

# Referendum on the reform of the Constitution in Turkey

## 12<sup>th</sup> September 2010

The present Turkish Constitution dates back to the 1980's. It was written after the coup d'état of 12th September 1980 led by General Kenan Evren. The third in the country's history the last coup was also one of the bloodiest: around 5,000 people died, 6,000 others were imprisoned, 200,000 were put on trial and 10,000 were deprived their nationality; finally hundreds of thousands were tortured. After the coup Turkey was led by a National Security Council before democracy was re-established once more.

All politicians – those from the majority like those from the opposition agree to say that the Fundamental Law of 1982 does not meet international democratic standards. The need to modify the text is therefore not a subject of debate. This is why the ruling party, the Justice and Development Party (AKP), suggested to Parliament at the beginning of the year the approval of several amendments to the Constitution. On 7th May last the constitutional reform won the approval of 336 of the 550 members of the Grand National Assembly, the only Chamber of Parliament but this was a number inferior to that necessary for the text to be adopted definitively but enough to be able to submit the issue to referendum. According to the texts in force this had to be organised within the 120 days after the vote (the electoral law was modified and reduced this period down to 60 days but this measure does not take effect until next year).

On 12<sup>th</sup> May last the constitutional reform that includes 27 articles in all was adopted by the President of the Republic Abdullah Gül and two days later the referendum date was set for 12<sup>th</sup> September next. Finally on 14th May the main opposition party, the People's Party (CHP) made an appeal to the Constitutional Court with aim of invalidating three of the article: one regarding the dissolution of political parties, another the structure of the Constitutional Court and finally one regarding the equivalent of the Higher Magistrates Court (HSYK). To do this the party had to collate 110 MP's signatures. Its request was signed by 97 MPs from the People's Re-

publican Party, 6 from the Democratic Left Party (DSP) led by Masum Türker, one from the Democratic Party and 7 independent MPs i.e. a total of 111 people.

On 7th July last the Constitutional Court, the official guardian of the secular Constitution of Turkey delivered its decision after 9 hours of deliberation. The legal institution cancelled some measures in the text approved by Parliament (such as for example the ability for the President of the Republic to appoint the members of the Higher Magistrates Court) without however rejecting it as a whole.

In the past the Constitutional Court chaired by Hasim Kilic has rejected several projects to reform the Fundamental Law put forward by the AKP.

### The text submitted to referendum

The constitutional reform that is being submitted to the Turks on 12<sup>th</sup> September next stipulates that soldiers must be tried by civilian courts and those accused of crimes against the State, including officers, should be prosecuted by civilian courts. It also includes a rule whereby officers dismissed from the army for having entertained links with radical Islamic groups may launch an appeal. Finally the text would enable the trial of the leaders of the coup d'état of 12<sup>th</sup> September 1980.

The number of the members of the Constitutional Court of Justice would rise from 11 to 17 including three appointed by Parliament. The Magistrates' Surveillance Council would rise from 7 to 22 members including four

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appointed by the President of the Republic.

The text submitted to referendum withdraws the monopoly held by the legal institution to decide over the dissolution of political parties. In 2008 the AKP was nearly banned for having impeded secularity; the Constitutional Court finally chose to deprive the party of half of the 26 million € annual state subsidy because of its anti-secular activities. The constitutional reform grants new rights to civil servants (including the ability to undertake collective negotiations together with the right to strike), it also promotes positive discrimination in support of the elderly, gender equality and the protection of children – it also includes the creation of a the post of ombudsman. Finally the text brings Turkey in line with the EU's Charter of Fundamental Rights signed by Ankara. The 27 EU Members all welcomed the approval of the reform by the Turkish Parliament.

Prime Minister Recep Tayyip Erdogan (AKP) is presenting the constitutional reform as a passport to the EU. In his opinion this new text enhances democracy and meets the demands made by the 27. *"If we adopt a new civilian Constitution we shall see the completion of the accession process of our country to the EU as it happened with Portugal and Spain,"* declared Egemen Bagis chief negotiator with the EU. *"Accession on the part of Greece, Spain and Portugal gathered pace after they adopted civilian Constitutions. As a result 12<sup>th</sup> September next is a chance to make historical progress in Turkey's accession to the EU,"* he added.

### The Electoral Campaign

The opposition parties, the National Action Party (MHP) led by Devlet Bahçeli and the People's Republican Party support most of the articles in the constitutional reform but reject those affecting the control of the legal institutions. They fear that the text will increase the government's power over justice by increasing the number of members of the Constitutional Court and by giving Parliament and the President of the Republic the power to appoint some of them. They also maintain that the AKP may, with this new Constitution, take over the levers of power by placing its supporters in key positions across the country and affect the principle of secularity that has governed Turkey since 1923.

*"We shall say "no" to the changes, the Constitutional*

*Court's decision did not satisfy our requests,"* declared the new leader of the People's Republican Party, Kemal Kilicdaroglu. His party also chose to undertake a campaign with the slogan *"Saying "No" can be a good thing"*, a phrase which cannot be translated effectively from Turkish since it includes a pun.

For its part the Party for Peace and Democracy (BDP) is rather in support of the constitutional reform. Its leader Yalcin Topcu declared that all of the political parties should support the government's work to amend the present Fundamental Law. He also recalled the former People's Republican Party leader Deniz Baykal's promise to vote "yes" in the referendum if the Constitutional Court cancelled the articles modifying the structure of the Constitutional Court and the Higher Magistrate's Council. *"The People's Republican Party must keep its promises and vote "yes" in the referendum,"* he declared.

*"Our noble nation must not vote on the government's work or on the parties' political programmes but on the future of Turkey,"* indicated the Head of Government Recep Tayyip Erdogan, who recalled that the text reduced the powers of the legal and military hierarchy. The Prime Minister repeats that the referendum is a democratic tool and not a political one and insists on the fact that by voting "yes" the Turks will be making the choice *"of the path to democracy."*

Since the referendum will be held on 12<sup>th</sup> September the electoral campaign will be taking place during Ramadan (from 11<sup>th</sup> August and 10<sup>th</sup> September this year). Kemal Kilicdaroglu also recommended his supporters not to leave the tarawih (a specific prayer during Ramadan) in the hands of the AKP and invited them to enter tents that have been set up by the town councils where believers can come to break their fast (iftar). This popular vote will be the first electoral test for the new leader of the People's Republican Party.

A "no" vote will of course be an excellent sign for the opposition parties just one year before the general elections planned for the summer of 2011. On 11th August last a poll by Sonar, published in the opposition newspaper Sozcu announced a possible victory for the "no" with 50.9% (49.1% for the "yes"). 5% of those

interviewed did not express their preference or declared they would not turn out to vote on 12<sup>th</sup> September next.

The government may suffer because of a rise in unemployment and even a rise in violence in the south-east of the country, a region dominated by the Kurds who have threatened on several occasions to take advantage of the electoral campaign period to commit acts of rebellion. A “yes” vote won with a narrow majority or low turn-out would comprise a rejection for the Pri-

me Minister and his party (12<sup>th</sup> September is a holiday when the Turks will be celebrating the Aid Al Fitr and the end of Ramadan).

As a coincidence the referendum will take place on the same day as the 30<sup>th</sup> anniversary of the 1980 coup d’Etat. “12<sup>th</sup> September is a perfect day to face the torture, cruelty and inhuman practices of the coup d’Etat of 12<sup>th</sup> September 1980,” declared the Head of Government on 21<sup>st</sup> July last.

# An easy victory for the “yes” vote during the constitutional referendum in Turkey

## 12<sup>th</sup> September 2010

The majority of Turks accepted the reform of their Constitution during the referendum organised on 12<sup>th</sup> September – the day of the 30<sup>th</sup> anniversary of the coup d’Etat led by General Kenan Evren in 1980.

57.9% of the electorate voted “evet” (“yes”) to the modification of the Fundamental Law and 42.1% said “no”. The rejection of the text came mainly from the West and South West of the country. Turnout rose to 77%. It is obligatory to vote – refusal or failure to vote could lead to a 22 Turkish pound fine (around 12€). The call to boycott by the Democratic Society Party (DTP), the main party of the Kurdish community (15 million people, i.e. 20% of the population) because this reform would not enhance Kurdish rights, did not have much influence over the referendum results in the end.

This popular approval is a victory for Prime Minister Recep Tayyip Erdogan and the Justice and Development Party (AKP). Just under a year from the general elections planned for the summer of 2011, it is a positive sign for the party in office since 2002. “*The victor in this is Turkish democracy. The guardianship regime of the army is now belongs to history. The supporters of military putsches will not achieve their goals,*” declared Recep Tayyip Erdogan. “*The 12<sup>th</sup> September will be a turning point in Turkey’s democratic history. Our people took an historic step on the road to democracy and the supremacy of the rule of law. How good it is to have raised the levels of democratic standards in Turkey,*” he indicated on the announcement of the results.

“*For many Turks who will vote or who choose not to vote it is more an election with regard to the Islamic-Conservative government,*” analyses Cengiz Aktar, professor of European Studies at the University of Bahcesehir in Istanbul. “*This election looked like a vote of confidence for the AKP and it has won confidence,*” stressed political expert Tarhan Erdem. Riza Türmen, former judge at the European Court of Human Rights believes however that the fact that 42% of the people rejected the reform of the Fundamental Law is important and problematic. “*A Constitution has to be the result of a social contract and it is clear that the new text is not one,*” he declared.

### RESULTS

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The popular vote is a failure for the opposition forces notably for the National Action Party (MHP) led by Devlet Bahçeli and the People's Republican Party (CHP) led by Kemal Kilicdaroglu, who had campaigned for the "no" vote.

On 7<sup>th</sup> May last the constitutional reform which included 26 articles in all won the approval of 336 of the 550 members of the Grand National Assembly, the only Chamber in Parliament i.e. a number lower than necessary to be finally adopted but enough for the issue to be submitted to referendum. The Turkish President Abdullah Gül, adopted the text five days later.

The constitutional reform adopted on 12<sup>th</sup> September stipulates that the military, including officers and those accused of crimes against the State can now be brought to trial in civil courts. It also says that officers who are dismissed from the army for having links with radical Islamic groups may make an appeal. Finally the text authorises the trial of the leaders of the coup d'Etat of 12<sup>th</sup> September 1980. The modified text also structures the Constitutional Court of Justice, the number of members of which rises from 11 to 17 (three will be appointed by Parliament) and the Magistrates' Surveillance Council the number of members of which rises from 7 to 22 (four will be appointed by the President of the Republic).

The text submitted to referendum withdraws the sole right of the legal institution to have a monopoly of decision over the dissolution of political parties, it grants new rights to civil servants (including the right to undertake collective negotiations but not the right to strike), promotes positive discrimination in favour of the elderly and equality between men and women and the protection of children – it also plans for the creation of the position of ombudsman. Finally the constitutional reform brings Turkey in line with the EU's Charter of Fundamental Rights which has already been signed by Ankara. The Prime Minister repeated during the electoral campaign that with this modification of the Constitution Turkish democracy was enhanced and the country would fall in line with European norms. The European Commission also expressed its support for the re-organisation of the legal system but reproached the

Turkish authorities for the lack of public debate before the referendum. It is a "step in the right direction" declared Michael Leigh, Director General of the DG Enlargement at the European Commission after the results were announced.

In the opinion of the opposition the constitutional reform threatens the independence of the legal system and also the separation of power since the President of the Republic's powers are now greater likewise those of the government over the legal institutions and this will allow the AKP to control sources of power by placing its supporters in key positions – finally they believe it threatens the principle of secularity that has been in place in Turkey since 1923.

"This is not just a victory for the government – we are moving towards a new Constitution. It is just the start. Turkey is moving towards standardisation and demilitarisation which it needs to become a country which is truly confident in its future," said Cengiz Aktar. In the opinion of Mithat Sancar, professor of law, the victory of the "yes" is neither a government victory nor a defeat for the opposition. "The result shows that most Turks are against the army and the legal system interfering with politics," he declared. He believes that the amendments adopted on 12<sup>th</sup> September will help to make Turkish political life "more democratic and more civilised." "There is a demand for democracy on the part of the people which is seen as a means to settle problems. And all of the political parties should take this seriously before the next elections take place," he concluded.

**Referendum Results on the Constitution 12th September 2010 in Turkey**

Turnout: 77%

Question submitted to referendum	% of « yes » votes (no of votes in brackets)	% of « no » votes (no of votes in brackets)	Blank and void (no of votes in brackets)
<b>Constitutional Reform (amendment of 26 articles of the Turkish Fundamental Law)</b>	57.90 (21 781 555)	42.10 (15 848 532)	1.4 (725 908)

Source : *Supreme Council for Elections in Turkey*

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