

Presidentialism in Turkey. A first appraisal of 2017 Constitutional Reform

by Valentina Rita Scotti[♦]

Abstract: *Il Presidenzialismo in Turchia. Una prima valutazione della riforma costituzionale del 2017* – The article focuses on the content of the 2017 constitutional amendment introducing presidentialism in Turkey, having regard to the factors which made this change of the system of government a constant argument in the Turkish political history. Therefore, it discusses the influence of the tutelary role played by the Army since the establishment of the Republic and the origins of the proposals for a presidential system since 1970s. The analysis of the content of the 2017 reform is supplemented with some considerations, led in a comparative perspective, on its main controversial elements and on the national and international reactions to its approval. Some final remarks deal with the topic, often advanced during the political campaign, that the reform may represent a risk for the endurance of democracy in Turkey.

Keywords: Presidentialism; Turkey; Democracy; Constitutional reform; Army.

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1. Introduction

On 16 April 2017, Turkish citizens approved with a constitutional referendum 72 amendments to 18 provisions of the 1982 Constitution providing for the modification of the system of government from parliamentarianism to presidentialism.

Attempts for empowering the Presidency have been led for decades, moreover after 2002, when it became one of the main targets of the *Adelet ve Kalkınma Partisi* (AKP – Justice and Development Party)¹ which considered it as a means for rationalizing the legal system and for ensuring stability. The need to protect State's stability seems to be a constant Turkish phobia, which resulted, since the establishment of the Republic and notwithstanding the 'official' parliamentarianism, in an overwhelming influence of the Presidency of the Republic as well as in a 'preference for the Executive'. In this play, the Army has

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¹ Though this party is nowadays internationally renowned, it could be useful to remind that it originated in 2001 from the decision of some members of the *Refah Partisi*, led by Recep Tayyip Erdoğan and Abdullah Gül, to leave the party in order to establish a new movement based on the model of western liberal right-wing parties, whose religious inspiration is far to be perceived as it is in political Islam and is closer to religiously inspired western parties such as Italian or German Christian-Democrats (see W. Hale, E. Özbudun, *Islamic, Democracy and Liberalism in Turkey. The Case of the AKP*, London-New York, 2010). Since 2002, AKP holds the majority in Parliament and therefore expresses the Executive; since 2007, it also expresses the Presidency of the Republic.

constantly had a relevant role.

Indeed, the content of the 2017 constitutional amendment is analyzed through the lens of the evolution of the Turkish conception of the Presidency of the Republic from the assemblarism established at the foundation of the Republic after the first world conflict to the current presidentialism. A comparison with the US system – the framers of the Turkish reform declared to be their source of inspiration – allows for a debate on the criticalities of the Turkish model, mainly based on the risks the lack of checks and balances may entail for the respect of democracy in the country.

2. A legal system based on “tutelage”

Since the very beginning of the republican period, Turkey has been characterized by a strong presence of the Army in the institutions. As the Army, and its leader Mustafa Kemal², was the principal creator of a Turkish State free from foreign influences³ and fully independent, its role was not contested during the approvals of both 1921 and 1924 Constitutions. As a matter of fact, when the experience of the Ottoman Assembly⁴ was put apart and the Grand National Assembly of Turkey (GNAT – the unicameral Parliament) was established as pillar institution of the new legal system, the devotion to the “immortal hero”⁵ was confirmed by appointing him as President of the Republic on the same day the Republic was officially established (29 October 1923). Although Atatürk imposed to the high rank of the Army to decide whether to follow the political or the military career on the occasion of the first elections for the GNAT, the perception that the Army was the protector of the State remained undisputed as well as the preeminence in the legal system of a man which at the same time covered the roles of head of State, of commander in chief and also moral head of the Army and of leader of the only recognized political party⁶. Indeed, a single-party system was de facto in force at that time, despite 1924 Constitution provided for a parliamentarianism structured around democratic principles and potential turnover. Behaving that the turnover could have endangered the modernizing reforms he wanted for the country, Atatürk managed to ensure that the *Cumhuriyet Halk Partisi* (CHP – Republican People’s Party)⁷ represented the sole electoral constituency⁸ through a system of

² In 1934, due to the 1923 law imposing Turkish citizens to add a surname to their names, he obtained the surname of Atatürk (father of Turks) from the Assembly.

³ On this point, it should be added that the official propaganda focused on the fact that the newborn Republic succeeded in repulsing French and British attempts of indirect control; the influence that, at least at the very beginning, Soviet Russia was able to gain thanks to the allotment of funds was often concealed. On this point, see K. Kreiser, C.K. Neumann (eds), *Turchia. Porta d'Oriente*, Trieste, 2013, 316-317, and V.R. Scotti, *Il Costituzionalismo in Turchia fra circolazione dei modelli e identità nazionale*, Sant'Arcangelo di Romagna, 2014, 49.

⁴ For details on this Assembly, see R. Akın, *Ottoman Parliament and Its Political Legacy to Modern Turkey*, in 4 *International Journal of Turcologia*, 51-67 (2009). See also M. Heper, *The Ottoman Legacy and Turkish Politics*, in 1 *Journal of International Affairs*, 63-82 (2000).

⁵ This is the definition the current Preamble of 1982 Constitution uses for Atatürk.

⁶ See M. Heper, *The State Tradition in Turkey*, Beverley, 1985, 2 and C.H. Sherill, *A Year's Embassy to Mustafa Kemal*, New York, 1934.

⁷ Although this party changed its name during its history, for the sake of clarity its current denomination, CHP, is used in the whole essay.

parties' exclusion based on the denegation of the authorization to their establishment by public authorities. This system remained active until the end of WWII, when Atatürk's successor, President İsmet İnönü, strove for the introduction of a multi-party system (1945-1950)⁹. Benefitting of this reform, the *Demokrat Parti* (DP – Democratic Party) obtained the majority. The reaction of the Army to the attempts of the DP to overturn several of the reforms introduced during the Kemalist period¹⁰ demonstrates how deep the tutelage was. On 27 May 1960, a military coup d'état¹¹ was organized and the drafting procedures leading to the approval of 1961 Constitution began¹². Parliamentarianism was confirmed, but it was supplemented by the introduction of constitutional bodies conceivable as checks and balances in spite of the fact that their main aim was to ensure and confirm the tutelage. For instance, a Constitutional Court was introduced for the judicial review of legislation, but it mainly conceived itself as the guarantor of Kemalist values¹³. Similarly, the Senate, because of its composition, became another instrument for ensuring the influence of the Army on the legislative process as well as the National Security Council, established according article 111 of the Constitution, ensured the influence on the Executive.

Then, the Army exercised again its active tutelage as a reaction to the political and economic instability of the 1970s. Initially, it intervened with a memorandum (12 March 1971) calling parties for political responsibility and de facto appointing the care-taker government responsible for the approval of constitutional amendments (in 1971 and 1973) reducing the powers of the Assembly in favor of the Executive. As instability persisted, the Army organized another coup d'état (12 September 1980) and submitted to a constitutional referendum the 1982 Constitution¹⁴. The content of the Charter and the procedures for its approval are noteworthy as they confirm the will to solidly entrench the military tutelage in the legal system. First, the referendum question coupled the approval of the Constitution with the confirmation of the General Kenan Evren as President of the Republic. Second, articles 118, 119, 120 and provisional article 2 of 1982 Charter disciplined the role and functions of the National Security Council, which for six years "assisted" the President under the denomination of Presidential Council. According to these articles, the Council, composed by six generals and

⁸ C. Koçak, *Parliament Membership during the Single-Party System in Turkey (1925-1945)*, in 3 *European Journal of Turkish Studies* (2005), www.ejts.org/497.

⁹ On the contribution of İnönü to the Turkish political system, see L.C. Schiavone, *İsmet İnönü: il leader "dimenticato" che guidò la Turchia verso la modernità*, in 3 *Tetide. Rivista di Studi Mediterranei* (2016), available at www.centrostudimediterraneo.com/rivista/ultimi-articoli/190-smet-noenue-il-leader-dimenticato-che-guido-la-turchia-verso-la-modernita.html.

¹⁰ On the political program of this party, see H. Erdemir, *Turkish Political History*, Izmir, 2007, 108-109.

¹¹ The so-called secular *fetva* of the University of Istanbul then justified and considered this intervention in line with Turkish republicanism.

¹² A version in English of 1961 Constitution is available at www.anayasa.gen.tr/1961constitution-text.pdf.

¹³ On this point the Court elaborated an interesting jurisprudence between 1962 and 1980, stating that Kemalist principles represent the prominent features of the Republic it is entitled to safeguard due to the unamendability of the republican form of government provided at article 1 of 1961 Constitution.

¹⁴ For the English version of 1982 Charter, see global.tbmm.gov.tr/docs/constitution_en.pdf.

some members of the Cabinet¹⁵, was a consultative body entitled of issuing opinions for the Executive in the field of national security, intended in its broader sense¹⁶, as well as of vetoing the foundation of political parties¹⁷. In facts, the tutelage was ensured by strengthening the powers of an Executive subject to the “advices” of the highest ranks of the Army, in spite of the institutional role of the Assembly¹⁸ and in a general environment privileging stability instead of pluralism¹⁹.

Nearly every political party and interest group²⁰ had therefore a reason of discontent for claiming constitutional amendments. Actually, since 1995, the 1982 Constitution has been under a constant process of revision, which, with regard to the military tutelage, has had crucial moments in 2001 and 2010. Indeed, in 2001 the number of civilians composing the National Security Council was increased in order to assign them the majority; in 2010 the 15th transitional provision was abolished consequently allowing for the judicial review of the acts approved between the 1980 coup and the approval of the Constitution and for the uplift of the immunity to the authors of 1980 coup.

The last evidence that the Army has lost any possible role in the institutional architecture, and even the popular support it has had in some moments of Turkish history, has been the recent failed coup of 15 July 2016²¹. For the purpose of this essay, it is worthy to remind that this event has represented a consistent boost to the reasons of the supporters of presidentialism, whose attempts for modifying the system of government date back over time.

3. Introducing presidentialism

The sword of Damocle represented by the Army and the will to find an institutional solution to the political instability are the main reasons of the proposals for reinforcing presidential prerogatives several political parties have historically advanced in Turkey, moreover since the 1970s, when political instability became a distinguishing element of the Turkish political system. Notably, the National Outlook movement (*Milli Görüş*) and the Nationalist Movement (*Milliyetçi Hareket*) foresaw in presidentialism a solution for equipping the country with a strong and stable political authority against the crisis of

¹⁵ Notably, the President of the Republic, chairing it, the Prime Minister, Ministers of Internal and Foreign Affairs, Minister of Defense.

¹⁶ A definition of national security was provided with the law n. 2945 of 9 November 1983, as to include the protection of the constitutional order, of the national and territorial integrity of the State, of its political, economic and social interests in the international field, of the interests deriving from international agreements against internal or external threats.

¹⁷ According to art. 4 of the Law on political parties n. 2820 of 1983.

¹⁸ See M. Carducci, B. Bernardini D'Arnesano, *Turchia*, Bologna, 2008, 69.

¹⁹ For instance, the law n. 2839 of 10 June 1983 provided for an electoral system assigning seats only to those parties able to overcome the threshold of 10% and using the d'Hont method.

²⁰ T. Işıksel, *Between Text and Context: Turkey's Tradition of Authoritarian Constitutionalism*, in 11 *International Journal of Constitutional Law*, 28 (2013).

²¹ On this event, see V.R. Scotti, *Vogliamo i colonnelli?: riflessioni preliminari sul fallito colpo di stato in Turchia e sull'evoluzione del ruolo dei militari nell'ordinamento costituzionale*, in 3 *Osservatorio Costituzionale* – AIC (2016).

authority caused by the weak coalition governments of that period.

However, when drafting 1982 Constitution, framers excluded a presidential option fearing that this would have reduced the influence of the Army, but their will to reinforce the Executive clearly appeared. Indeed, framers were not afraid of assigning to the Presidency competencies unusual in a comparison with the archetypical model of parliamentarianism²², such as a vast powers of appointment²³ as well as a relevant veto power allowing the President not only for returning a law to the Parliament for further consideration but also for refusing to sign ministerial decrees, for appealing the Constitutional Court against laws before of their final approval, for calling for constitutional referenda.

These vast powers notwithstanding, a further reinforcement of presidential prerogatives was considered as the most effective way to solve the political crisis interesting the country at the end of the 1980s. Notably, in 1988, the then Prime Minister Turgut Özal, who has also been President of the Republic (1989-1993), supported a reform for presidentialism supposing it would have helped the country solving its ethnic cleavages²⁴ and himself in controlling parliamentary agenda setting. Though fiercely against any possible recognition of ethnic minorities inside Turkey, also Süleyman Demirel, Özal's successor and main opponent, supported presidentialism as a means to ensure political stability against the fragility of coalition governments and to extend his own tenure.

For reasons of political opportunity both the abovementioned projects on presidentialism failed even to be address to the Assembly, but they were deeply considered at the beginning of the elaboration of the AKP's proposal of a Turkish presidentialism. Ironically, the first step toward the definitive establishment of presidentialism derived from the decisions a strong President of the Republic, Ahmet Necdet Sezer, took at the end of his term in 2007²⁵.

3.1. 2007 constitutional amendment on the direct election of the Presidency

Indeed, when the term of President Sezer ended in Spring 2007, AKP proposed as his successor the then Foreign Affairs Minister and Deputy Prime Minister Abdullah Gül, mindful that the composition of the Assembly would have allowed its election at the third ballot, when the *quora* the Constitution required were lower. The Army reacted by issuing a memorandum calling political forces for responsibility and wishing a secular politician as next President. The CHP demonstrated its opposition to this candidacy boycotting the first ballot (27 April

²² On the exceptionality in a parliamentary system of the powers 1982 Constitution assigned to the Turkish President, see M. Heper, M. Çinar, *Parliamentary Government with a Strong President: The Post-1989 Turkish Experience*, in *3 Political Science Quarterly*, 483-503 (1996), 490 ff.

²³ The President was entitled with the power of appointing constitutional judges, a quota of the judges of the Council of State, the Military Court of Cassation, the High Administrative Military Court, the High Council of Judges and Attorneys, as well as the General Attorney of the Court of Cassation, Universities' Rectors, the members of the Council of High Education.

²⁴ Cit. in B. Duran, N. Mis, *The transformation of Turkey's Political System and the Executive Presidency*, in *18 Insight Turkey*, 11-27 (2016), 15.

²⁵ On the evolution of the Presidency of the Republic until 2007, see L. Gönenç, *Presidential Elements in Government: Turkey*, in *3 European Constitutional Law Review*, 488-523 (2008).

2007).

From this decision derived the long debate on the interpretation of the required *quora* for presidential election provided at article 102 of 1982 Constitution. Literally, it stated that a two third majority is required at first two ballots, while the absolute majority is sufficient at the third one, then, at the fourth ballot, a run-off election takes place among the two candidates receiving the highest number of preferences in the previous poll. Therefore, when CHP deserted the first poll only 361 MPs voted – 357 of which in favor of Gül – and the opposition party appealed the Constitutional Court claiming a lack of the legal number to consider valid the poll. The Constitutional Court, accepting CHP interpretation according to which article 102, 3 stated that the President of the Republic had to be elected with a two third majority of MPs as counting the required majority on the total number of the members of the GNAT (550) and not, as AKP wanted, of those who were present to the poll, decided that the required quorum was of 367 MPs. In order to overcome the following stalemate, the GNAT was dissolved and new elections were scheduled for 22 July 2007. Meanwhile, on 31 May 2007, the Assembly approved a constitutional law amending the provisions for the election of the President of the Republic rendering this office directly elected²⁶. President Sezer, believing that the entry into force of this law would have infringed the tenets of Turkish parliamentarianism, sent it back to the GNAT and, when the Assembly confirmed the approval of the law and he was obliged to promulgate it, used his power to call for a constitutional referendum. The reasons President Sezer put forward are noteworthy: according to him, a direct presidential election would have eliminated the impartiality and neutrality of the Presidency, which, together with the confidence and the relation of responsibility between the Assembly and the Executive, is a pillar of a parliamentary system of government²⁷.

The majority of Turkish citizens did not agree with these reasons for opposing to the constitutional reform and, broadly, to AKP policy. On 22 July 2007, the 46,5% of the electors supported AKP at national elections assigning it 341 seats in the GNAT. Supported by MHP's MPs, entered in the Assembly after these elections, the AKP was therefore able to elect Gül as President in August 2007. Then, on 21 October 2007, the 68,92% of the voters approved the constitutional reform during the referendum, paving the way for the direct election of the current President, Recep Tayyip Erdoğan, in August 2014.

3.2. The Constitutional Reconciliation Commission and the failed reform of the Constitution

Willing to provide the country for the first Constitution completely drafted and approved by civilians, an attempt of totally change 1982 Constitution has been done since 2011, with the establishment of the *Anayasa Uzlaşma Komisyonu* (Constitutional Reconciliation Commission).

Being still the Prime Minister of Turkey at that time, Erdoğan commented

²⁶ See Law n. 5560 of 31 May 2007.

²⁷ See E. Özücü, *Whither the Presidency of the Republic of Turkey?*, in 14 *European Public Law*, 35-53 (2008), 48.

on the beginning of the new constitution-making process saying that «The new Constitution will be prepared not by constitutional experts but by the wide segments of the society. The Constitution will be prepared by civil society organizations, youth and women's associations, trade unions, economists and social scientists. We will ensure the broadest possible participation. We will recourse to constitutional experts at the last phase to receive technical assistance. The society will not need an interpreter to understand the Constitution. After the general elections, we hope to have a parliamentary composition which will allow us to realize this process. Currently some efforts have been initiated by civil society organizations. We are proud of this and we encourage such efforts. I envision a short, concisely written and comprehensible constitutional text aiming at advancing democracy and guaranteeing fundamental rights and liberties»²⁸.

In details, the system for approving the new Charter was based on the interaction between politicians and people, which were expected to be involved in national consultations. The forecasted procedure provided for a parliamentary approval of a text drafted by a parliamentary Commission having heard the proposals coming from the civil society through the 'Turkey Speaks' platform, to be then submitted to a popular referendum. In order to come out with a fully shared Charter, it was also decided that the Constitutional Reconciliation Commission had to be composed by three representatives for each of the four political parties which seated in the GNAT after national elections of 12 June 2011²⁹; furthermore, the debates of the Commission were considered legally held only when the representatives of at least three of the four involved parties were convened.

According to its schedule, the end of its activity was forecasted for May 2013, but finally any patent result was achieved and the Commission dissolved³⁰, apparently because of the impossibility to reach a compromise on the system of government, on the discipline of ethnic minorities (basically, of Kurds)³¹, on the reform of the first four articles of 1982 Constitution³².

Although the legitimacy of this constitution-making procedure can be controversial because it is unclear whether it was consistent with the unamendability clause of article 4 of 1982 Constitution, it should be noted that the

²⁸ See Sabah, *Yeni Anayasayı Halk Yapacak* [New constitution will be made by the people], 13/1/2011.

²⁹ The parties were: *Adalet ve Kalkınma Partisi* (Justice and Development Party), *Cumhuriyet Halk Partisi* (Republican People's Party), *Milliyetçi Hareket Partisi* (Party of National Movement), *Barış ve Demokrasi Partisi* (Peace and Democracy Party).

³⁰ For further details on the work of the Commission, see yenianayasa.tbmm.gov.tr/uyeler.aspx.

³¹ On the discriminations suffered by this minority and on the attempt to provide for them a constitutional recognition, see V.R. Scotti, *Il riconoscimento della minoranza curda in Turchia: situazione attuale e prospettive future*, in *3 Diritto Pubblico Comparato ed Europeo*, 1090-1110 (2009), and V.R. Scotti, *Il Costituzionalismo in Turchia*, cit., 152 ff.

³² Article 4 states the unamendability of the first three articles, which affirm that the Turkish form of government is republican (art. 1), that the Republic of Turkey is based on democracy, secularism, rule of law, respect of human rights and on the principles of public peace, national solidarity and justice, and is loyal to the nationalism of Atatürk (art. 2), as well as that «the State of Turkey, with its territory and nation, is an indivisible entity. Its language is Turkish» (art. 3).

establishment of the Commission and its work was strongly supported by the population which then regretted its final dissolution. Furthermore, such a dissolution caused a sort of revamp of the political divide, the coup of 15 July 2016 further increased after a very short period of national cohesion.

4. Establishing presidentialism: 2017 constitutional referendum

As mentioned above, AKP tried to reach an agreement with the other political forces for entrenching in the new Charter a presidential system aiming at concluding the reform path began with the introduction of the direct presidential election in 2007, which transformed the country in a “*parliamentarisme atténué*”³³. When the failure of the Constitutional Reconciliation Commission demonstrated the impossibility of reaching such an agreement, the AKP succeeded in forming a coalition with the MHP for obtaining the parliamentary majority required in order to call for a constitutional referendum on the proposal for presidentialism. As a background for the decision to try a constitutional amendment without the involvement of the civil society and in a rushed manner, the mentioned failed coup d'état of 15 July 2016 and the following declaration of the state of emergency should be considered, as the latter could have impinged on the results of the referendum denying «the due democratic setting for a constitutional referendum»³⁴.

4.1. The content of the reform

The constitutional amendments approved on 16 April focus on the relations between the Parliament and the Executive, but also on the Judiciary.

Indeed, as for the new configuration of the Executive, aiming at establishing a presidential system, the reform entitles the President with all the powers and competences previously assigned to the Prime Minister, whose office is therefore abrogated. The President of the Republic, whose five-year term can be now renewed only once, will be directly elected by the population in a two-round election accessible only for candidates belonging to political parties which obtained at least 100.000 votes on the previous election overcoming the 5% threshold. According to the framers of the reform, because of this electoral procedure, the President will hold the confidence of citizens, which implicitly extends to all the Cabinets s/he will appoint during his/her term. The President has been also entitled with the power of appointing vice-Presidents³⁵, who may substitute him/her if needed, and Ministers. Finally, modifying the provision stating its neutrality in the political arena, the President may hold political offices and charges.

The Grand National Assembly will also change its composition as the

³³ E. Özbudun, *Contemporary Turkish Politics. Challenges to Democratic Consolidation*, London, 2000, 59-61.

³⁴ See Venice Commission, Opinion of the amendments to the Constitution, CDL-AD(2017)005, 10-11 March 2017, 30 (hereafter Venice Commission Opinion).

³⁵ Their number will be defined by an ordinary law.

number of MPs has been increased from 550 to 600 and the right to be elected has been extended to those who have reached the age of 18³⁶, in consideration of the demographic expansion and willing to involve the younger generation into politics. Then, according to the new rules for candidacy, those who have exhausted their duties deriving from the mandatory conscription may candidate, thus including among possible candidates not only those who are already discharged, as according to the previous discipline, but also those who have been exonerated or obtained authorized postponements.

The most relevant, and even controversial, amendments, however, concern the relations between the Assembly and the President. Indeed, both terms have been fixed in 5 years, with the prevision of compulsory contemporary elections. These institutions are now bound by a *simul stabunt simul cadent* principle: the GNAT, with 300 votes, may dissolve itself at the same time ending the presidential term³⁷; the President may end both his/her term and that of the Assembly when s/he deems it necessary. The legislative power of the Assembly has been also reduced in favor of the President. First, the President is entitled of proposing the budgetary law, the Assembly should then approve having only 55 days and without the power of increasing expenditures³⁸. Second, the President may issue decrees for ensuring the accomplishment of the Executive's duties and in all those fields not yet ruled by the Assembly. These decrees, which may be the object of an a posteriori control by the Constitutional Court, do not need any conversion into law from the Assembly and are abrogated in case the Parliament legislates in the same field. Third, in case the President will veto the approval of a law and will return it to the Assembly, an absolute majority will be then required in order to approve again the law, instead of the simple majority previously needed. Fourth and finally, presidential emergency powers have been extended, as the President becomes competent in declaring the state of emergency, the Assembly maintaining only the competence of converting the declaration decree into law, as well as all the other decrees approved during the state of emergency.

The reduction of the Assembly's legislative power corresponds also to a reduction of the power of controlling the Executive, as the oral question time has been abolished and the GNAT may now exercise its control only through general debates, parliamentary inquiries, investigations and written questions. As the President loses the protection granted in parliamentary system by the principle of Presidential irresponsibility, s/he becomes now criminally liable and may be also interested by an impeachment procedures. The Assembly is involved in the authorization procedures for trying the President. Indeed, the GNAT has to approve the proposal for starting the investigations with an absolute majority, then, no more than one month after, it has to confirm the approval in a secret ballot scrutiny with a three-fifth majority. An ad hoc Commission, composed of 15

³⁶ The previous threshold allowed for the candidacy of 25 years old Turkish citizens.

³⁷ In this case, a President of the Republic completing a second term could be entitled in presenting his/her candidacy again. However, the candidacy for another term in case of dissolution of the Assembly could occur only once.

³⁸ In order to prevent possible deadlocks, it is also provided that the previous year's budget will remain in force if the budgetary law would not entry into force in due time.

members chosen respecting the proportions among the political groups of the Assembly, will be then appointed for investigating on the allegations and for preparing a report to be presented at the Speaker of the GNAT in a two-month period, eventually extendible of three more months. This report should be distributed by the Speaker's office to MPs in ten days, after which the Assembly has to convene for a general debate and a further vote. A two-third majority will be required in order to indict the President in front of the Constitutional Court, acting in its function of judge of highest offices of the country, which has to decide in a three plus three month period. All along this procedure, it will not be possible to hold elections, even though they were previously scheduled.

Finally, with regard to the Judiciary, the reform suppresses all military courts, with the only exception of disciplinary tribunals, and entrenches in the Constitution the principle of impartiality and unity of the Judiciary. Such an abrogation of military courts entails also the abrogation of the two judges the Army used to nominate for the appointment by the President at the Constitutional Court, which therefore reduces the number of constitutional judges from 17 to 15. The number of the High Council of Judge and Prosecutors, which loses the 'High' in its denomination, is reduced as well from 22 to 13.

4.2. Turkish presidentialism and its criticalities

The framers of the constitutional reform conceived the presidential system they designed for Turkey as a rationalization of the archetypical US model. However, Turkish presidentialism strongly differs from the US one at the point that it could be considered as a completely different model. Notably, it does not provide the same system of checks and balances, allowing for some considerations in a comparative perspective which should be focused on the consequences for the democratic asset of the country, especially when considering the opaque drafting of some provisions.

A clear example of the detachment of Turkish presidentialism from the archetypical model concerns presidential appointments. In the US, the Senate has to advise and consent on such appointments³⁹, whilst the Turkish system lacks of a similar mechanism allowing for the parliamentary control, also diminished by the abrogation of the oral question time. Furthermore, the timing of parliamentary and presidential election is very different from the US model. As mentioned, the constitutional reform approved in Turkey provides for the election of the Assembly and for the first round of the presidential election on the same day, following a system more similar to the French one after the 2008 reform than to the US electoral system. The decision of not providing for mid-term elections seems based on the will of avoiding possible cohabitation or the presence in the Assembly of a majority alternative to that supporting the President able to block the realization of the Executive's program. A possibility that could have occurred in Turkey, where the ideological divide among political forces is stronger than the capacity of reaching political compromises, as demonstrated during the works of the

³⁹ See article 2, 2 of the US Constitution.

Reconciliation Commission. However, although the rationale of this provision is understandable, it cannot be ignored that the strong bounds between the President and “his/her majority” could weaken the independence of the Assembly.

In the field of elections, a further consideration should concern the mentioned lack of checks and balances. The reform, providing the President for the possibility to running for a full third term in case the Assembly decides for a mutual renewal, hides a chance for political maneuverings which could ensure the extension of the presidential tenure behind a measure supposed to be a tool for checks.

Other examples clarify the opaqueness of some provisions. For instance, the extended presidential margins of discretion in declaring the state of emergency and in issuing emergency decrees produce an evident unclearness as per the possibility of the judicial review of these acts, moreover when considering the uncertain and mutable jurisprudence of the Constitutional Court⁴⁰. The amended constitutional provisions also do not consistently clarify the procedures for implementing the abrogation of presidential decrees issued in the lack of a parliamentary act in case the Assembly will then legislate on the same subject, nor defines the authority competent in resolving the potential – but evidently possible – conflicts of jurisdiction. Furthermore, the higher majority required for re-approving a law returned by the President could represent another hindrance to the approval of an act in a field already covered by a presidential decree.

Turkish presidentialism, instead, strongly relies on the US model when it comes to other provisions. The harshly contested abrogation of the provisions forbidding the President to keep holding offices inside his/her party after the election falls in this category. Although it overturns a consolidated Turkish constitutional tradition, such an abrogation is consistent with the US model, conceiving the President as the leader of his/her party and allowing him/her in participating to political campaigns. Furthermore, having regard to the Turkish political history, it should be noted that this provision will allow the system to escape from the instability occurred during the Presidencies of Özal and Demirel due to the ideological conflicts with their Prime Ministers⁴¹, which characterized also the cohabitation between Erdoğan and Davutoğlu until the resignation of the latter. It cannot be ignored, however, that such an abrogation conflicts with the already mentioned vast appointment power of the President, the parliamentarism previously into force could justify with the impartiality of this office.

⁴⁰ Although article 148 of the Constitution excludes judicial review for emergency decree, the Constitutional Court, in 1991 (E1990/25 K1991/1 10/1/1991) and in 2003 (E2003/28, K2003/42, 22/5/2003), declared its competence in reviewing the adherence of these kind of decrees to the principles of necessity and proportionality. Overturning this jurisprudence, the Court declared its lack of competence in two 2016 decisions concerning emergency decrees issued after 2016 failed coup (Basın Duyurusu n. GK 8/16, 4 November 2016).

⁴¹ To better explain these conflicts, it must be reminded that, according to Turkish parliamentarianism, a party leader passed his/her office to the Prime Minister once elected to the Presidency of the Republic, of course when they both belong to the ruling party.

4.3. The day after: national and international reactions to the results of the referendum

The results of the referendum demonstrated how divisive it has been for the country. Several data are worthy to be underlined in order to demonstrate this point.

First, the scant majority in favor of the reform and the composition of both fields are relevant. Differently from the previous constitutional referenda held during the AKP's era and despite the fact that the Government enjoyed the "controlled environment" due to the state of emergency which reduced the visibility of the opposition, this time the popular support was weaker, as only 51,41% voted YES⁴² (48,59% voted NO), in a voter turnout of 85,32%⁴³. It is worthy to note that a great support to the approval of the reform came from Turkish citizens living abroad (i.e. in Germany more than 63% voted YES)⁴⁴, whilst Turkish biggest cities, which supported AKP in the past, voted against⁴⁵. Moreover, AKP lost the occasion to gain the support of the younger generation of voters. Indeed, it was stated that on the occasion of the referendum «2 million of new voters would be able to cast their votes for the first time» having turned 18 and that, though it still unknown how many of them actually participated to vote, «according to an IPSOS survey reported by CNN Turk, 54% of young people between the ages of 18 and 24 voted NO while 46% voted YES»⁴⁶.

Second, the results could have been altered by vote riggings. This controversial statement is at the very core of the debate began in Turkey soon after the proclamation of the results. Already during the last hours before the end of the voting, some social networks posted videos of men altering the electoral sheets in favor of YES. Then, some of the ballots were counted in favor of YES even though they had not the official stamp of the polling station committee. These latter were at the center of a decision of the Supreme Election Board (YSK) which considered them valid. On the possibility of riggings, the results of the OSCE Observation Mission on the referendum could be mentioned. Indeed, in the Statement of Preliminary Findings and Conclusions, the Mission stated that «the referendum was generally well administered by the four levels of electoral bodies. [...] All legal deadlines were met»⁴⁷, and «while a few procedural errors were noted, the counting and tabulation were generally assessed positively»⁴⁸. However, the

⁴² This evidently shows a loss in popular support even in comparison with the previous referendum held in 2010, when the governmental proposal of constitutional amendment was approved with 57,88% of votes in favor.

⁴³ According to the Statement of Preliminary Findings and Conclusions of the OSCE International Referendum Observation Mission – hereafter OSCE Statement – 'more than 58 million voters were registered to vote, including over 2.9 million abroad', p. 1.

⁴⁴ For an overview of the vote of Turkish citizens living abroad, see B. Başer, *The Turkish diaspora and the constitutional referendum*, in *Independent Turkey*, 22/4/2017.

⁴⁵ Istanbul YES 48,6% NO 51,4%; Ankara YES 48,8% NO 51,2%; Izmir YES 31,2% NO 68,8%; Adana YES 41,81% NO 58,19%; Antalya YES 40,92% NO 59,08%; Diyarbakir YES 32,41% NO 67,59% (Data retrieved from CNN Turk, accessible at www.cnnturk.com/referandum-2017).

⁴⁶ M.Y. Yilmaz, *Golden Opportunity for the Opposition*, in *Hurriyet Daily News*, 24/4/2017.

⁴⁷ See OSCE Statement, 5.

⁴⁸ Ibidem, 13.

Statement highlighted that, because of the legal framework regulating elections and referenda and because of the state of emergency, the campaign was characterized by a clear prevalence of the YES-field visibility, which also benefitted of administrative resources and of the support of the supposed-to-be neutral President of the Republic⁴⁹.

Supposing possible riggings, on 21 April CHP appealed the Council of State for annulling the decision of the YSK. The Council of State, however, relied on the provision affirming that YSK's decision cannot be appealable and, on 25 April, declared its incompetence in examining CHP's appeal with four votes in favor against one⁵⁰. As a reaction, the main opposition party has declared its will to appeal to the European Court of Human Rights.

Third, the positive result of the referendum will impact also on the AKP's internal dynamics. Now that the President is allowed to hold office in a political party, the procedure had begun to give Erdoğan back his position as leader of the AKP. Indeed, on 2 May a ceremony has been held to celebrate Erdoğan's comeback among the ranks of the AKP. On that occasion, the Prime Minister Binali Yıldırım, still head of the party, proposed Erdoğan's candidacy as his successor and Yasin Aktay, a prominent party's member, said that the party's executive committee decided to hold an extraordinary congress on May 21 in order to elect next AKP's chairman who is expected to be Erdoğan⁵¹.

Looking at the reactions of foreign leaders and institutions, despite the fact that Turkish presidentialism was often considered as a «presidential regime which lacks the necessary checks and balances required to safeguard against becoming an authoritarian one»⁵², several leaders, including the US President Donald Trump, immediately congratulated with President Erdoğan⁵³, and, finally on 28 April, also EU declared that it «respects the result of the referendum»⁵⁴.

The consequences on the EU-Turkey relations of the referendum results cannot be ignored as, on the EU side, several Member States started asking a definitive interruption of the accession process, and, on the Turkish side, the level of support to Europeanization is falling, at the point that President Erdoğan, who already before 16 April spoke about the possibility of holding a referendum on the accession⁵⁵ and of suspending the agreement on migrants⁵⁶, warned that «Turkey

⁴⁹ Ibidem, 7-8.

⁵⁰ See Hurriyet Daily News, *Turkey's Council of State rejects main opposition's appeal over referendum results*, 25/4/2017.

⁵¹ See Hurriyet Daily News, *Erdogan to return to AKP on May 2: Turkish PM*, 28/4/2017; see also Azernews, *Turkish president joins Justice and Development Party*, 2/5/2017.

⁵² See Human Rights Watch, *Questions and Answers: Turkey's Constitutional Referendum*, 4/4/2017.

⁵³ See Anadolu Agency, *World leaders congratulate Erdogan on referendum win*, 16/4/2017.

⁵⁴ See Anews, *EU respects results of Turkish referendum*, 28/4/2017.

⁵⁵ See Reuters, *Erdogan says Turkey may hold referendum on EU accession bid*, 25/3/2017.

⁵⁶ On this agreement, see V.R. Scotti, *European Union discovers Turkey again: first remarks after the 29 November 2015 EU-Turkey Summit*, in 3 *Tetide. Rivista di Studi Mediterranei* 2016, <http://www.centrostudimediterraneo.com/rivista/ultimi-articoli/194-european-union-discovers-turkey-again-first-remarks-after-the-29-november-2015-eu-turkey-summit.html>.

won't wait at Europe's door forever»⁵⁷. The declarations of EU officials after the EU Foreign Ministers Informal Meeting (Gymnich) at La Valletta (28 April 2017) confirm this condition of uncertainty. While in the press conference at the end of the meeting the European Union Foreign Affairs Chief, Federica Mogherini, stated that, to date, talks with Turkey are still on-going, although «we are currently not working on any new chapters»⁵⁸, on 29 April the Commissioner on European Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, affirmed: «Everybody's clear that, currently at least, Turkey is moving away from a European perspective [...] The focus of our relationship has to be something else [...] We have to see what could be done in the future, to see if we can restart some kind of cooperation»⁵⁹. For the moment, President Erdoğan seems to exclude any other solution different from a full accession⁶⁰.

5. (On the impossibility of) Concluding remarks

At this stage, it would be too ambitious to write concluding remarks as the consequences of the referendum are still incoming. Some considerations may just concern the reactions to the approval of the constitutional reform and the possible scenario it may entail for the country.

As highlighted above, the introduction of presidentialism has been harshly criticized and its opponents regarded it as another demonstration of the existence of an AKP's hidden agenda based on the will of re-islamizing the country and turning it into an authoritarianism. Actually, according to some scholars, authoritarianism is an innate characteristic of the Turkish Republic⁶¹. The excursus proposed here seems to demonstrate that, maybe, there is not a trend in the legal system for the establishment of an authoritarianism, but a cultural trend of the most part of the society in favor of the attribution of vast powers in the hands of charismatic individuals, especially during times of crisis such as the current one, characterized by the social trauma of the coup d'état and by the threats of the so-called Islamic State and of the Kurdish guerrilla. On the present occasion «Turkey proves the link between securitization and the rise of presidentialism in times of crisis. The amendment could be easily perceived by the voters as a constitutional solution for better governance of the security crisis by a powerful president that may provide stability and peace by rapid responses»⁶².

Coupling this trend with the fears Linz expressed in his defense of

⁵⁷ See Hurriyet Daily News, *Turkey won't wait at Europe's door forever: President Erdogan*, 26/4/2017.

⁵⁸ Anews, *EU respects results of Turkish referendum*, 28/4/2017.

⁵⁹ See Hurriyet Daily News, *Turkey's EU dream is over for now, top EU official says*, 2/5/2017.

⁶⁰ On 2 May he declared that, unless new chapters of negotiation will be opened, the Turkish accession path may be considered concluded. See APF, *Erdogan warns Turkey could 'say goodbye' to EU*, 2/5/2017.

⁶¹ A. Insel, *The AKP and normalizing democracy in Turkey*, in 3 *South Atlantic Quarterly*, 293-308 (2003), 293.

⁶² B.E. Oder, *Turkey's ultimate shift to a presidential system: the most recent constitutional amendments in details*, in *Constitutionnet*, 31/1/2017, <http://www.constitutionnet.org/news/turkeys-ultimate-shift-presidential-system-most-recent-constitutional-amendments-details>.

parliamentarianism⁶³ – based on the assumption that democracy is better safeguarded in parliamentarianism due to the higher protection it is able to grant to oppositions – some doubts on the ways Turkish democracy will be shaped in the next future may arise. Although Linz's assumption is not uncontested, the fact that strong mechanisms of checks and balances are needed in order to ensure democracy is instead uncontested. As it currently is, the constitutional reform approved in Turkey seems to suffer of a consistent lack of such mechanisms, making quintessential to wait until the approval of the ordinary laws for its full implementation in order to understand whether the opaqueness provisions will be clarified and whether effective measures for balancing powers will be introduced. Notably, the possible amendments to the electoral system will be noteworthy. Since last elections in 2015, the proportional system has allowed for a good level of pluralism despite the 10% national threshold, but some proposals to change it have been already advanced. AKP, again supported by MHP, is discussing the possibility of minimizing the electoral district magnitude and of introducing some majoritarian elements, the most immediate consequence being an increased "selection" for acceding to the Assembly. De facto, due to the rules on parliamentary and presidential elections, this would mean an increased power for the President instead of the introduction of a balancing mechanism.

Besides the procedural rules, some considerations should also concern the political culture of the country. Indeed, as argued elsewhere⁶⁴, the political responsibility political actors will demonstrate after the entry into force of presidentialism will be crucial for finally destroying or definitively consolidating Turkish democracy. The internal dynamics of political parties can support the elaboration of this point. To date, they are characterized by a strong party discipline and by an internal paternalism according to which the selection of candidates is mainly in the hands of the party's leadership with a limited use of primary elections. Whether political parties will not increase their democratic level intervening on the internal procedures, these are all factors that will strengthen the presidential control over the GNAT beyond the meaning of the constitutional provisions, as an influential President and head of the party will easily intervene through "his" MPs in order to control the parliamentary agenda.

A concluding thought must regard the European Union, which again reacted to the political events occurring in Turkey without taking a clear and understandable position. The abovementioned declarations of Mogherini and Hahn demonstrate the difficulties in reacting with a single-say to international events, which is not a novelty in EU history even after the establishment of the "EU Minister of Foreign Affairs" with the 2009 Treaty of Lisbon. Furthermore, such an ambivalence is not a novelty in the history of EU-Turkey relationship. Here, it would suffice to remind that EU-Turkey relations officially started with 1963 Ankara Agreement, and since then the two were intertwined in a complex and

⁶³ See J.J. Linz, *The Perils of Presidentialism*, in 1 *Journal of Democracy*, 51-69 (1990) and Id., *The Virtues of Parliamentarism*, in 1 *Journal of Democracy*, 84-91 (1990).

⁶⁴ See V.R. Scotti, *Does the Winner Take All? Preliminary Thoughts on the Legal Content of the Turkish Constitutional Referendum on Presidentialism*, in M. Ciola (ed), *Turkey facing Its future: Analysis and Perspectives of Constitutional Referendum*, Mediterranean Affairs Dossier 1/2017, 11-39.

controversial accession process, which inexplicably seemed to provide for lower possibilities of a final adhesion soon after that the recognition as a candidate country was issued in 2005. Probably, the current moment is the worst one since the beginning of this story of love and suffering also because a fracture emerged between the EU and Erdoğan, after a decade in which the former gave him important credits. The man who currently is often depicted as a truce dictator, at least until 2010 constitutional referendum was awarded as the forerunner of an Islamic way for building democracy, of a new conception of human rights for Turkey, of the establishment of a democratic regime against the military tutelage.

Turkish bent for escaping a crisis by reinforcing the role of the President is not unique both in the European and international paramount, and of course its implementation will allow for further considerations by scholars in a comparative perspective and is worthy of a specific attention by international decision-makers, as the evolutions going on in Turkey – and the reactions to them – will be able to impinge on the future of the EU and on the political stability of the whole Mediterranean area.