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The Countdown: Turkey's Constitutional Referendum

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On September 12, 2010 Turkish voters will go to the polls to confer or reject government-sponsored "revolutionary constitutional changes". These proposed changes mark the clear desire by the ruling Islamist Justice and Development Party (Adalet ve Kalkınma Partisi; AKP) to extend and consolidate its influence in various spheres of Turkish institutional life, particularly the judiciary.

The decision to hold the constitutional referendum on September 12 was no coincidence, for it was the date of the military *coup d'état* carried out by the Turkish Army (Türk Silahlı Kuvvetleri; TSK), an act viewed by the AKP as perhaps the ultimate crime of Turkey's formerly dominant military-security establishment. Indeed, in order to understand the current situation we need to clarify and discuss the roots of the 1980 *coup d'état* and the 1982 constitution which emerged from it.

The 1980 *coup* was carried out in response to the increasingly anarchic situation in Turkey, characterized by violence and terror among competing radical movements from the left and right as well as Islamic groups. Designated as "Flag Operation" (Bayrak Harekatı), its declared objectives were to safeguard the country's unity, restore order and eliminate the centrifugal, anti-system tendencies that threatened to undermine Turkey's fragile democratic system. Its first act upon seizing power was to annul the Turkish parliament, revoke the immunities of its members, and suspend basic rights and liberties throughout the country.

The coup was carried out by the military's senior leadership, which established the "National Security Council" (Milli Güvenlik Konseyi; MGK). Its actions were legitimized through reference to the "Inner Service Law," which defined the mission of the TSK as guardian of the Republic. Initially, Chief of Staff General Kenan Evren possessed the jurisdictional powers of the President and Head of the MGK. Under him, the new military government adopted the "National Security Doctrine": culture and ideology were militarized, the public was depoliticized, martial law measures became the norm in daily life, public liberties and the judiciary's powers were limited, and the jurisdiction of police forces was broadened. In essence, the Doctrine enabled the state to infiltrate and interfere in all spheres of society.

However, the TSK has always served as a unique case in the annals of military interventions in civilian affairs. Notwithstanding the fact that it has overthrown civilian governments on a number of occasions, the TSK always eventually re-installed civilian rule.

In the case of the post-coup constitution that it promulgated in 1982, the TSK held the reins tightly, as it attempted to fashion a more stable polity. Already, it has been amended 16 times, involving amendments to 84 articles, and the need for further modifications is understood by all parties. However, there is little consensus on what those changes should be.

The AKP's proposed amendments to the constitution address the following subjects: equality before the law; privacy; the right of accommodation and travel; protection of families and children's rights; collective bargaining agreements; rules governing the functioning of political parties; the creation of an ombudsman regarding governmental activities; the parliamentary presidium; the judiciary; the Constitutional Court; the High Committee of Judges and Prosecutors, and paving the way to holding the 1980 *coup d'etat* leaders accountable for their actions.

If passed, the changes will have revolutionary implications for the judicial system. Reforms in the constitutional court and the High Committee of the Judges and Prosecutors will allow the country's President, currently the AKP's Abdullah Gül, and the other bodies of the AKP government to nominate the majority of the judges and prosecutors. In essence, the AKP will gain a complete monopoly on the country's three branches of government, rendering the principle of separation of powers devoid of meaning.

In addition, the AKP sees the constitutional referendum as an opportunity to block future potential *coups d'etat*. The proposed amendment to article 145 stipulates that if a soldier is accused/convicted of acting against the state's

security or against the constitution he/she will be tried/sentenced in a civil court, not a military one. For the AKP, the necessity of the amendment stems from the Ergenekon investigation. Ergenekon, a euphemism meaning "ultranationalist covert network", refers to a series of indictments against former and active senior military leaders and Kemalist civilians who allegedly plotted to overthrow the AKP government. Most of the accused are being tried in a military court.

Another proposed amendment is directly related to the 1980 coup. Article 15 of the 1982 constitution gave the coup leaders immunity from any possible future legal action against them. However, the article was intended to have been temporary, and the AKP wants to remove it entirely. According to Turkish constitutional law expert and honorary chief prosecutor of the Supreme Court of Appeals, Sabih Kanadoğlu, the article should have been revoked a long time ago. However, he also rejects the notion of prosecuting the coup leaders because the article had been approved by 91% of Turkish voters, along with the rest of the constitution, in a referendum. Moreover, he believes that the law prevents them from being indicted even if the amendment will be approved.

The proposed changes, particularly regarding the judicial system, will seriously exacerbate divisions within Turkish society. This is clearly indicated by the response of the opposition parties - the Republican People's Party (Cumhuriyet Halk Partisi; CHP), the Nationalist Action Party (Milliyetçi Hareket Partisi; MHP) and the Kurds' Peace and Democracy Party (Barış ve Demokrasi Partisi; BDP). All are vigorously opposed to the proposed constitutional changes, which the CHP brands as the "*coup d'etat* of the AKP". In seeking to preserve judicial independence, the CHP bases its objection on the Code of Good Practice on Referendums, of the European Union's Venice Commission. In the Code's "specific rules" section, article 30 states: "Electors must not be called to vote simultaneously on several questions without any intrinsic link, given that they may be in favour of one and against another".

By contrast, the nationalist MHP accuses the AKP of tendering the amendments according to the European Union's and the United States' orders. More importantly, the MHP is opposed to the proposed amendment dealing with rules governing political parties, as it fears that the change will enable the Kurdish BDP to advocate a more explicitly separatist position in parliament.

For its part, the BDP is no less critical, but for different reasons. In its view, neither the current constitution nor the proposed amendments take into account the Kurdish reality in Turkey. BDP's message is direct: "We won't

say 'One Language, One Nation', on 12 September We will boycott the ballot box". Its ultimate goal is to insert the legitimacy of Kurdish ethnicity and regional self-rule into the constitution.

Much of the population at large does not understand the essence of the constitutional referendum on which they are being asked to cast their ballots. Hence, most will vote either according to their party loyalty or according to their evaluation of the country's leaders overall performance. As such, the constitutional referendum will also provide some preliminary indication regarding the probable outcome of the next general elections, scheduled for July 22, 2011.

In the meantime, the September 12 referendum will do much to determine Turkey's destiny. Either the AKP will gain control of the remaining branch of government not in its hands - the judiciary - or its opponents will demonstrate renewed strength, enabling Turkey's judicial system to retain its independence from the ruling authorities.

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