Erdoğan to rule the country at least until 2029 were swiftly approved in the Grand National Assembly with the support of the nationalist MHP, which made the main opposition party CHP's resistance completely ineffective after the imprisoning and harassment of the pro-Kurdish HDP deputies in parliament. The leading figures of the AKP and MHP defended the move to practically end the separation of powers by arguing that Turkey needed a strong leadership and a sustainable stability, and to thus erase all the components of military and bureaucratic tutelage.

The new constitution was drafted under the blanket of a state of emergency that went far beyond

measures against military and bureaucratic tutelage, without the consent of the other parties in Parliament. Furthermore, parliament had already been side-lined by the emergency rule decrees of Erdoğan, and was put to the vote under the same conditions of the suspension of due process in the rule of law. The opponents of the amendment, including the CHP and HDP, argued that transferring the executive authority of the parliament to the president and making him completely immune to judicial accountability would inevitably establish a dictatorship under Erdogan. By allowing the President to maintain party affiliation, they say, single-party rule will be secured at the expense of destroying minority parties and weakening checks and balances. In the context of the deep polarization that Turkey has been struggling with, this new divide over a regime change will further deepen the cracks in the fabric of society and accelerate the risk of civil war.^{xix}

Furthermore, one may easily claim that the new constitutional amendments offer a crystal clear regime and system changes from parliamentary democracy to an exclusively presidential one. Taking into account all of the historical background of Turkish democratization and the AKP's authoritarian shift it is true that the new system could bring about one-man rule with patrimonial and patriarchal mentalities that would directly affect human rights and liberties negatively. In his study, Uvin divided human rights into five different categories: political, economic, social, civic and cultural. Based on a historical explanation Uvin demonstrates that presidential systems with a lack of democratic culture and a strong system of checks and balances with a highly transparent bureaucracy could harm these human rights categories starting from the political and economic ones. After that, these kinds of systems would affect the social, civic and cultural rights that embody freedom of thought and speech (Uvin 2004). In this regard, as mentioned previously, the existing situation of human rights and liberties has been getting worse since the beginning of 2010 under the strict dominance of Erdoğan. The legalisation of this situation open a huge gap in the wall of human rights and liberties.

Although there are a great many studies that make similar claims to Uvin, according to the Turkish Prime Minister Binali Yıldırım, with the new amendments Turkey will be ruled by a strong presidential government and be completely saved from the risk of instability caused by coalition governments. Despite the erasure of the post of Prime Minister by the new constitution, he said: "*Parliament ... is being strengthened, while the presidency, in charge of the executive branch, is being restructured to end conflicts between branches... There will only be strong leadership now.*"^{xx} The authorities that will be granted to the President are as wide as

possible, allowing for presidential decrees that do not require parliamentary approval, and also giving him the authority to appoint public officials as well as half of the high court judges.

Article eight of the amendment establishes that the President will have the power to issue executive decrees without a need for parliamentary ratification or legislation except in times of a state of emergency, and except on matters of fundamental rights, individual rights and duties listed in the unchanged articles of the Constitution.^{xxi} Although the parliament partially retains its legislative power on paper, the de facto state of rule in Turkey signals that the presidential decrees will be the norm rather than the exception in the new regime. It is also likely to see frequent clashes of power within the executive branch, as the legislative power of Parliament is still in force in the current Constitution. Yet it is designed in such a way that it will be impossible for the parliament to rule against the President, especially within the context of a party-state union. The President can send the laws back to parliament in whole or in part, for reconsideration; and in that case, the Parliament needs a majority of 301 votes out of 600 seats (there are currently 550) in order to pass that law. This means that unless they gain a majority of 51 percent in the parliament, the parties other than the president's party will have no chance of blocking or resisting legislation.

According to this new amendment, as may be understood from the above paragraph, the power of parliament will be almost entirely extinguished. That is, the open discussions on different issues by the representatives of different social components will be silenced and/or deactivated. This in spite of the fact that Turkey is a country that has a great many different minorities in terms of gender, social class, religion and ethnicity. From this point of view, under the new constitution, the rights of LGBT people, Alevis, non-Muslims, Kurds, Armenians and other non-majoritarian groups will be abandoned in favour of one-man rule by a person who will mainly represent the majority and their rights in order to extend his/her political journey. As mentioned previously minority rights is one of the fundamental pillars of human rights and liberties, thus the amended constitution will again harm the quality of human rights and liberties in Turkey with its pro-majoritarian structure.

The amended constitution also carries the risk of arbitrary or prolonged periods of state of emergency, as it grants the President the sole authority to decide this. Again, in article eight of the amendments, this state of emergency covers martial law as well as state of emergency regulations in the Constitution. This allows the President to rule the country by presidential

decree and request the parliament to extend the period by up to four months, which will not apply in the event of a war. Another power handed to the President in the same article is the ability to restructure all the ministries and public institutions and deciding whether to abolish or change a ministry branch or add a new one simply by issuing a presidential decree. Not only the ministers of the government, but also all the senior civil servants (the definition is left open with the possibility to include rectors of universities, police heads and military force commanders) will be subject to a presidential decree in their appointments. This new regulation seems to give rights to the authority to establish an arbitrary and sustainable state of emergency. Yet, as noted previously, Turkey's history regarding states of emergency does not inspire confidence. Restrictions imposed under the state of emergency have always gone beyond those permissible under international human rights law, including unjustifiable limitations on media freedom and the right to freedom of expression.

The structure of an independent judiciary branch is seriously harmed in the amended constitution, reducing the members of the High Council of Judges and Prosecutors (*Hakim ve Savcılar Yüksek Kurulu -HSYK*) from 22 to 12, half of them to be directly appointed by the President, and the other half to be elected by Parliament according to article fourteen in the constitutional amendment. The HSYK is the body that runs all proceedings of the courts: the appointment, promotion, disciplining or firing of judges and prosecutors, abolition or creation of courts or changes to their territorial jurisdictions. In other words, in a system where the President and the majority in Parliament are from one political party, this will practically mean that the judiciary will be under the total control of a single political authority. Regarding the independent structure of the judiciary two different points should be mentioned. First of all, the United Nations Human Rights Office of the High Commissioner noted in 1985 that: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." And, "the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."^{xxii} However, the new constitutional amendments will take the independent structure of the judiciary and hand it over to the patrimonial relationship mechanisms of the one-man regime.

Furthermore, one of the fundamental notions of human rights and freedoms is the concept of

tolerance balanced by an independent judiciary. However, the creators of this constitutional amendment have little tolerance for any kind of individual opposition and its expression. During Erdoğan's time in as President he has filed more defamation cases than all the previous presidents. In less than three years more than three thousand individuals have been prosecuted for insulting the President. *From this point of view, it is possible to speculate that now the constitutional amendments have been approved by the referendum, most of these individuals would by constitutionalising article eight, fourteen and ten.* [my italics-this sentence can be deleted. It doesn't make sense and is unnecessary]

Along the same line of subduing the judiciary branch to the strong executive branch, the accountability of the President is made even more difficult with the new Constitution. According to article two of the amendments, impeachment proceedings against the President may be commenced by the signatures of 301 deputies in the proposed 600-seat parliament. Then Parliament will set up an inquiry commission by the secret ballot of 360 deputies, and if the commission decides the President should be tried at the Supreme Court, this will only be possible with a secret ballot of 400 deputies, according to article fourteen. Moreover, these provisions will still apply even after the President's term ends, which implies a lifetime of unaccountability for the President.

One final regulation that strengthens the authority of the President concerns re-election, as according to the amended constitution parliamentary elections will be held every five years instead of four, on the same day as the Presidential elections. Instead of allowing Parliament to hold a snap election by a vote of 139 deputies out of 550, as previously, the amended constitution requires 360 of the 600 deputies, according to article two. Under these provisions, Parliament is given only the slimmest chance to call for an election in spite of the President. The President is allowed to be elected for a second term, but it is also possible to run for a third term if he/she makes a call for a new parliament during his/her second term. Indeed, the amended constitution makes it possible for the President to serve for life by not putting any obstacle to this authority of closing and reopening parliament.

As noted previously, the first constitution in Turkish history was the *Kanun-i Esasi* adopted in 1876, which was not the result of a popular will, but drafted by a group of educated elites called 'The Young Ottomans.' According to this constitution, the Ottoman dynasty held unconditional, unrestricted sovereignty. The Sultan's person was deemed 'sacred' and all

executive and legislative powers belonged to him. Although the judicial power was considered independent, the Sultan had the right to grant amnesty. The citizens were granted all basic rights except for the freedom to gather and form political parties or organizations. The law promised to guarantee the citizens' lives, properties, honour and immunity of residence; yet this judicial guarantee was deeply flawed as the Sultan could still exile people after a police investigation, on the grounds that they constituted a threat for the state. Looking at the 2017 amended constitution promising a strong presidency with weaker judicial independence, one cannot help but ask what is exactly new after 140 years in the constitutional journey of Turkey.

Under these conditions, far beyond any discussions as to whether there is anything wrong with replacing the classical parliamentary system with a presidential system, the problematic points exist in three different areas: timing, general context and fundamental human rights.

It is obvious that the amended constitution will give huge and almost uncontrollable power to both the current president and future charismatic leaders, but this is the main problem of the situation. The first problem concerns the timing of the proposed constitution in two ways. First of all, the constitutional amendments were prepared after the failed coup attempt under the state of emergency. Furthermore, it would be possible to argue that there were no negotiation and consensus processes held by the different sides. Under these exceptional conditions, the regulator of the state of emergency is an open side of the campaign that occurs that there is no fair and free accompanying process.

In terms of general context, under this amended constitution there will be no political bargaining among the different groups in Turkey. Erdoğan and his supporters say the changes will streamline decision-making and end a system that divides power between a prime minister and a president. As noted previously, the amended Constitution will also allow a president to be the official head of his party, something not previously permitted, but it will limit the president to two terms. In this regard, even though it seems that the changes will maintain the separation of powers and democratic checks on the president, it is quite obvious that the legal changes are intended to confirm the *de facto* dominance of the President in the state apparatus. Furthermore, the changes to the constitution also assume the establishment of the President's *de facto* control over the sphere of justice. There are plans to reform the Supreme Council of Judges and Prosecutors, the highest disciplinary body in the Turkish judiciary, which also has broad powers to take personnel decisions. This mechanism means that the head of state will in practice have

control of the judiciary.

Both the timing and contextual problems affect human rights. Most respected sources mention that human rights are rights inherent to all human beings, whatever an individual's place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations for states to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups. Yet, with this amended constitution both the decisions and classical management institutions of the country will be handed over to one executive office and this office will also gain an ability to confiscate assets, declare a state of emergency and delegate legislation with no audit context of high judiciary and international authorities.

Conclusion

This article explains the recent course of Turkish politics and the new amended constitution within the context of human rights. In this regard, it first explains the historical journey of Turkey's constitutional establishment. Furthermore, it mentions the long, discriminating and controversial political journey of the AKP under the intensive impact of its indisputable leader Erdoğan. It argues that many extreme political and social situations and the leadership dexterity of Erdoğan over time can best be expressed as a ceaseless will for power. The early struggle with the tutelary bureaucracy of Turkey signifies no loyalty to democracy in the light of recent rapid authoritarianism. Finally, the article explains some of the new articles in the constitution and demonstrates their political, legal and sociological output and claims that the objective system introduced will extinguish all constitutional memory and will reveal restrictions on human rights since there is no legal guarantee of basic rights and freedoms in the text. Consequently, it would be fair to say that especially since 2010 the AKP and its indisputable leadership mechanism have been making themselves more and more authoritarian. This is something that has been noted not only in scholars' works but also in various international data. Under these circumstances, there has been a significant decline in the rule of law, freedom of speech and other fundamental human rights. However, this gradually declining process gained great momentum after the failed coup attempt since the ruling structure has found a tool to instrumentalise their decisions and policy plans.

Yet, it is fair to say that no one is happy regarding the results of Turkey's controversial referendum. According to the almost official results^{xxiii}, it is quite obvious that the 'yes' votes had a narrow lead. However, 'no' votes were ahead in Turkey's biggest cities like Istanbul, Ankara and Izmir. It should also be noted that despite allegations of serious vote rigging, blunders by the Higher Election Council and strong evidence of undemocratic practices in the run up, the race was very tight.^{xxiv} Furthermore, it seems that the CHP, the main opposition party, is going to object to the results on the grounds of some infractions of the rules on polling. This means that even if the official result is 'yes', this was one of the most debatable electoral processes in Turkey. But, frankly, Erdoğan, who has been in control of the entire state apparatus for a long time now, will never allow any result other than 'yes'.

Under these disputable circumstances, although the supporters of Erdoğan will see the results of the referendum as the official start of a 'new Turkey' era, we cannot be that precise. Since, first of all, the results show that polarisation in Turkey has reached a peak. While half of the population is willing to deliver their will to Erdoğan, the rest is strongly against him and his authoritarian and pro-Islamic policies. Secondly, with the result of the referendum, the one-man rule of Erdoğan has become constitutional, but it is also crystal clear that the educated classes and young generation are against him and it is apparent that it will be hard for him to run the country with his previous authoritarian habits. In this regard, the result of the referendum is not an end, it is just the beginning of a new era of struggle between pro-Erdoğanists and the rest. Yet, this is almost obvious that it seems that the last political moment is the new constitution that gives the president more and more power includes pay-pass the parliament and international subordinated conjunction which would be related with international human rights.

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ⁱ For the full profile of Turkey, see; <http://data.worldjusticeproject.org/#/groups/TUR> (last accessed on 10 January 2017).

ⁱⁱ <http://edition.cnn.com/2017/04/16/europe/turkey-referendum-results-erdogan/> (accessed on 17 April 2017).

ⁱⁱⁱ This study does not examine all the single items of the constitution. There are 18 different amendments in the constitution, but I have mainly focused on the articles that will affect freedoms and human rights.

^{iv} Turkey's understanding of secularisation/laïcité, which has been implemented as management and regulation of religion by the dominant political actors in Turkey. In this regard, the Turkish state indicates not a *separation* of religion and state, but an attempt at *hegemonic management of religion* by the state for the purpose of not only limiting its influence and pertinence within the public sphere but of pacifying it more generally.

^v One of the important points is article 90 (5): International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. (Sentence added on May 7, 2004; Act No. 5170) In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

^{vi} An explanatory article about the issue, see; <http://www.al-monitor.com/pulse/tr/originals/2014/01/ergenekon-turkey-gulen-akp-trial.html> (accessed on 5 January 2017).

^{vii} For a detailed explanation, see; <https://www.theguardian.com/world/2014/may/29/gezi-park-year-after-protests-seeds-new-turkey> (last accessed on 14 February 2017).

^{viii} For Erdoğan's statement, see; <http://www.radikal.com.tr/politika/basbakan-erdogan-biz-birkac-capulcunun-yaptiklarini-yapmayiz-1136875/> (accessed on 6 January 2017).

^{ix} It refers to a criminal investigation that involves several key people in the Turkish Government. It had two parts; 17 and 25 December. Erdoğan described the corruption investigation as a "judicial coup" by those jealous of his success, namely Fethullah Gülen and his Movement, backed by foreigners.

^x Please see; <http://t24.com.tr/haber/cumhurbaskani-erdogan-gaziantep-te-konusuyor.289627> (accessed on 18 January 2017)

^{xi} For related news, see; <http://www.aljazeera.com/news/2016/07/turkish-political-parties-unite-coup-attempt-160717170830139.html> (last accessed on 10 February 2017).

^{xii} For a related report see; <http://www.refworld.org/pdfid/5890c8d84.pdf> (last accessed on 5 February 2017).

^{xiii} See for details, <http://www.haaretz.com/middle-east-news/turkey/1.737374> (accessed on 11 March 2017).

^{xiv} See for details, <https://www.theguardian.com/world/2016/nov/04/turkey-arrests-pro-kurdish-party-leaders-mps> (accessed on 4 April 2017).

^{xv} See for details, <http://www.thestar.com.my/news/world/2016/09/08/turkish-governor-denies-municipal-shakeup-in-kurdish-southeast/> (accessed on 15 January 2017).

^{xvi} See for details, <http://www.middleeasteye.net/news/turkey-cumhuriyet-press-freedom-terrorizm-2006817265> (accessed on 4 April 2017).

^{xvii} Please see <https://www.rt.com/news/351630-erdogan-turkish-military-relationships/> (accessed on 16 March 2017).

^{xviii} For the early version of this part please see; <https://www.opendemocracy.net/ahmet-erdi-ozturk-tar-g-zaydn/turkey-s-draft-constitutional-amendments-harking-back-to-1876> (last accessed on 26 March 2017).

^{xix} For an explanatory article see; <https://www.opendemocracy.net/ahmet-erdi-ozturk/small-picture-in-big-picture-of-erdogan-s-turkey> (last accessed on 11 February 2017).

^{xx} For the full speech please see; <http://uk.reuters.com/article/uk-turkey-politics-constitution-idUKKBN13Z0K4?il=0> (last accessed on 12 February 2017).

^{xxi} For the all constitutional amendments please see; <https://www.tbmm.gov.tr/kanunlar/k6771.html> (last accessed on 16 April 2017).

^{xxii} For the full text see, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> (last accessed on 5 April 2017).

^{xxiii} To see the results <http://www.cnnturk.com/referandum-2017> (last accessed on 17 April 2017).

^{xxiv} For the report of the International Referendum Observation Mission, please see; <http://www.osce.org/odihr/elections/turkey/311721?download=true> (last accessed on 17 April 2017).