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Turkey's 'Yes' Vote in the Referendum on Constitutional Reform: One More Step Towards Joining the EU (ARI)

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Theme: The 'yes' vote by a significant margin in Turkey's constitutional referendum on 12 September should revive the flagging negotiations for Turkey's full entry into the EU, launched in October 2005, which have virtually ground to a halt.

Summary: The result was a resounding victory for the conservative Islamist-based Justice and Development Party (AKP) of Recep Tayyip Erdogan and boosts his chances of winning a third term as head of a single-party government in 2011 and running for the presidency in 2012. Erdogan's opponents in the secular establishment (the military, judiciary and state bureaucracy) contend, however, that the outcome will make the government more authoritarian.

Analysis: The long overdue reform of parts of Turkey's illiberal 1982 constitution, drawn up by the military junta that ruled the country for three years after the 1980 coup, was approved by 58% of voters, much wider than most polls had suggested, and rejected by 42%. The voter turnout was high at 78%. In a highly symbolic move, the referendum was held on the 30th anniversary of the coup. Among the voters was Kenan Evren, the leader of that coup.

The AKP, first elected in 2002 and re-elected by a wider margin in 2007, had tried root-and-branch reform of the constitution, but always ran up against fierce opposition, mainly from the People's Republican Party (the CHP, established by Mustafa Kemal Ataturk, the founder of the Turkish Republic in 1923) and the Nationalist Action Party (MHP). A draft constitution was drawn up but got nowhere. The package of reforms put to the referendum was passed by the 550-seat parliament in late April and early May 2010 with 336 votes, below the two-thirds majority necessary to pass it directly, but enough to send it to a referendum within 60 days after the president signed the law.

The 26 amendments to the constitution, whose emphasis on the state's as opposed to the individual's rights put it at variance with EU norms, include:

- Giving parliament more say in the appointment of a larger Constitutional Court and more powers to select members of the Supreme Council of Judges and Prosecutors, the body in charge of appointments.
- Further limits on the powers of military courts, prohibiting them from trying civilians. The article that prevented the prosecution of the leaders of the 1980 military coup, which followed political gridlock and civil unrest, was repealed. Over half a million Turks were arrested and tortured after the coup and 51 were executed by hanging.

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Campaigners wasted no time in launching petitions to put Evren (aged 93) and his closest colleagues on trial.

- Civilian courts have more powers to try military officers charged with plotting coups. Any soldiers discharged by the Supreme Military Council now have a new right of appeal. This change stems from the perception that Islamists were the focus of previous army purges.
- All citizens have the right to appeal to an ombudsman. The EU pressed for this reform as a prerequisite for EU membership.
- Other reforms concern data protection, positive discrimination for vulnerable groups – notably children, the elderly and the disabled– and the rights of trade unions. Civil servants have the right to conclude collective bargaining agreements and go on strike. In parliament, elected deputies are now allowed to stay on if their party is disbanded by a court. Several precursors of the AKP have been banned over the last 20 years.

The reforms remove remnants of autocratic rule and thus will boost Turkey's aspiration to join the EU. The European Commission welcomed the results. 'These reforms are a step in the right direction as they address a number of long-standing priorities in Turkey's efforts towards fully complying with the accession criteria', Stefan Fuele, the Enlargement Commissioner, said. President Barack Obama called Erdogan to congratulate him – Turkey is a major strategic ally for Washington and Nato which wants the country in the EU in order to secure its position–. Obama 'acknowledged the vibrancy of Turkey's democracy as reflected in the turnout for the referendum'.

Guido Westerwelle, the Foreign Minister of Germany, whose government is against Turkey's full EU membership (it entered the EU customs union in 1995) and wants the country to have a 'privileged partnership' (totally unacceptable to Ankara), was also one of the first to praise the results. 'This discussion in society, also about the concrete form of the balance of power in the state, is very much to be welcomed', he said.

The centre-left CHP and the extreme-right MHP, the two parties that channel most of the secular vote, believe that two of the reforms will give the government excessive influence over the judiciary. They campaigned for a 'no' vote, accusing the AKP of trying to seize control of the judiciary –a bastion of Kemalism which has been at loggerheads with the government ever since it came to power– as part of a back-door Islamist coup. The AKP narrowly escaped closure by the constitutional court in 2008 for allegedly undermining the secular constitution after parliament approved constitutional amendments, which paved the way for women to be allowed to wear the Islamic headscarf in universities. This case followed the AKP winning 47% of the vote on an 84% turnout in the 2007 general election, which was called early to resolve the stand-off between secularists and Islamists over the choice of the next President (see Figure 1). The army tried unsuccessfully to stop Abdullah Gul, then the AKP Foreign Minister, from becoming President, on the grounds that he was not sufficiently secular (his wife wears the Muslim headscarf).

Figure 1. Elections in Turkey (% of the vote)

	2002 general	2004 local	2007 general	2009 local
AKP	34.3	41.7	46.6	38.4
CHP	19.4	18.2	20.9	23.1
MHP	8.4	10.5	14.3	16.0
Pro-Kurdish parties	6.2	5.2	5.2	5.7

Source: Turkish Interior Ministry.

Political life has become increasingly polarised, reflected in the results of the referendum. The highest number of 'yes' votes came from Central Anatolia, the heartland of the AKP. The results in Istanbul (55% in favour), the largest city, and Ankara (54%), the capital, were in line with the national figure. The 'no' vote was strongest in coastal cities, where voters feel their westernised lifestyles are under threat from the AKP. Voters appeared to have followed their party's line, turning the referendum into a vote of confidence in the government. Erdogan appealed to his core vote and did not reach out to his opponents, accusing them during the referendum campaign of being 'in favour of army coups' and even going as far as to warn that they would be 'eliminated'.

The outcome was a blow for Kemal Kilicdaroglu, the new CHP leader, who replaced Deniz Baykal in May. The 72-year-old Baykal had run the CHP, which has been out of power for 15 years, since 1992 as if it was a private fiefdom. He was forced to resign after a secretly-filmed sex video allegedly featuring him and his former secretary was leaked to an Islamist website. The lack of a credible and effective opposition, and thus an alternative government, hampers the development of a full democracy in Turkey. The CHP's electoral strategy consists of little more than inciting the army and the courts to move against the AKP and opposing the government's reforms even those that enhance the country's EU membership bid.¹ As the political heirs of the pro-Europe Ataturk, they have done the visionary leader a poor service.

The pro-Kurdish Peace and Democracy Party (BDP), and the outlawed Kurdistan Workers' Party (PKK) called for a boycott, saying the reforms did not meet Kurdish needs for a brand-new constitution. Turnout was low among Kurdish voters in the south-east (below 10% in some areas), the poorest and most troubled part of Turkey which during the 1980s and 1990s witnessed a vicious war between the PKK, fighting for an independent Kurdistan, and the army which left more than 30,000 people dead. The PKK has threatened to call off its recently declared unilateral ceasefire unless Erdogan moves more on Kurdish rights.

While there is little evidence to support the opposition's claims that the AKP has seriously undermined secularism during its eight years in office, the amendments introducing procedural changes to the appointments of supreme justices and allowing more to be appointed by the President and the legislative branch from state institutions controlled by the executive branch do raise legitimate concerns. 'An independent but ideological judiciary may be transformed into a dependent and possibly equally ideological entity', says Sinan Ulgen, the Chairman of the Centre for Economics and Foreign Policy Studies (EDAM) in Istanbul and a visiting scholar at Carnegie Europe.² He added that independence is 'further undermined by allowing the minister of justice to remain at the helm of the supreme board of judges and prosecutors. Turkish democracy runs the risk of being taken hostage by elected but authoritarian leaders'.

Spain, it should be said, has major parts of the judiciary –the Constitutional Court and the governing body of the judiciary (*Consejo Superior de Poder Judicial*)– which are widely recognised as having become increasingly politicised over the years.

¹ See David Gardner, 'Turkey needs more from Ataturk's irrelevant heirs' by David Gardner, *Financial Times*, 11/III/ 2010.

² See Sinan Ulgen, 'Turkey faces the next major test of its democracy', *Financial Times*, 9/IX/2010.

The AKP's record on press freedom leaves a lot to be desired. It has fostered the nourishment of pro-government media and the US\$2.5 billion tax fine imposed on the Dogan group drew criticism from the European Commission in its 2009 progress report on Turkey's long and winding path to EU membership. The report said the fine 'potentially undermines the economic viability of the Group and therefore affects freedom of the press in practice. There is a need to uphold the principles of proportionality and of fairness in these tax-related procedures'.³

The upcoming progress report will be more positive than the last one, but there is still a very long way to go. Now that various domestic obstacles have been cleared out of the way, the government needs to focus, to the exclusion of almost everything else as regards the EU's accession requirements, on resolving the 36-year dispute with Cyprus, which Turkey invaded in 1974 and which is divided by the UN-manned Green Line into the Greek Cypriot part in the south of the island and the internationally unrecognised Turkish Republic of Northern Cyprus (TRNC) in the north (see Figure 2).⁴ Turkey's intervention followed inter-communal strife and an attempt in a military coup to incorporate Cyprus into Greece.

Figure 2. Cyprus



Source: BBC.

The whole of Cyprus joined the EU on 1 May 2004 but the *acquis communautaire* are 'suspended' in the TRNC. Shortly before Cyprus entered, Turkish Cypriots voted overwhelmingly 'yes' to the reunification plan of Kofi Annan, the former UN Secretary General, presented in a referendum, while Greek Cypriot voters rejected it massively. The Council of the EU had pledged to reward the Turkish Cypriots for a 'yes' vote by reducing the isolation of, but the Republic of Cyprus's first action as a EU member was to block this gesture. The Turkish government reacted by reneging on its promise to implement the Additional Protocol to the customs union and open up its seaports and airports to Greek-Cypriot traffic and recognise the Republic of Cyprus. As a result, the EU summit in December 2006 suspended eight of Turkey's EU accession chapters and Cyprus has since then frozen another six.

³ See the author's analysis of the 2009 progress report: 'The EU's Progress Report on Turkey's Accession: Sluggish Steps Forward', ARI nr 145/2009, Elcano Royal Institute, http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ari145-2009.

⁴ For a full explanation of the Cyprus problem see the author's working paper *Cyprus: Time for a Negotiated Partition?*, Working Paper nr 21/2010, Elcano Royal Institute, http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/Elcano_in/Zonas_in/DT21-2010.

The Greek- and Turkish-Cypriot leaders renewed negotiations in May for reunifying Cyprus. Little progress of substance was made during 19 months of talks between Demetris Christofias, the Greek-Cypriot President, and Mehmet Ali Talat, the former President of the TRNC, who was defeated in April by the more hard-line Derviş Eroğlu. The international community is becoming increasingly frustrated by the lack of progress on a settlement and the idea of a negotiated partition has been gaining credence. The talks are currently bogged down over the highly sensitive issue of property.

Spain is an active supporter of Turkey's EU membership, but the Spanish EU Presidency in the first half of this year only managed to open one more accession chapter for the country and on the very last day. Madrid had announced that it hoped to open four chapters. The obstacles placed by the Greek Cypriot administration and other countries such as France made it impossible for Spain to open more than one chapter.

The opening of the chapter on food security, veterinary and phytosanitary policy brought the number of chapters opened since October 2005 to 13 (only one of which has been closed) out of a total of 35.

Conclusion: The AKP now needs to accelerate the pace of democratic reform, beginning with a brand new constitution, and prove to its opponents that the judiciary reforms will not be used against them. There is a need for stronger democratic checks and balances.

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