

Türkiye's Referendum Experience

Türkiye'nin Halk Oylaması Tecrübesi

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ABSTRACT

Keywords:

Referendum,

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Semi-Direct
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The referendum, a semi-direct democracy tool, was used seven times in the Republic of Türkiye in 1961, 1982, 1987, 1988, 2007, 2010, and 2017. Since referendums have been made more frequently in the last fifteen years, the issue has attracted public attention. The fact that the referenda were handled independently in the doctrine, and that the works that deal with all of the referenda with a holistic perspective were quite limited constituted the study's starting point. In the study, after giving brief information about the theoretical framework related to the referendum, the principles and procedures of applying for the referendum in Türkiye and the issues related to the administration and control of the referendum will be discussed. The level of consensus needed for long-term constitutional reforms has been pointed out, based on the results and processes of the referendums held in Türkiye.

ÖZET

Anahtar Kelimeler:

Halk oylaması,

Anayasa,

Yarı-Doğrudan
Demokrasi,

Yarı-doğrudan demokrasi aracı olan halk oylamasına Türkiye Cumhuriyeti tarihinde 1961, 1982, 1987, 1988, 2007, 2010 ve 2017 yıllarında olmak üzere yedi kez başvurulmuştur. Son on beş yılda halk oylaması yoluna daha sık başvurulmasıyla konu kamuoyunun da ilgisini çekmektedir. Doktrinde daha ziyade halk oylamalarının ayrı ayrı ele alınmış olması ve halk oylamalarının tamamını bütüncül perspektifle ele alan eserlerin oldukça sınırlı olması çalışmanın hareket noktasını oluşturmuştur. Çalışmada halk oylaması ile ilgili teorik çerçeve hakkında kısaca bilgi verildikten sonra Türkiye'de halk oylamasına başvurulmasının esas ve usulleri, halk oylamasının yönetim ve denetimi ile ilgili hususlar ele alınacaktır. Türkiye'de gerçekleşen referandumların sonuçları ve süreçlerinden yola çıkılarak uzun vadeli anayasal reformlar için ihtiyaç duyulan uzlaşma düzeyine işaret edilmiştir.

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1. INTRODUCTION

In terms of the use of sovereignty, we can examine the types of democracy under three categories (Tunç, 2008:1116). These are direct democracy in which people's sovereignty is exercised by themselves, representative democracy in which people's sovereignty is exercised through its representatives, and semi-direct democracy in which the use of sovereignty is shared between the people and their representatives. In semi-direct democracy, the people participate in the exercise of sovereignty using "*people's initiative*", "*referendum*", "*people's veto*" and "*removal of representatives*" (Aktaş, 2015:93).

In favor of semi-direct democracy; there are arguments that it is compatible with democracy, provides democratic education of the people, ensures stability and peace, and prevents the parliament and political parties from misusing their powers (Gözler, 2011:689-690). Against semi-direct democracy; arguments such as tiring the public, being costly, being slow and the possibility of returning to plebiscite are expressed (Gözler, 2011:690-693).

Semi-direct democracy can be expressed as a hybrid tool in which the advantages and disadvantages of direct democracy and representative democracy are synthesized. Considering the practices related to the referendum, it is seen that there is a justification for the arguments for and against semi-direct democracy. It is very important to consider these arguments to benefit positively from the referendum. In this context, referendums should ensure that the people participate in the administration (Nohutçu and Bektaş, 2017:7). Only the referendum is a semi-direct democracy instrument that can be used in Türkiye. The Referendum can also be applied only to constitutional amendments, not on every issue. Because constitutions are the basic condition of processing of a democratic system (Gökçe et al., 2017:19).

The 1961 constitution did not contain a provision regarding the submission of constitutional amendments to a referendum. The submission of constitutional amendments to the referendum in the 1982 Constitution was regulated in Article 175 and the referendums were held by these provisions.

The original version of Article 175 is simpler than the current regulation. Accordingly, the adoption of the constitutional amendment proposal is possible with the vote of two-thirds of the total number of members of the Grand National Assembly of Türkiye. In case the President disapproves and sends the constitutional amendments back to the Grand National Assembly of Türkiye, if the Parliament accepts the returned law as it is, the President can submit this constitutional amendment to the referendum. In the current arrangement, the President can submit the constitutional amendment to a mandatory or optional referendum, depending on the acceptance rate of the constitutional amendment in the Grand National Assembly of Türkiye. The authority of the President, who is the most influential actor in the referendum process, stems from his title as the head of state (Öztürk, 1992:91).

The Supreme Election Council is responsible for managing and supervising elections in Türkiye. The Supreme Election Council, which consists of high judges elected from the Council of State and the Supreme Court, is responsible for the administration and control of the general and local elections as well as the referendums on constitutional amendments. The Supreme Election Council was also responsible for the administration and control of the 1961 constitution and the 1982 constitution referendums held during the coup periods. After the President decision to submit the constitutional amendment to the referendum, the Supreme Election Council is responsible for the functioning of the election calendar, announces the results of the referendum, and finally decides on the disputes.

In the referendums of the 1961 and 1982 constitutions, there was no constitutional provision regarding the submission of the constitutions to the referendum. These referendums were held within the framework of the laws enacted by the National Unity Committee and the National Security Council.

Since the 1987 referendum was the first referendum held under ordinary conditions outside the coup period, Law No. 3376, which regulates the propaganda process, election administration and control process, was accepted by the Grand National Assembly of Türkiye (Official Gazette dated May 7, 1987 and numbered 19473).

2. CONCEPTUAL FRAMEWORK

The Referendum, which is a semi-direct democracy tool, was applied seven times in the history of the Republic of Türkiye, in 1961, 1982, 1987, 1988, 2007, 2010 and 2017. In this study, these referendums will be discussed separately. The political process leading to the referendum, what happened during the adoption process, the decisions of the political actors in the propaganda process, the numerical results of the referendum, its political consequences, the Constitutional Court process, if any, and the material/form nature of the change are discussed.

In the study, the referendums held in Türkiye were examined under three main categories. In this context, the referendums that held after the military coup in the first part, the referendums of the Motherland Party period in the second part, and the referendums of the Justice and Development Party period in the third part are discussed. Within the framework of this classification, the common features and results of the referendums that held in the relevant period were revealed. While the referendums held after the coup were aimed at the entire constitution, the other five referendums were for partial constitutional amendments. It is also seen that these five referendums are mainly related to the basic organs of the state, namely the public administration (Çolak, 2022:93).

General agreement on the distinction between plebiscite and referendum is lacking (Uleri, 1996:3) and sometimes these terms are used interchangeably (Qvortrup, 2014:4). Referendums conducted at the appreciation of the government have often been called plebiscites, a term that may have negative signification in some contexts (Bulmer, 2017:7). Also, plebiscites accepted as a type vote of confidence especially in disguise on the policies of the head of state. (Suksi, 1993:10) At the same time plebiscite sometimes used as a synonym for a referendum called by the authority, often the executive (IDEA, 2008:214).

Essentially, the litmus paper of the plebiscite is a propaganda opportunity. If the arguments of propaganda are severely restricted, it can't accept as referendum, but of a plebiscite. On the other hand, if there is a possibility of propaganda, it is not possible to talk about a plebiscite. Freedom of elections and propaganda opportunities were not restricted in the referendums except for the coup period referendums. Although referendums cannot be defined as plebiscites in this respect, the fact that they start with the initiative and desire of the governments makes it necessary not to ignore the possibility of plebiscite.

In the study, it was also necessary to determine whether the referendums held in Türkiye turned into plebiscites. This finding helped to understand the reasons for the frequency of applying to referendums on constitutional amendments in Türkiye. It has been seen that these inferences give valuable messages about what should be avoided during the making and adoption processes of long-lasting constitutions.

3. REFERENDUMS AFTER COUPS

3.1. 1961 Constitution Referendum

The tradition of a referendum in the history of the Republic of Türkiye started with the constitutional referendum held in 1961. After Türkiye had adopted multi-party political life, which started with the elections being held under the administration and control of the judicial organs, the government of the Republican People's Party came to an end, and the ruling period of the Democrat Party began. The government of the Democrat Party period between 1950 and 1960 ended with an unjust, unlawful and bloody coup carried out by a junta within the Turkish Armed Forces on May 27, 1960.

Usually, military coups prepare its constitution in order to shape the political and societal sphere (Ünal and Erdoğan, 2013:604). In this context, one of the priorities of the National Unity Committee that carried out the coup was to prepare a new constitution. With the Communiqué No. 13 published three days after the coup, a committee of science and law, under the chairmanship of Prof. Dr. Süddık Sami Onar, was given the task of preparing a new constitution (Official Gazette dated May 30, 1960 and numbered 10514).

The 1924 Constitution did not have any provision regarding the submission of constitutional amendments to the referendum. Article 102 of the 1924 Constitution, which includes the provisions regarding constitutional amendments, was repealed with the law dated June 12, 1960 and numbered 1. The new law required that constitutional amendments would be possible with the vote of at least four-fifths upon the proposal of at least one fifth of the members of the National Unity Committee and the referendum was not mentioned (Official Gazette dated June 14, 1960 and numbered 10525).

The process of making a new constitution was determined with the law dated December 13, 1960 and numbered 157 (Official Gazette dated December 16, 1960 and numbered 10682). In this law, the duties and powers of the

Constitutional Commission, the House of Representatives and the National Unity Committee were regulated in detail regarding the constitution-making process. In this regulations, Democratic Party was excluded from the constitution making process (Parla, 1984:218-219). Law No. 157 stipulated that the text of the constitution, which would be adopted according to the principles and procedures the law determined, would only become final after it would be approved by referendum, and if the text of the constitution was not accepted in the referendum, a new House of Representatives would be established by the election. In this context, it can be claimed that the legal basis of the 1961 Constitution referendum is Law No. 157. Within the framework of the provisions of Law No. 157, the “Law on Submission of the Constitution to Referendum” dated March 28, 1961 and numbered 283 was adopted (Official Gazette dated April 1, 1961 and numbered 10771). In Law No. 283, it was stated that the administration and control of the constitution referendum would be in the provincial and district election boards, especially the Supreme Election Council, and it was emphasized that the general election legislation was valid. According to Law No. 283, if more than half of the valid votes are “yes”, the constitution would be accepted. On May 19, 1961, Supreme Election Council published a statement (circular), numbered 35, regarding the submission of constitutional amendments to the referendum (Official Gazette dated May 23, 1961 and numbered 10812).

The National Unity Committee published the constitutional text to be submitted to the referendum (Official Gazette dated May 31, 1961 and numbered 10816). The National Unity Committee, with its decision dated June 20, 1961 and numbered 56, determined the date of submission of the constitution to the referendum as July 9, 1961 and decided that promotional activities could begin as of June 22, 1961 (Official Gazette dated June 23, 1961 and numbered 10836). As can be seen, the time given for propaganda for the public vote on the 1961 Constitution was kept very short. In this period, especially the Democratic Party was excluded from the propaganda process and the propaganda against the new constitution was very limited (Karakartal, 1984:169-170). The Republican People's Party, the Republican Peasant Nation Party and the New Türkiye Party made propaganda in favor of new constitution (Tuğluoğlu, 2019:140).

In the referendum held on July 9, 1961, 10.322.169 voters, out of total 12.735.009 registered, participated in the referendum. The turnout rate was 81%. In the referendum, valid votes (10.282.561) were 99.6%, invalid votes (39.608) were 0.4%, and the votes for the change were 61.7% (6,348.191) and against was 38.3% (3,934.370) (Official Gazette dated July 20, 1961 and numbered 10859).

The 1961 Constitution, which was accepted with 61.7% of the votes, had a very short life. The exclusion of the Democratic Party from the process caused the political parties that continued the same political tradition not to adopt the 1961 Constitution. In addition, the belief that the fundamental rights and freedoms provided by the 1961 Constitution were “too much” in Türkiye brought about the 1971-1973 constitutional amendments. In addition, the system introduced by the 1961 constitution was expressed as one of the reasons for the 1980 military coup (Gözler, 2019:112-113).

3.2. 1982 Constitution Referendum

The belief that the atmosphere of freedom provided by the 1961 Constitution disrupted the public order and the failure to elect a new president for six months were grounds for a military coup on 12 September 1980 by a military junta, which called itself the National Security Council. The most important difference between the 1980 coup, which was at least as bloody and unlawful as the 1960 coup, from the 1960 coup was that there was no chain of command in the National Unity Committee, while the National Security Council seized the administration within the chain of command in the 1980 coup.

With the Law on the Constitutional Order No. 2324, dated 27 October 1980, adopted by the National Security Council, it was foreseen that the 1961 Constitution would remain in force (Official Gazette dated October 28, 1980 and numbered 17145). Right after the 1960 coup, the National Unity Committee started to work on the constitution, while the National Security Council did not hurry to start the work on the constitution. With the Law on the Constituent Assembly dated 29 June 1981 and numbered 2485, the construction process of the new constitution was determined (Official Gazette dated June 30, 1982 and numbered 17386). In this law, the duties and powers of the Constitutional Commission, the Consultative Assembly and the National Security Council were regulated in detail for the constitution-making process. Although Law No. 2485 states that the text of the constitution, which would be accepted according to the principles and procedures determined, would only become final after being by referendum. However, it was not stated what kind of process would be carried out if the text of the constitution was not accepted in the referendum.

One of the conditions for being a member of the Consultative Assembly was not to be a member of any political party as of September 11, 1980. With this provision, it can be said that the political actors of the pre-coup period were all excluded from the constitution-making process. The constitution draft, which was accepted by the National Security Council after having been accepted by the Constitutional Commission and the Consultative Assembly, was published to be submitted to the referendum (Official Gazette dated October 20, 1982 and numbered 17844). Principles and procedures related to referendums, Law No. 2707 “*Law on Submission of Constitution to Referendum*” and Law No. 2485 “*On Arrangement of Voting Registers to be Prepared for Submission of the Constitution in accordance with the provisions of the Law on the Constituent Assembly*” were adopted (Official Gazette dated September 25, 1982 and numbered 17823 /Official Gazette dated July 3, 1982 and numbered 17743).

In Law No. 2707, it was stated that the administration and control, regarding the submission of the constitution to the referendum, would be in the provincial and district election boards, especially the Supreme Election Council, and it was emphasized that the general election legislation was valid. According to Law No. 2707, it has been stated that if more than half of the valid votes are yes, the constitution will be accepted.

The text of the constitution, published in the Official Gazette on October 20, 1982, was submitted to the referendum on November 7, 1982. During the propaganda period, which was quite short, the provisions of Law No. 298 on freedom of propaganda were not implemented, and the propaganda was carried out within the framework of the principles and procedures determined by the National Security Council.

In the referendum held on November 7, 1982 (20.722.602) the registered voters (18.715.115) voters participated and the turnout rate was 91.3%. In the referendum, valid votes (18.600.313) were 99.8%, invalid votes (117.802) were 0.2%, and the rate of the votes for new constitution was 91.4% (16.945.545), while the rate of the votes against was 8.6% (1.594.761) (Official Gazette dated November 9, 1982 and numbered 17863/Repetitive).

The high rate of votes for the new constitution can be explained by the following reasons, apart from the others;

- Although it was clear that the constitutional studies would start again if the constitution prepared after the 1960 coup and submitted to the referendum was not accepted, it was not clear what would happen if the constitution prepared after the 1980 coup and submitted to the referendum was not accepted. While the voters were voting "Yes", they also wanted the military order to end as soon as possible.
- Even though it was limited, there was an opportunity for propaganda after the 1960 coup. However, Law No. 2707 enacted after the 1980 coup stipulated that the provisions of Law No. 298 on freedom of propaganda would not be applied. Although there was a limited opportunity for propaganda in the 1961 constitution referendum process, it cannot be said that there was propaganda opportunity in line with the above-mentioned provision in the 1982 constitution referendum. It was decided to use “*Accept*” and “*Reject*” ballots instead of “*yes*” and “*no*” in the 1982 referendum process in order to prevent possible propaganda against the constitution. The words “*Hayırda hayır vardır*”, “*Hayırlı sabahlar*”, “*Hayırlı Günler*” (heteronym words for “*no*” and “*good*” in Turkish language) (Alkan, 2017:123).
- The envelopes were transparent, especially the “*Rejection*” vote was visible from the outside, which became an element of pressure on the voters.

As stated above, political and social actors were excluded from the constitution-making process, and propaganda was very limited during the constitutional referendum process. Shortly after the constitution was accepted, amendments came to the fore as an expected consequence of the exclusion of some actors. Five referendums regarding the 1982 Constitution have been held so far, and with 19 amendments, almost half of the constitution has been changed.

4. THE MOTHERLAND PARTY PERIOD REFERENDUMS

4.1. 1987 Constitutional Amendment Referendum

With Provisional Article 4 of the 1982 Constitution, some politicians were banned from political activities for five to ten years. But after a short while, politically banned leaders were included in the political arena, de facto and covertly, although not legally and explicitly. The ban on political leaders was an important advantage for Prime Minister Turgut Özal and his Motherland Party. Prime Minister Turgut Özal gave the impression that he did not want the continuation of the political bans, but that the political bans had been made a constitutional

provision by the National Security Council and that President Kenan Evren had a tendency to continue the political bans (Çelebi, 2021a:305). Disturbed by this situation, President Kenan Evren stated that the political bans were accepted by referendum and that the political bans should be revoked if the people wanted it (Çelebi, 2021b:62).

With the Constitutional Amendment Law No. 3361 of 17 May 1987, the voting age was reduced from twenty-one to twenty, the number of deputies was increased from four hundred to four hundred and fifty, the procedure for amending the constitution was changed and political bans were removed. While no special provision was required for the other three articles, it was mandated that the provision regarding the removal of political bans would be decided by referendum. (Official Gazette dated May 18, 1987 and numbered 19464).

During the referendum process, Prime Minister Turgut Özal and his Motherland Party made propaganda against the amendment. Politically banned leaders; Süleyman Demirel and the True Path Party, Bülent Ecevit and the Democratic Left Party, Necmettin Erbakan and the Welfare Party, Alpaslan Türkeş and the Nationalist Work Party made propaganda for the amendment. The main opposition party, the Social Democrat Populist Party (which did not have a banned political leader), and Erdal İnönü, also made propaganda for the amendment. The Reformist Democracy Party and Aykut Edebali called for "blank/invalid" votes (Çelebi, 2021a:307-308).

It should be stated that unlike the 1961 and 1982 referendums, the 1987 referendum held in a free environment. It can be said that the Social Democrat Populist Party and Erdal İnönü, which made propaganda for the amendment despite being a disadvantage for him and his party, influenced the results of the referendum which resulted in favor of "Yes".

According to the original version of the 1982 Constitution, the President's authority to submit to a referendum could only be possible after the process of sending it back to the Grand National Assembly of Türkiye. In the adoption of Law No. 3361, the President submitted the draft directly to a referendum without running the process. As such, the constitutional amendment law was unconstitutional in form (Gözler, 2019:1295). This practice The Constitutional Court rejected the request for annulment, pointing out that in terms of form, the constitutional review was limited to the proposal, the majority of the voting, and whether the condition of not being able to be discussed promptly was complied with (Official Gazette dated September 4, 1987 and numbered 19564).

The 1987 constitutional amendment can be accepted as a constitution in the formal sense in the material/formal constitution distinction. As it is known, in a material sense, the constitution includes the establishment and functioning of the basic organs of the state and the fundamental rights and freedoms of the citizens. In the formal sense, the constitution refers to the laws that are at the top of the hierarchy of norms and that are changed with more difficult principles and procedures than laws. It can be said that the political ban on some political leaders, which is the subject of the 1987 constitutional amendments, is not related to the establishment and functioning of the main organs of the state, and it is a constitutional amendment in the formal sense.

In the referendum held on September 6, 1987 (26.095.630) of the registered voters (24.436.821) voters participated and the turnout rate was 93.6%. In the referendum, valid votes (23.347.856) were 95.5%, invalid votes (1.008.965) were 4.5%, and the yes rate was 50.2% (11.711.461) and the no rate was 49.8% (11.636.395) (Official Gazette dated September 12, 1987 and numbered 19572).

As a result of the 1987 referendum, the political bans imposed on political leaders by the 1982 Constitution came to an end, and the possibility of Prime Minister Turgut Özal continuing unopposed in political life disappeared. Because of the number of votes against the removal of political bans was more than the total votes of the Motherland Party showed some people still hold the politically banned leaders responsible for the events that held before September 12, in the referendum. So it can be deemed the rate of "No" votes was higher than the vote rates of the Motherland Party in the last general elections (Kaya Osmanbaşıoğlu and Bekaroğlu, 2019:127-129). During the referendum process, the issue turned into a vote of confidence for Prime Minister Turgut Özal and the Motherland Party. For this reason, the Grand National Assembly of Türkiye decided for early general elections on October 17, 1987, as the result of the referendum was against Prime Minister Turgut Özal and the Motherland Party (Official Gazette dated October 7, 1987 and numbered 19609).

4.2. 1988 Constitutional Amendment Referendum

The 1988 referendum, which was the only referendum that resulted in more "no" votes, is quite interesting in terms of its subject. After the 1987 referendum and the 1987 general elections, Prime Minister Turgut Özal and

the Motherland Party's public support began to decline and they decided to bring the 1989 local elections forward (Türk, 1989:77-78). This decision was influenced by Prime Minister Turgut Özal's desire to become the next President after President Kenan Evren's term of office ended in 1989. Because the possibility of the Motherland Party getting lower votes than expected might have endangered Prime Minister Turgut Özal's chance to be elected President by the Turkish Grand National Assembly.

The Grand National Assembly of Türkiye has adopted laws numbered 3394 and 3420 about bringing forward of local elections. The Constitutional Court annulled the election-related provisions of both laws after the main opposition party's application in the Constitutional Court, ruling that they are unconstitutional (Official Gazette dated July 15, 1988 and numbered 19873, Official Gazette dated July 14, 1988 and numbered 19872).

The Motherland Party decided to overcome the annulment decision of the Constitutional Court with a constitutional amendment. Since the constitutional amendment was approved by the Grand National Assembly of Türkiye with 284 votes (between 3/5 and 2/3), the President did not have the authority to approve this constitutional amendment. Within this framework, the President had to return the constitutional amendment to the Grand National Assembly of Türkiye for re-negotiation or submit it to a referendum. President Kenan Evren preferred the referendum route. In this context, with the constitutional amendment law dated 6 August 1988 and numbered 3467, the Grand National Assembly of Türkiye was authorized to hold the local elections one year earlier, and at the same time, it was decided that the first local elections would be held on 13 November 1988 (Official Gazette dated August 13, 1988 and numbered 19898). As a result, if the referendum resulted in "Yes", the local elections would be held on 13 November 1988, if the referendum resulted in "No", the local elections would be held on 26 March 1989.

The 1988 constitutional amendment can be accepted as a constitution in the formal sense in the material/formal constitution distinction. Changing the date of the local elections, which is the subject of the 1988 constitutional amendments, is not related to the establishment and functioning of the main organs of the state, so it can be said that it is a constitutional amendment in the formal sense.

In the referendum held on September 25, 1987 (26.739.227) of the registered voters (23.750.873) voters participated and the turnout rate was 88.8%. In the referendum, valid votes (22.956.878) were 96.7%, invalid votes (793.995) were 3.3%, and the yes rate was 35% (8.034.933) and the no rate was 65% (14.921.945) (Official Gazette dated October 1, 1988 and numbered 19946).

Because of the political emphasis on the subject of the 1988 referendum was low, the rate of votes for the referendum was close to the support rate of the Motherland Party (Kaya Osmanbaşıoğlu and Bekaroğlu, 2019:129). After the referendum resulted with more votes against it, local elections were not brought forward, which resulted in an important political defeat for the Motherland Party. This defeat was followed by the Motherland Party's third place in local elections. Responding to the early election demands of the opposition parties with a broad cabinet revision and receiving the vote of confidence, Prime Minister Turgut Özal was elected President after the term of office of President Kenan Evren expired.

4.3. Referendum Not Realized: 2001 Constitutional Amendment

With the Constitutional Amendment Law dated October 3, 2001 and numbered 4709, fundamental changes were made in 33 articles of the 1982 Constitution. It was stated that the main reason for this change was to meet the economic and political criteria for full membership to the European Union (Sağlam, 2002:245). 85% of the changes are related to fundamental rights and freedoms (Fendoğlu, 2002:116). On October 15, 2001, these constitutional amendments (except for Article 27) were approved by President Ahmet Necdet Sezer. President Ahmet Necdet Sezer decided to submit the amendment to the referendum, because it was mainly about the personal/financial rights of the Turkish Grand National Assembly members (Official Gazette Dated October 22, 2001 and Numbered 24561/ Repetitive).

With the decision of the Supreme Board of Elections dated 10 November 2001 and numbered 658, the preparations for the referendum began. Considering the cost of submitting an article about the personal rights of the deputies only to the referendum, the Grand National Assembly of Türkiye abandoned the amendment draft. Article 86 was revised in line with the sensitivities of the President with the Law No. 4720 dated 21 November 2011, and was approved by the President on 30 November 2011 (Official Gazette dated December 1, 2001 and numbered 24600). With its decision dated 3 December 2001 and numbered 721, the Supreme Election Council decided that there was no need to hold a referendum anymore, with the law numbered 4720, and that the work on this issue should be stopped (For the opposite view, Gözler, 2019:1266).

5. JUSTICE AND DEVELOPMENT PARTY PERIOD REFERENDUMS

5.1. 2007 Constitutional Amendment Referendum

According to the 1982 Constitution in its original form “*The President of the Republic shall be elected for a term of office of seven years by the Grand National Assembly of Türkiye from among its own members who are over forty years of age and who have completed their higher education or from among Turkish citizens who fulfill these requirements and are eligible to be deputies... The President of the Republic shall be elected by a two-thirds majority of the total number of members of the Grand National Assembly of Türkiye and by secret ballot. If a two-thirds majority of the total number of members cannot be obtained in the first two ballots, between which there shall be at least a three-day interval, a third ballot is held and the candidate who receives the absolute majority of votes of the total number of members is elected President of the Republic. If an absolute majority of votes of the total number of members is not obtained in the third ballot, a fourth ballot is held between the two candidates who receive the greatest number of votes.*”

Since the 10th President Ahmet Necdet Sezer's term of office would expire on 16 May 2007, the first round of the Presidential election was held on 27 April 2007. Before the presidential election process began, former Supreme Court Chief Public Prosecutor Sabih Kanadoğlu claimed that the “*two-thirds majority of the total number of members*”, which was the quorum for the decision in the first round of the Presidential election process, was also the “*quorum for the meeting*” (Acar and Çelebi, 2012:18). Since AK Party had 354 deputies during the presidential election process, it could not achieve a “*two-thirds majority of the total number of members*” on its own. 361 deputies participated in the first round of the Presidential election due to the lack of support from the Republican People's Party, Democrat Party, Motherland Party and other parties represented in the Parliament (Balci, 2007:241-242).

After the first round of the Presidential election held on April 27, 2007, the Republican People's Party brought the claim, which was defended by Sabih Kanadoğlu and supported by some lawyers (Eroğul, 2007:170), to the agenda of the Constitutional Court. The Constitutional Court, with its -unlawful- decision annulled the decision of the Grand National Assembly of Türkiye regarding the first round of the Presidential elections by accepting an active bylaw change (Official Gazette dated 3 May 2007 and numbered 26511). Following this annulment decision, the Grand National Assembly of Türkiye decided to bring the elections forward and hold them on 22 July 2007 with its decision dated 3 May 2007 and numbered 891 (Official Gazette dated 3 May 2007 and numbered 26511/ Repetitive).

After the general election held on July 22, 2007, the crisis regarding the Presidential election was resolved, with the inclusion of the Nationalist Movement Party in the composition of the Grand National Assembly of Türkiye consisting of the AK Party and Republican People's Party. Because unlike the Republican People's Party, the Nationalist Movement Party participated in the General Assembly of the Grand National Assembly of Türkiye by presenting its own candidate during the Presidential election process, thus the quorum for the meeting sought by the Constitutional Court was reached. Thus, on 28 August 2007, Abdullah Gül was elected as the 11th President of the Turkish Republic, by the Turkish Grand National Assembly.

After the election process started, the Justice and Development Party submitted a seven-article constitutional amendment proposal to the Grand National Assembly of Türkiye, which included the election of the President by the people, reducing the legislative session from five to four years, and regulating the quorum for meetings more clearly. The constitutional amendment adopted by the Grand National Assembly of Türkiye on May 10, 2007 was sent back by the President on May 25, 2007 to be discussed once again in the Grand National Assembly of Türkiye. The constitutional amendment, which was sent back and accepted in the Grand National Assembly of Türkiye again on 31 May 2007, was submitted to the referendum by the President and published in the Official Gazette (Official Gazette dated 16 June 2007 and numbered 26554).

After the referendum decision was published in the Official Gazette, President Ahmet Necdet Sezer and the Republican People's Party filed an action for annulment with the Constitutional Court, claiming that the constitutional amendment was unconstitutional in form. Prior to this date, the dominant view in the constitutional law doctrine was that the constitutional amendment sent back to the Grand National Assembly of Türkiye to be discussed once again by the President could only be accepted with a “*two-thirds majority of the total number of members*” (Gözler, 2019:1254). Contrary to the dominant view in the doctrine, the Constitutional Court rejected the request for annulment, pointing out that the constitutional amendment sent

back to the Grand National Assembly of Türkiye was not required to be accepted with a “*two-thirds majority of the total number of members*” (Official Gazette dated 7 August 2007 and numbered 26606).

As can be seen, the 2007 referendum was held as a reaction to this decision of the Constitutional Court, which is known as the “*367 decision*” by the public and which pushed the boundaries of logic/law/constitutional law. Justice and Development Party, Felicity Party, Great Unity Party, Democratic Society Party, Social Democratic Populist Party, Motherland Party and Democrat Party voted “*yes*” in the referendum, while the Republican People's Party and the Nationalist Movement Party took a “*no*” decision. The main argument of the parties that took the “*Yes*” decision is that the election of the President, who is the head of the state and the executive, by the people is more compatible with democratic values and the decision of the Constitutional Court is unlawful. The main argument of the parties that took the “*No*” decision is that the most characteristic feature of the parliamentary system is the election of the President by the legislature, and that the President elected by the people would create a dual power in the executive.

The 2007 constitutional amendment can be accepted as a constitution in the material sense in the material/formal constitution distinction. The election of the President by the people, the elections of the Grand National Assembly of Türkiye every four years, the meeting number of the Turkish Grand National Assembly, which is the subject of the 2007 constitutional amendments, are related to the establishment and functioning of the basic bodies of the state.

The constitutional amendment submitted to the referendum was based on the assumption that the 11th President could not be elected by the Grand National Assembly of Türkiye and that it would be elected by the public according to the new regulation. However, before the referendum held, the 11th President was elected by the Grand National Assembly of Türkiye. Thereupon, the Grand National Assembly of Türkiye decided to remove the temporary articles of Law No. 5697 of October 16, 2007 and the constitutional amendment, which stipulate the election of the 11th President by the people from the text of the article. The constitutional amendment was approved by the President and published (Official Gazette dated 17 October 2007 and numbered 26673).

In the referendum held on October 21, 2007 (42.690.252) of the registered voters (28.819.319) voters participated and the turnout rate was 67.51%. In the referendum, valid votes (28.167.661) were 97.7%, invalid votes (651.658) were 2.3%, and the yes rate was 68.95% (19.422.71) and the no rate was 31.05% (8.744.947) (Official Gazette dated October 31, 2007 and numbered 26686).

The issue of changing the constitutional amendment, which was already published in the Official Gazette and submitted to the referendum, by the Grand National Assembly of Türkiye was widely discussed (Abdülhakimoğulları and Baykan, 2012:35-37) and the dominant view in the constitutional law doctrine was that this was not possible (Eroğul, 2009:112; Gözler, 2009:562-564). The fact that the change was made a short time before the referendum, the voting process started 40 days ago at the customs, and the fact that 25,103 voters voted at the customs caused the process to become complicated. Republican People's Party applied to the Constitutional Court with the allegation that Law No. 5697 was unconstitutional. The Constitutional Court rejected the request for annulment, pointing out that there was no obstacle to the amendment of the constitutional amendment, which was published in the Official Gazette and submitted to the referendum (Official Gazette dated February 2, 2008 and numbered 26792). With the 2007 constitutional amendment, the election of the President by the public was accepted and the transition from the parliamentary government system to the semi-presidential system was made.

5.2. 2010 Constitutional Amendment Referendum

One of the issues on which social and political actors in Türkiye agree is the anti-democratic character of the 1982 Constitution and the necessity of changing it (Coşkun, 2017:4). Political actors do not embrace the 1982 Constitution and support a consensus-based civil constitution process. The constitutional drafts prepared as an alternative to the 1982 Constitution, which turned forty years old, have almost become a corpus (Erdem and Heper, 2011). After the 2007 constitutional amendment referendum, demands for a new and civilian constitution by political parties including the Justice and Development Party, began to be expressed more frequently (Devran and Seçkin, 2011:157).

Upon the failure of a consensus to change the entire constitution under the umbrella of the Grand National Assembly of Türkiye, the Justice and Development Party decided to make a partial constitutional amendment. Unlike the other three referendums held during the 1982 Constitutional period, the 2010 referendum regulated a wider area. The constitutional amendment submitted to the referendum in 2010 consisted of three titles. The first

is about fundamental rights and freedoms, the second is about the prosecution of the people who carried out the 12 September 1980 coup, and the third one is about the judiciary. In fact, there was a consensus on the first two topics, both in the public and in the Turkish Grand National Assembly. However, there were intense criticisms of the opposition parties about the regulations regarding the judiciary claiming that the independence of the judiciary would disappear (Yokuş, 2020:22).

The Justice and Development Party, which faced a closure case at that time, believed in the necessity of establishing a pluralistic structure in the judiciary (Hakyemez, 2010:389-390). In this context, the Justice and Development Party decided to submit the constitutional amendment package to the referendum as a whole in order to gain the support of wider social actors.

Since the constitutional amendment was approved by the Grand National Assembly of Türkiye with 336 votes (between 3/5 and 2/3), the President did not have the authority to approve this constitutional amendment. Within this framework, the President would return the constitutional amendment to the Grand National Assembly of Türkiye for re-negotiation or submit it to a referendum. President Abdullah Gul decided to submit the constitutional amendment to the referendum (Official Gazette dated May 13, 2010 and numbered 27580).

According to the original version of Law No. 3376, which regulates the propaganda process, election administration and control process of referendum, it was required to be held on the first Sunday after the one hundred and twentieth day following the publication of the relevant constitutional amendment law in the Official Gazette. In order to keep the actuality and recency of the debates on the referendum (Anayasa Komisyonu, 2010:3), this period was reduced from one hundred and twenty days to sixty days before the 2010 referendum. The Republican People's Party filed an action for annulment with the Constitutional Court, claiming that the constitutional amendment adopted by the Grand National Assembly of Türkiye was unconstitutional.

The Constitutional Court can audit the conformity of constitutional amendments only in terms of form. The constitutional review, in terms of form, was limited to the proposal, the majority of the voting, and whether the condition of not being able to be discussed promptly was complied with.

Although the 2010 constitutional amendments are not unconstitutional in terms of form, the Constitutional Court exceeded its authority and carried out an audit of the merits (Gözler, 2019:1299-1300) and annulled some provisions (Official Gazette dated 1 August 2010 and numbered 27659/ Repetitive). However, this annulment decision didn't affect the essence of the constitutional amendment.

In the referendum, the Justice and Development Party, Felicity Party, and Grand Unity Party voted "yes", the Republican People's Party and the Nationalist Movement Party voted "no", and the Peace and Democracy Party decided to "Boycott" (Yılmaz, 2010:590-598). In the propaganda process, polarizations based on a sharp discourse have come to the fore (Anbarlı Bozatay, 2011:124).

The 2010 constitutional amendment can be accepted as a constitution in the material sense in the material/formal constitution distinction. Because the amendments made regarding the judiciary organs, which is the main subject of the 2010 constitutional amendments, are related to the establishment and functioning of the main organs of the state.

In the referendum held on September 12, 2010 (52.051.828) of the registered voters (38.369.099) voters participated and the turnout rate was 73.71%. In the referendum, valid votes (37.644.037) were 98.1%, invalid votes (725.062) were 1.9%, and the yes rate was 57.88% (21.787.244) and the no rate was 42.12% (15.856.793) (Official Gazette dated September 22, 2010 and numbered 27708).

With the 2010 constitutional amendment, judicial proceedings were enabled for those who carried out the September 12 coup. However, the changes made in the field of the judiciary have resulted in devastating and difficult-to-recover results in practice.

5.3. 2017 Constitutional Amendment Referendum

Following the acceptance of the amendment regarding the election of the President by the people in the 2007 referendum and the election of Prime Minister Recep Tayyip Erdoğan as the President by the people, the parliamentary system implemented in Türkiye has evolved into a semi-presidential system (Gönenç and Kontancı, 2019:76).

The Justice and Development Party wanted the de facto situation to have a legal basis. However, the current number of deputies of the Justice and Development Party was not enough to take the constitutional amendment to the referendum. The Nationalist Movement Party believed that the way to legalize or end the current de facto situation was the Grand National Assembly of Türkiye and the referendum (Çelik, 2018:1072). In this context, with the support of the Nationalist Movement Party, Constitutional Amendment Law No. 6771, consisting of 18 articles, was accepted in the Grand National Assembly of Türkiye.

The main point of the change is the Presidential government system. In addition, partial arrangements have been made regarding the structure of the legislative body, its duties, term of office, and audit trails. Also, the abolition of the martial law procedure and the regulation of the state of emergency, the regulation of the Council of Judges and Prosecutors are other important regulations. The abolition of the Military Court of Cassation and the Military High Administrative Court are important steps of military reforms (Karabulut and Kutlu, 2020:85).

During the referendum process, the Justice Development Party argued that the parliamentary system could not provide a suitable infrastructure for Türkiye's growth and development. Expressing that the presidential government system would solve the problems compatible with the realities of the country and invited the citizens to say "Yes" to the referendum.

The Republican People's Party, on the other hand, stated that the Presidential government system is problematic in terms of establishing the balance/supervision mechanism and that it has an anti-democratic nature as such, and invited the citizens to say "No" to the referendum (Bilgin, 2017:61-64).

The 2017 constitutional amendment can be accepted as a constitution in the material sense in the material/formal constitution distinction. Because the amendments made regarding the legislature, executive and judiciary organs, which are the main subject of the 2017 constitutional amendments, are related to the establishment and functioning of the main organs of the state.

In the referendum, the Justice and Development Party, Nationalist Movement Party and Grand Unity Party voted "yes", on the other hand, the Republican People's Party, Felicity Party, Peoples' Democratic Party and Democrat Party called people to vote "no".

On the day of the referendum, the Supreme Election Board took a decision due to intense complaints that the seal of the ballot box committee was not found on the back of some ballot papers. The Supreme Board of Elections decided that ballot papers and envelopes that did not bear the seal of the ballot box committee would be considered valid unless they are proven to have been brought from outside and used. In the doctrine and public opinion, this decision has been criticized as it contradicts the provision of the Law No. 298 on Basic Provisions of Elections and Electoral Registers, "*ballot papers are not valid without the seal of the ballot box committee behind them*" (Gözler, 2017). The Supreme Election Board, on the other hand, responded to the criticism by stating that it had made similar decisions in similar situations before. The fact that the difference between yes and no votes were quite low caused the discussion to remain on the agenda for a while.

Since the constitutional amendment was approved by the Grand National Assembly of Türkiye with 339 votes (between 3/5 and 2/3), the President did not have the authority to approve this constitutional amendment. Within this framework, the President would return the constitutional amendment to the Grand National Assembly of Türkiye for re-negotiation or submit it to a referendum. President Recep Tayyip Erdoğan also submitted the constitutional amendment to the referendum (Official Gazette dated February 12, 2017 and numbered 29976).

In the referendum held on September 12, 2010 (58.291.898) of the registered voters (49.798.555) voters participated and the turnout rate was 85.43%. In the referendum, valid votes (48.936.604) were 98.3%, invalid votes (862.251) were 1.7%, and the yes rate was 51.41% (25.157.463) and the no rate was 48.59% (23.779.141) (Official Gazette dated September 22, 2010 and numbered 27708).

Faced with some problems during the parliamentary system period, Turkey found the way to get rid of these problems by switching to the presidential system (Al, 2020:31). With the 2017 referendum, both the government system was changed and effective measures were taken to ensure that the military bureaucracy was completely under the control of the civilian administration (Öztürk, 2019:54). Besides, the provision that the president will be resigned from his party was abolished and the party presidency was introduced (Kırışık and Öztürk, 2022:106).

6. CONCLUSION

The basis of most of the social and political problems in Türkiye resulted from constitutional issues and problems. In Türkiye, which has been the subject of judicial activism for a long time, constitutional amendments have become an obligatory address for the solution of even the simplest problems.

Although the referendums held in Türkiye cannot be fully qualified as plebiscite, it can be seen at the middle of referendum and plebiscite pendulum. Because, in all referendums, the political will that led the text to the referendum was voted rather than the text. In this context, the fact that plebiscites are unlikely to be long-term gives important messages about the constitution making and adoption process. Except for the coup period referendums, the fact that all referendums held under fair and free propaganda opportunities was not sufficient to ensure a healthy constitution-making process. Türkiye's referendum experience makes it necessary to rise above the current level of consensus in the constitution-making process.

In fact, as long as the constitutions are made as a result of consensus, they are long-lasting and have the potential to produce solutions to social/political problems. When the referendums held in Türkiye are examined from a holistic perspective, there is no referendum on constitutional/constitutional amendments that received the support of the majority of the social segments. Although there was a high rate of votes for 1982 constitution referendum, as stated above, there is no social equivalent of this rate.

The referendums held during the coup period did not take place in a democratic and free environment. Referendums held in ordinary periods, on the other hand, held in one-party governments, in a democratic and free environment. The first two referendums held during the period of the Motherland Party, and both did not result in the way the Motherland Party wanted. The subject of these referendums is constitutional amendments in terms of form. In addition, other social/political actors did not support the Motherland Party in these referendums. The other three referendums held during the period of the Justice and Development Party, and all three resulted in the way the Justice and Development Party wanted. The subject of these referendums is constitutional amendments in material terms. In addition, some social/political actors supported the Justice and Development Party in these referendums.

What Türkiye needs is a new constitution on which the qualified majority of social/political actors agree. Political actors have similar thoughts on this issue. Although the Constitutional Reconciliation Commission, which was established within the body of the Grand National Assembly of Türkiye between 2011 and 2013, was an important and valuable step in this sense, no results could be obtained. In a possible constitution-making process, it is necessary to bring the demands of social/political actors together on the basis of consensus, based on Türkiye's referendum experience.

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