

The End of (Turkish) democracy – Presidentialism alla Turca

by Mahir Tokatli - 13/08/2017 18:54



Have we just witnessed the end of democracy in Turkey? Only if one argues that it existed in the first place. Many could reasonably argue that Turkey was never a fully consolidated democracy, just one that at least since the second wave of democratization in 1946 was always at best an “imperfect” democracy and at worst one with “adjectives”. If you wanted to be polite, you could call Turkish democracy a “peculiar” kind of democracy. The kind of place where you get to call yourself democratic, even after experiencing four “successful” military interventions from 27th May 1960 until 28th February 1997. It’s the kind of democracy that gets overthrown at least once a decade, by its own military (usually in the name of preserving it).

In many ways in fact, it would be more accurate to argue that Turkey is the inversion of the liberal democratic regime. Whereas in general, the rule of law ought to limit state power in order to secure the individual from a despotic state, in Turkey the case is vice versa and the state is protected from the individual, hence when we speak

about Turkey, we are speaking of a sacrosanct state which secures its holiness through its very constitution.

Thus, Turkey can only generously be called an imperfect democracy. But at least as of late, it was a democracy! There is now a growing concern that, since the introduction of a multiparty-system in 1946, Turkey has never been this far away from being a democratic regime. In recent memory, the biggest blow to democracy was the declaration of the state of exception (OHAL, olağanüstü hal) after the failed coup d'état in July 2016. For more than twelve months, the citizens of Turkey have lived under a completely suspended legal order, where president Recep Tayyip Erdoğan is able to govern with decrees bypassing the parliament, and persecute what is left of a critical civil society. Nearly 145.000 people working in the public services have been sacked, over 250 journalists have been arrested and more than 4.500 judges or prosecutors were dismissed, all of them by presidential decrees.

And now, the biggest blow to democracy has been the recent regime change in Turkey. It couldn't have been a more opportune moment for the introduction of 18 new constitutional articles. Civil society has been under the boot of the AKP government since the failed coup attempt, and the public sphere is stricken in fear, leaving no room for the Government to be held accountable for serial accusations of electoral manipulation. On 16 April 2017, the governing AKP government succeeded in their referendum, and Turkey was to officially become a "presidential system alla Turca." Camouflaged as a change of governmental system, it was in fact a regime change, which transferred the undemocratic state of exception to a permanent and legal one, with the presidential and parliamentarian elections to be held on 2019 or before if snap elections were announced. It is most likely that the government will prolong the OHAL every three months until the elections.

It is important to note that this was not a sudden transformation. When the AKP took power, many voters saw them as an important actor of changing the tutelary status quo in Turkey and democratizing the political system. But the institutional arrangements of the Republic itself pushed the AKP to change its methods very quickly, and eliminate any potential actors who would get in their way. Their clear shift to authoritarianism was therefore, not a sudden response to the coup attempt, but a gradual affair. In this game of crude power politics, the failure of the Kemalist elite to ban the AKP in 2008 gave them the needed image of being renegades, and the controversial and long extended election of Abdullah Gül in 2007, indoctrinated many to stand idly by, while his presidential powers, designed by the 1982 constitution, provided the framework to neutralize the judiciary and appoint judges friendly to the new status quo. As for the military, it dealt with itself when the general

staff of the Turkish Armed forces collectively resigned in 2011. Since then, there was no actual strong veto-player in the political system of Turkey, except for civil society (Gezi-resistance) and an inner-political fight over power (corruption affairs unveiled by the Gülen-movement). These were the only perceived dangers for the sole reign by Erdogan and his AKP, both in 2013.

This was at least until the June elections 2015, when the leftist HDP entered the political arena and surpassed the 10% threshold to share governance. It was an unexpected victory for civil society groups and effectively blocked the parliamentary road for AKP to institute a regime change. It's also clear why this led to a state-based crackdown on HDP and even its supporters.

Despite breaking the constitutional order of being neutral to party politics, president Erdogan took the field and routed for 400 "local" and "national" deputies in order to meet the requirement of changing the constitution to a so called "presidentialism alla Turca". With the results in both parliamentary elections in 2015 the citizens clearly showed their refusal to the government intentions of reshaping the governmental system in the sense of AKP, but in general there was still a deep desire to democratically draw up a new constitution in order to remove the often modified military constitution of 1982 completely.

Both defeats in 2015 made Erdogan take a more nationalistic and autocratic stance in order to delegitimize critics, especially his biggest and most effective opponent HDP and the Kurdish people. His war against Kurds, beginning in October of 2015 after the grand triumph of the HDP especially in the Kurdish regions, continued the *raison d'être* of the Turkish state homogenizing its non-Turkish citizens. In this reversal Erdogan was now indistinguishable from the Kemalist elites he claimed to overthrow. Not only was he now backtracking on his promises to institute a western style democracy, he effectively became a despotic leader. His toleration to any opposition to his rule rapidly decreased, condemning any critiques against him as an insult to the nation. Erdogan was elected with 52% of the votes in 2014, which actually means he should represent the whole nation, but he is doing it just in the interest and in the name of this 52%. In other words, Erdogan feels like he is the incarnation of the Turkish state and everything he is doing is for the wellbeing of the nation and the other way round if someone criticizes him, it is against the sacrosanct Turkish state and also the nation. Erdogan is the supreme patriarch of the Turkish nation, one cannot talk about Turkey without meaning Erdogan. Just recently, the official account of the Turkish Presidency tweeted: "AKP means Turkey. If AKP gets weaker, Turkey is getting weaker." It is needless to say, that AKP means also Erdogan.

Thus, we are dealing with a merging of Erdogan, AKP and the state, they are becoming one. This anti-liberal stance on the rule of the people reminds one of the German crown-jurist of the Third Reich, Carl Schmitt, who did not differ between democracy and dictatorship. In fact, he preferred an elected one-person rule and argued that the will of the people will be better represented by just one person, whereas more people in power could dilute the real will of the people. To Schmitt, the successful state is a homogenized and centralized state. And its patriarch, was to be the charismatic leader and sole-decision maker. He would have affirmatively nodded to statements of Erdogan, who constantly refers to the people and the results at the ballot box and he would have been excited by the dismantlement of Turkey's "separation of powers" (which to be frank, has been defective since the constitution of 1982, mainly written under the strict control of the Turkish Armed Forces).

This is where many scholars get the situation wrong in Turkey. It's not a general shift in from a parliamentarian to a semi-presidential system, It is the consolidation of a dictatorship. There will not be any separation of powers in Turkey, instead the executive branch, consisting of just one person and members – who he alone appoints and removes – has a great say in future politics in all three branches. There will be a clear supremacy of the executive over the other two branches. Don't believe me? Take a look at the new constitution. The president can literally govern by decrees, and although there are *de jure* constraints, *de facto* they are negligible.

The constitution allowed the president to pass decrees only in the field of the executive. However, as every single law has to be executed, there is practically no law at all, which is not related to the executive field. Thus, this constraint is not one at all.

Parliament has effectively lost its power of dissent. While the new constitution allows for presidential decrees to be overruled by laws passed parliament, the president also has extended veto powers. So as an example, if the president decrees repressive measures, and parliament attempts to over-ride it, the president can still veto the laws proposed by parliament. And unlike the already repressive 1982 constitution, absolute majority, and not simple majority, will be required to overrule a veto by the president. To put this more simply, parliament is made to look like it has the power to protest dictatorial decrees. But practically, it has many obstacles in its way.

And then there is the amendment of the president to become a party member again. As chief of the party, the president could be both the executive, and gain a massive influence on the likely parliamentarian majority – if he is the chief of his party. (As a fun fact, this article is valid immediately and Erdogan already has become party

president again on the 21st of May 2017). Whereas this isn't necessarily an institutional failure, it is a problem for the political culture of Turkey which is usually overdetermined by loyalty and charismatic leadership.

And finally, as it concerns the judiciary, the new constitution offers a less degree of independence in the relationship between the other branches than the old one. Almost half of the members of the Constitutional Court and of the HSK (Council of Prosecutors and Judges) will be appointed solely by the president, the rest of them will be elected by parliament, which will likely be controlled largely by the executive anyway. Furthermore, with the constitutional amendments in 2010, the executive branch receives more occasions to control the jurisdiction of Judges. The government can easily relocate unfavourable judges and inconvenient prosecutors in order to prevent them doing their tasks, something Turkey has witnessed in the government scandal of 2013 when judges and prosecutors were dismissed or pushed to resign by senior party officials. It has been hard to speak of an independent judicial branch in Turkey for a long time, it becomes impossible with the new constitution.

Also, the bureaucracy will be much more under the grand influence of the president, since he appoints almost all of them without any restrictions.

To sum up, the "New Turkey" will be an autocratic regime, in which we will not witness any kind of competitive elections due to massive infringements of civil rights, liberties, rule of law and separation of powers. The de facto autocratic regime gets constitutionalized in 2019, this has to be the interpretation of analyzes regarding the newly agreed constitution. It will be a constitution Carl Schmitt would have dreamt of, a strong centralized state and homogenized nation embodied in a charismatic leader, whose decisions are regarded as the best for the nation.

Democracy will be dead in Turkey – long live democracy!