

**POLITICS AND THE KURDISH PROBLEM IN TURKEY
AFTER THE CONSTITUTIONAL REFORM**

Ali Bayramođlu

Democratic
Progress
Institute

September 2017

I. INTRODUCTION

In the 4-month period following the constitutional referendum of 16 April 2017, no significant changes have occurred either in Turkey's political developments or the course of the Kurdish problem compared to the previous period. In this context, it will be useful to situate our evaluation on two principal axes.

This question is of vital importance: "What will be the political grounds of the Kurdish issue's trajectory, and its resolution?" In order to be able to evaluate this, we need to paint a picture of the input of Turkey's political structures and climate in the (post-referendum) recent period, as well as their current state. This is the first axis.

The second axis asks about the possibilities of a potential resolution process or return to politics with regard to the Kurdish problem, and analyses the opportunities, situations and actors that might actualize this potential.

II. POLITICAL BACKGROUND

The post-referendum political developments and balance continues to rest on these components:

1. "A political structure that gathers all power in its hands and its systematic fortification"
2. "Continuous purges in the state, the media, politics and the business world"
3. "A self-enclosed securitarian discourse"
4. "Legal actions against leftists, dissidents, Kurds, and even the critical mind, which narrow the political and democratic field"
5. "An approach which defines politics/protesting/reacting as attempts at political insurrection, which prosecutes even humanitarian and civil society organizations; the "construction of an obedient society" through this approach.

1. The new institutional structures

With the constitutional referendum of 16 April 2017, the Turkish political system has left behind the parliamentary system it employed since 1876, and adopted an idiosyncratic presidential system. Undoubtedly, this transition tremendously affected the institutional and political structures of the country. The new constitutional structure might be summarized with these four elements:

- * The political system is designed around a president (political leader-chief) who will be elected by the people, command the executive, interfere with the legislature and shape the judiciary. In other words, all constitutional structures have lost their power against the president as well as being subsumed by him.
- * The legislature's opportunities for checking the executive have been limited; mechanisms pertaining to the president's responsibility have been relaxed.
- * The president is no longer impartial, now he has the power to be the active leader of the organized majority party. Thus, the distance between the state and the political power has been diminished.
- * The judicial power is now controlled by the political power for the large part.

As a result, the new institutional structure anticipates a unity of power in action, as opposed to the strict principles of the separation of powers (checks and balances) predicated by the presidential systems in democratic orders. This is the order of a leader who will establish a hegemony over the system; a leader with extremely wide elbow room in terms of rules and regulations.

The accepted constitutional reform anticipates that the new constitutional order/institutional structure will essentially come into play in 2019, after the presidential and parliamentary elections.

However, there are three exceptions to this case. It has been decreed that the changes in these exceptional areas of the constitutional package be immediately implemented without waiting for 2019. One of these was the repeal of military justice. The second was the restructuring of the High Council of Judges and

Prosecutors (HSYK) according to new constitutional provisions and the election of its members. The third was reversing the rule about the impartiality of the president/

The adaptation of the system to this new institutional structure and the exceptions implemented at once after the constitutional referendum have produced swift results. The changes based on these exceptions have seriously transformed the workings of the system as well as its political grounds; the spirit of the model anticipated by the constitutional reform has taken over the system.

The repeal of military justice cannot really be said to effect immediate changes on the political system. On the other hand, it is necessary to stress two points.

a. Judiciary

With the constitutional reform, the High Council of Judges and Prosecutors (HSYK) now has 13 members. Immediately after the referendum results were officially announced, in May 2017, 8 new members were appointed to HSYK; 4 by the president and 4 by the parliamentary majority of the ruling party. According to the law, including the Minister of Justice and the Undersecretary of the Ministry of Justice, who are natural members, 10 out of 13 members of the council are now under the control of the political power and administration. Structurally speaking, the element of political control in the judiciary has increased. In order to evaluate the results of this increase, it is necessary to state that 12 % of all judges and prosecutors in the country have either been appointed or relocated with the statutory decrees of May and July 2017. Also, with the purges in the judiciary directed toward Gulenist groups¹ and new appointments (about 8000 judges and prosecutors, half of the total, have been taken into service)² the judiciary is being restructured in accordance with the political power.

Another result is that the referendum results have verified and fed into a partisan tendency both politically and psychologically, mainly in the judiciary. In this tendency, we see the insecurity created in the political power by the attempted

¹ By 5 February 2017, in the last period 4.569 judicial and administrative judiciary officers have been investigated and expelled from the judiciary.

² <http://www.mymemur.com.tr/671-sayili-khk-ile-4-bin-hakim-ve-savci-alinacak-80796h.htm>

coup coming together with the collectivist attitude of the AK Party; the combination of these elements tend to value political loyalty above all else, including merit. Within this framework, the main problem is the structural creation of a partisan judiciary. The preference of statist, authoritarian and nationalist tendencies in the appointment of judges and prosecutors and the deterioration of independence and autonomy in the judiciary in the face of political submission have caused the level of legal legitimacy to drop in the judicial reflex and in freedom of thought. From this point of view, two things bear stressing. Considering this general situation together with the new structure of HSYK, we see that the politicisation of the judiciary as well as the judiciary's tendency to value state security and official politics over the individual's liberty are becoming established. At the same time, the new mass recruitments based on allegiance and loyalty have made the relation between "the political will and the judiciary" more direct than ever. As befitting a populist order, the level of institutionalisation has decreased in the workings of the state structure, and the element of arbitrariness has increased.

b. The executive/the political model

Approximately 1 month after the constitutional reform was voted in the referendum, the AK Party congress convened on 21 May and re-elected as chairman Tayyip Erdoğan, who had resigned from the party in August 2014 upon being elected as president. During the congress, the new Central Decision and Executive Board (MKYK) members of the party were determined by Erdoğan. On 29 May, for the first time in Turkey's multi-party era, a president was leading the central executive board meeting of a political party. Considering that the political party in question was the party in power with a parliamentary majority, debates on the performances of the ministers and the government as well as statements regarding new aims were not being performed by the prime minister representing the government, but by the president, or in his other capacity, the chairman of the party. Another example is that on 27 July, president Tayyip Erdoğan had a meeting with the party's MPs and ministers in AK Party's headquarters as the chairman of the party. This meeting represented the constitutional order of Turkey: meeting under the leadership of the president, who would not have any political responsibilities until 2019 and

representing the state's power, the majority of the judiciary and the executive, and following his orders. The elements in this picture indicate a structure in which constitutional powers are subsumed by a leader; one in which the separation of powers is valid to the extent the leader personally wishes it to be. In this sense, Erdoğan both became the leader of the AK Party majority in the assembly and solidified his power over the legislative, and also controlled the executive. Now the decision making body of a political party rather than the constitutional bodies, "personified" in the president, began to rule de facto. The meaning of this picture, in terms of a pluralist democracy and the legalization of the decision-making mechanism, is critical.

It is also necessary to underline this element which particularly strengthens this structure in question: the resulting state-party intertwinement is not just on the level of constitutional bodies, the legislative and the executive. Indeed, the central and local structures of the political parties in Turkey, especially those of the ruling parties, have their own weight. These organizations are both one of the centers of state-society relations and also, in the context of a clientelistic structure, they play an important role in appointments, contracts, finding employment, and distributing unearned income. They are one of the determinative elements of Turkish politics. The constitutional reform Turkey is undergoing is also an expression of the ruling party gaining ground in the operation of the state as an institution, through a president who holds party chairmanship and legal political power in his hand.

In the light of these input, what we have a result is a majoritarian, populist and patriarchal model based on the convergence of state and political party that is personal rather than institutional, one in which the functions of all the institutional structures between society and the leader have been limited.

Another result of the 16 April referendum is that until 2019 when the new constitutional provisions will go into effect, Turkey will live through a chaotic constitutional period, which will have political results.

The provisions regarding the presidential model, powers and responsibilities will go into effect in 2019. Therefore, until then the president is subject to the

parliamentary system rules of the 1982 constitution. In this framework the president has no political responsibilities and the decisions he makes within his authority cannot be controlled by the judiciary. At the same time, in this transitional period the president is the de facto political “boss” of the legislative and the executive through his party chairmanship. Indeed, this is how the system is functioning at present.

2. Political balances

a. The regime

The expectations harboured by some parties that post-referendum there would be a general mellowing in attitudes regarding both the Kurdish problem, and also the general domestic political scene and politics, were not fulfilled. On the contrary, the political power chose to consolidate its rigid position, self-enclosed discourse and politics. The authoritarian political discourse and practices with a focus on order and security became more entrenched. In this framework, the angry language targeting Washington because of the YPG-U.S. collaboration in the Middle East, and the anti-Westernism based on deep suspicions of the EU keep on escalating. Among the elements indirectly feeding into the consolidation of the AK Party’s authoritarian politics are the developments in Iraq and Syria regarding the Kurdish groups and communities, it needs to be said. From the perspective of the Kurdish issue, the tacit alliance between the political parties in the parliament based on isolating the Kurdish movement, attempting to push the Kurdish issue outside of politics and the increasing fear of being divided in the face of the development in the Middle East has not relaxed. The nationalist rhetoric created by indicating the Kurdish problem continues to be the glue that holds the current political climate together.

The authoritarian political practices regularly and gradually narrow down the political and democratic space of the country. This narrowing down of space is due to two important causes, one of which is desired and structural, the other obligatory and conjunctural in the recent period.

The first, structural one has to do with the new order of the Turkish political system directly. The constitutional institutionalization of the personalization and arbitrariness in the political power, its legitimization and fortification has caused the country's process of becoming more authoritarian to speed up and banalize. The full transition to the presidential practice or the leadership system that allows Erdoğan to dominate the state power and organs, decreasing the intermediary layers between him and the society; the silencing of objections, the acceptance of legal violations, all of these are important signs. The anxiety and threat discourse became standard with this new order. Making use of the opportunities provided by the state of emergency, this new order oppressed the Kurds, the opposition and the press as well as turning the judiciary into an ideological purge and enforcement tool; this agenda expanded with new objectives, arrests and appointments after 16 April.

The second, obligatory and conjunctural reason of becoming authoritarian is the existence and actions of the dark organization who realized the attempted coup of 15 July, the Gulenists, in the state. The most important element of this aspect is the systematic, continuous purges. The "cleaning" of state institutions, of universities, of the business community is carried on by these purges. In this framework, the risk presented by the secret Gulenist presence in the state and the arbitrariness of doubt-driven precautions taken against them reproduce and trigger each other, indicating a double pressure to become more authoritarian. The ruling power's absolutization of its "anxiety, risk, precaution" politics, justified by pointing at the Gulenists, is one of the defining features of post-referendum Turkey.

The coup attempt of 15 July 2016 and the constitutional referendum of 16 April 2017 constitute the two important milestones of Turkey's new institutional order. The 15 July coup attempt was an opportunity for the ruling power to change all the settings of the political system. At the heart of these changes is a hierarchical, authoritarian, populist style of governance based on a majoritarian concept of national will, where all power is wielded by one person. The "composite and compound threat" discourse of the ruling power, placing the Gulenists, leftists, the opposition, the liberals and the Kurds in the same category, supposing them to be collaborating with one another, accusing them of subversive activities, is a result of the post-15 July

era. In the last year, the Erdoğan rule has extended its authoritarian politics and purge attempts to every conceivable area. The opposition, the press, the Kurdish movement, the universities and the intellectuals have all been extremely affected by these conditions, and they continue to be affected. A typical indicator of the state of affairs is that the state of emergency, now going on for a year, has become an established way of governance. The 16 April constitutional referendum, with the order it anticipates, expresses the process of institutionalizing, approving and legitimizing this way of governance. With the referendum results, the period of battling the inequalities between Turkey's seculars and conservatives has come to an end for AKP; the period of establishing a republic based on politically and socially conservative values such as tradition, leader and obedience has begun.

b. The political atmosphere

From the standpoint of the political parties, the nationalist and statist alliance between AK Party and MHP, centered around the rallying cry of one state, one nation, one flag and one country, is an important political indicator. The hesitant attitude of CHP, its opposition to the AK Party's authoritarian practices and projects, and its support of the ruling power's attempts to remove parliamentary immunity with regards to the Kurdish issue make the opposition fragile. HDP and the Kurdish movement have become the "devil" of the new political environment. 11 HDP MP's are still in jail. In 80 of the 106 DBP municipalities, appointed trustees ideologically purge the public servants. On 27 July 2017, two more MPs, HDP's Van MP Tuğba Hezer Öztürk and Şırnak MP Faysal Sarıyıldız were voted out of their ministry in a TBMM general meeting. So far, 4 HDP MPs have been voted out of their ministry.

Considering the political sensitivities of the society and electoral tendencies, the political area is more vibrant than the representation of the general headquarters of the political parties.

The latest public opinion polls show that the "idealist (*ülkücü*)"- nationalist constituency is divided in two. Half of the 12 % potential vote is controlled by MHP, which is in alliance with AKP, and the other half by the dissidents lead by Meral Akşener. The CHP constituency, according to polls, is stable but there is no increase;

they are more oriented towards lifestyle politics, and they keep their traditional 25-27 % vote percentage. Considering the changing votes AK Party got from all elections from 2015 onwards, they have a 10-15 % of displeased voters critical of the party's politics, almost half of whom voted no in the referendum. It seems that this restlessness in AK Party circles will make political actors such as Gül and Davutoğlu be more active and speak louder in dissent. The HDP constituency partially voted "yes" in the referendum, but its compact structure dependent on the Kurdish problem in the Southeast remains.

Considering the political dynamics of the society, some expressions and statements of the dissidents indicate a new situation. There is a movement in the dissident population between hopelessness and hope, between anxiety and the desire to do something. The 51 % victory of the presidential system in the referendum and the acceptance of the constitution defining Turkey's authoritarian leadership order was a cause for despair, but at the same time, the 49 % no votes are seen as an opportunity, as a hope, as a reason to get moving. The pressure on freedoms, on critical thinking and the press feeds political pursuits as much as it feeds the collective depression. An indicator of this is the dissident hopes created by CHP chairman Kılıçdaroğlu's Justice March in June, which he made from Ankara to Istanbul with thousands accompanying him, and with hundreds of thousands in the final rally; Kılıçdaroğlu started on this march due to arbitrary legal practices and the arrest of a CHP MP on allegations of being a spy. Different groups coming together to offer a joint candidate in 2019 in order to challenge Erdoğan and his rule, perhaps moving the 49 % no bloc to 51 % with a little support, continue to be a concrete and serious hope. The combined votes of AK Party and MHP were 62 % in November 2015; 6 months later, they dropped down to a total of 51 % with the loss of 9 points, AK Party's votes likely fell back to 42 %. In a public opinion poll conducted last month, these percentages have gone down some more. All of these are considered as supportive data in this respect. As a result, the political environment has in it both elements such as oppression, fragmentation and Erdoğan's lasting rule, and at the same time new conditions and possibilities for politics to come alive again.

III. THE KURDISH PROBLEM AND ITS RESOLUTION

How can the Kurdish issue progress on this political background, and on what timing? Which conditions or actors can positively affect and trigger the resolution or politics mechanism?

It is a known fact that the Kurdish problem of Turkey, as soon as it was resolved from Turkey's perspective, spilled into the Middle East; and also that the developments regarding the Kurdish groups in the Middle East are a party of internal relations and disputes.

Therefore we need to analyze these problems both separately for Turkey's domestic political dynamics and the regional dynamics, and at the same time with a combined approach.

1. The idea of resolution and politics in the domestic political arena

First let us go over the difficulties of the idea of politics and resolution that reappeared with a new strength after the 16 April referendum.

a. Obstacles

The first difficulty is that AK Party's policy of systematically narrowing down the arena of politics and democracy is ideologically defined as the ideal order of the new Turkey by Erdoğan and his circle. In this framework, the prosecutions and the witch hunt experienced by the Kurdish politicians is not merely the conjunctural result of the 15 July conditions. This politics of security and order also has some structural features that give clues to the ruling power's designs about the Kurdish movement and Kurdish politics. An assessment will display these clues. We provided the numbers about the HDP MPs in the previous section. The political process that began in 2015 continues. Today, 83 out of the 102 mayors of BDP, that is, more than 80 %, are replaced by public servant trustees. 75 % of these mayors are in jail. After the appointment of the trustees, an active purge towards the Kurdish movement in public sector began. With the latest statutory decree (KHK) of July 2017, 1486 people in DBP municipalities were seen as threats and dismissed from public service. By

February 2017, there were 8930 HDP members taken into custody after 15 July 2016, and 2782 of them had been arrested. Today, the total number isn't known but it is believed to have reached 10,000. A prosecution of this magnitude and perseverance means that a policy of pushing the Kurdish movement out of the arena of politics, especially by criminalizing it in political expressions and representation, is being pursued.

Parallel to this policy of exclusion, the AK Party government is redefining the Kurdish issue as a matter of service in the Southeast; it aims to control the field by means of relationships with Hizbullah and new actors such as other religious groups, and limiting the effect and movement area of PKK and HDP in the region.

This is important data in terms of the period to come. The situation faced by the representatives of the two legal pillars of the Kurdish movement, HDP and DBP, is a serious obstacle to any political process, in terms of politics, psychology and also social legitimacy. In order for there to be a new politics, a resolution, a softening, or a dialogue phase, it needs to be removed.

The second difficulty is that a great purge and subsequent restructuring is going on in state cadres from the judiciary to civil administration and military institutions. The new cadres in particular have nationalist and statist reflexes, instinctively closed and against the idea of a resolution process and politics. A similar tendency can be observed in political committees. The preferred cadres in the state and in the government are very different from the cadre of the resolution period that believed in politics. Resistance is easier and an open door now.

The third difficulty is the increasing populist pressure on political parties in the framework of the political power balance and political apparatus. Turkey cannot leave behind this political environment indexed to continuous elections. The 2017 referendum was perceived both by the ruling power and the opposition as an existential point of decision, a matter of life and death. Now the same feelings are directed toward the three elections to be conducted in 2019, of local administrations, the parliament and the presidency. In the referendum there was only 1.5 points between the "yes" and "no" votes; this reads as a fragility in the

ruling power in this election-oriented political environment. From the perspective of the ruling power, Erdoğan will make moves that will guarantee him 51 % in the presidential elections and he will look for an appropriate discourse and alliances. The first indications for this are already here. Erdoğan defines the 51 % as a vote that transcends the AK Party. In this framework, it can be seen that Tayyip Erdoğan will reach out to different conservative factions, especially to the “idealist (*ülkücü*)” and nationalist base, and that he will adopt a traditional center-right discourse.

The fourth difficulty has to do with the state the “power spectrum” is in. The alliance between the AK Party and MHP that gained momentum after 15 July 2016 isn’t just a convergence of political sensibilities on the Kurdish problem and the Gülen movement. Between these two political parties there is a coalition born out of their reciprocal needs based on their respective positions on the power equation, of partially sharing a common fate. From the perspective of the AK Party and Erdoğan it is obvious that there is a correlation between the institutional support of MHP and maintaining the political power. At least this is what observations indicate. The primary logistic support that MHP headquarters receives—otherwise in the throes of a serious internal crisis, divided both among the ranks of party elites and the base—is due to its presence in the hallways of the state and the government. This traditional approach of MHP HQ, a strategy of designating the state cadres and ideology, needs to be carefully taken into consideration in order to understand the political points of equilibrium.

b. Possibilities

The possibilities in the direction of resolution and of politics are as follows.

The first possibility, even though this is paradoxical, can be sought in the fact that the new institutional and constitutional structure has postulated a strong and flexible political will. On paper, a strong leader, a strong political will has every constitutional and legal opportunity to overcome systematic obstacles in order to start the resolution process for the Kurdish problem. Indeed, this is one of the reasons why almost half of all Kurdish constituents in Turkey’s southeast voted “yes” in the referendum. There is still an expectation that Erdoğan, empowered by the

presidential system, will return to the idea of resolution. Even though this is not likely in the short run, the 2019 elections might be an important milestone in this regard. With the support of other factors and conditions, primarily the balances of the Middle East, even Erdoğan might head in this direction again with his flexibility. Apart from that, there is always the possibility that if an alliance in which Kurds are stakeholders wins, the presidential system, a serious problem for the democratic order, will help the resolution of the Kurdish problem.

The second possibility is this: The majoritarian system, again paradoxically, has the possibility of enabling ways of politics that will increase contact between different groups in Turkey. In order to create an alternative for Erdoğan in the 2019 presidential elections, in order to beat him, alliances and compromises between different, even opposing sections are necessary; this necessity is being talked about even now. With the constitutional reform, there will be a two-round system to elect the president. In 2019, a system reminiscent of the French presidential system will take effect: in order for a presidential candidate to be elected, he or she will need to surpass 50 % in the first round; if that does not happen, in the second round, the two candidates with most votes will compete. The system of compromises and alliances forged by this ultimately majoritarian structure may play an important role for the Kurdish problem, as well as the candidates who will be pursuing the 50 % in the first round. It is necessary to underline three points. The first is the strategy that the Kurdish movement is going to follow in this framework. If this strategy includes returning to the arena of politics through HDP or a similar representative, and broadening the legal political arena, it is possible for the idea of resolution and politics to gain a new momentum. Secondly, a candidate or movement that wants to beat Erdoğan has to get the Kurdish votes; at least the 7-10 % that goes to HDP. Despite the conditions it is in, the Kurdish movement can play an active role in such a coalition of the opposition. As a result, the Kurdish problem may be relocated to the political and democratic arena. Thirdly, even if the Kurdish progress in the region puts an ideological pressure on the Turkish political system and its elements such as CHP, creating the historical anti-Kurdish power bloc, the other side of the coin might be that depending on the developments in the region, political actors might have to

make new definitions and act in new ways in an attempt to garner votes. This might make the allies adopt a different language with regards to the Kurdish problem and the resolution.