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Is Turkey evolving towards an authoritarian rule?

An analysis of human rights and democracy in Turkey in the light of the
Council of Europe

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ABSTRACT:

The situation of human rights and democracy in Turkey has suffered a dramatic change since the coup attempt on 15 July 2016. The subsequent declaration of a state of emergency and its prolongation for over a year have seriously damaged the human rights situation, both directly and indirectly. Moreover, under the current circumstances, the Turkish society has approved by referendum a series of constitutional amendments that will radically change Turkish political system from a parliamentary system to a presidential system, with a important concentration of power in the hands of the executive. Many academics have been wondering whether this situation will derive towards a one-man rule. Therefore, this project assesses both the impact of the measures taken under the state of emergency and the shifts in the political regime introduced by the constitutional amendments, from the perspective of the Council of Europe (COE). Through their analysis, one might conclude that human rights and democracy have seriously deteriorated under the current situation. Although, the Turkish society needs time to adapt to the new changes, it is necessary to alert on the authoritarian character of the introduced measures.

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1. Introduction

This master's thesis constitutes a research project that deals with the developments of human rights and democracy in Turkey from July 2016 to the present, so as to analyse the events and their impact. In this regard, the research project will focus on the events occurred on 16 July 2016 and the circumstances that followed, mainly the declaration of the state of emergency and its implications on human rights. However, it is also mandatory to assess, within this context, the current constitutional amendments, approved by a referendum on 16 April 2017 under the state of emergency, that, once they enter into force, will completely modify the political regime of the country from a parliamentary republic to a presidential one. Thus, the project will be divided in two different parts: those concerning human rights, and those regarding democracy.

Firstly, it is important to settle a hypothesis and clarify a method of research. This project has several hypotheses as it does not only examines the human rights situation in Turkey under the state of emergency, but also looks at the changes introduced by the constitutional amendments. It is also important to explain that this research has been carried out from a European perspective, and even more importantly from the perspective of the Council of Europe, as an indispensable organism for the protection of human rights and democracy, and an organism to which Turkey is an important member. As we will also see, the research methodology will centre on historical research, but also on a legal perspective.

Prior to the analysis, we will introduce the subject by explaining the developments of the coup d'état, as well as other open questions, and the declaration of the state of emergency. There are serious doubts on who was behind the coup d'état, however it is not the aim of this project to develop grave and unfounded political conspiracies. This background will principally look at facts and consequences, as it is considered a chain reaction. The coup attempt was logically followed by the declaration of the state of emergency. This context is necessary to understand and be able to assess the implications of both events in the human rights and democratic situation of Turkey during the following year.

The next section will take a look at the consequences derived from a prolonged state of emergency. Declaring a state of emergency logically entails restricting several human

rights, yet its prolongation over time, for a period of almost a year, represents a serious threat for the protection of human rights. As we will see in this section, human rights have been directly and indirectly affected by the extended state of emergency and mainly by the ruling of the executive by decree laws. We will question the legitimacy of those decree laws, as most of them have not followed the process established by the Constitution of parliamentary approval.

Logically, the next section will take us to an analysis of a major event that has taken place under this state of emergency: the approval of the constitutional amendments. This constitutional amendments will also have important repercussions on the Turkish democracy. It has been said by some organisms within the Council of Europe, but also from media, NGOs and other international organisms, that these amendments undermine the Turkish democracy and involve a major concentration of power in the hands on the President. Many of that media and NGOs have been wondering whether Turkey was deriving towards a “one-man rule”. Therefore, we will study the amendments and its consequences on the separation of powers and the independence of the judiciary, as they constitute the main tenets of a democratic system.

Finally, we will conclude our research by establishing a twofold outcome of the current situation. Firstly, we will observe how the situation of human rights in Turkey has been seriously undermined by the state of emergency and its decree laws. These shortcomings are difficult to sort out in the future, as several human rights have been violated. It is important to bear in mind in this section that, despite being under a state of emergency, the Turkish authorities could have taken measures more in compliance with human rights standards. Secondly, we will assess the constitutional amendments in order to answer whether Turkey might be ruled under an authoritarian government. It is obvious under the current amendments that the Turkish political system will concentrate the power in the executive branch, thus undermining the separation of powers. It will also limit the independence of the judiciary. Therefore, it is recommendatory that the Turkish authorities change their path and correct both situations as soon as possible.

2. Hypotheses and research methodology

This research project aims to examine the recent events in Turkey, so as to assess the impact on human rights and the Turkish democratic system since July 2016. As we will explain later, the sudden change in Turkish society has affected human rights conditions in the country, both directly and indirectly, and has also entailed a shift from a parliamentary system towards a presidential one. Therefore, this project will focus on constitutional theory, human rights abuses and the effects of a prolonged state of emergency. Both of these elements are interrelated, as it is impossible to talk about the constitutional amendments without taking into account the state of emergency. Also, as a part of this interrelation, one must wonder whether the constitutional reform would theoretically impact human rights standards in Turkey.

Nowadays, the situation in Turkey demands several answers that this project will try to respond. As one can deduce from the introduction, the project will assess two different hypotheses, as part of one greater question that is the adjustment of the Turkish society to the events of July 2016. In order to be able to examine the current human rights and democratic situation in Turkey nowadays, we find two different, well-established and complementary questions: the first one regarding human rights issues and the second one the reform of the political system. At first, the research was focused from a constitutional law perspective. However, during the research of this project, we found that it is not possible to look at the consequences of the constitutional amendments without taking into account the situation of human rights in the country. Thus, we must wonder what the current conditions of human rights in Turkey are, to be able to examine the amendments to the constitution.

In terms of research methodology, this project has faced several obstacles. It must be borne in mind that the situation in Turkey, despite having occurred in the past year, remains a current issue, and it has been changing over time. At the beginning of this research, the referendum had not been held and the Turkish parliament had not approved the referendum on 16 April 2017. In this way, one must take into account how this situation is constantly evolving.

Futhermore, the topic of this research needed to be narrowed down so as to find a fix point that centred the topic of research. Therefore, we decided to fix the research from a

Council of Europe's point of view, and mainly the opinions of both the Commissioner of Human Rights and the European Commission for Democracy through Law, hereinafter the Venice Commission. Turkey is part of the Council of Europe, and, thus, this organisation has been observing the situation in Turkey and its evolution. It has published several opinions and documents examining the situation, and has carried out visits to the country in order to obtain information at first hand. Other reason for focusing on a European perspective is the linguistic obstacle, as well as the structured European system that places value on democracy and human rights. One must be reminded that the European human rights system is also the most developed regional human rights system in the world, and, therefore, facilitates the collection of information, by issuing periodical reports.

We must also bear in mind that the ongoing character of the topic poses some difficulties when researching. This impacts the bibliographic sources of the project, as it is difficult to find reliable sources. This is another reason to focus the research from a European perspective.

From a disciplinary point of view, the master's thesis would have a multidisciplinary approach. It demands a historical approach, so as to introduce the events and facts that occurred during the period comprised between July 2016 until nowadays; but also, it requires a legal approach to understand the situation that have taken place during the state of emergency and a constitutional theory approach to get familiarized with the process and consequences of amending a constitution.

3. The situation in Turkey

First of all, we shall introduce the Turkish political system so as to better understand the political regime and the events that took place on July 2016. Turkey's political system is a parliamentary republic, whose executive power is held by the prime minister and the Council of Minister. As other parliamentary republics, the President has limited functions and is the head of state. Therefore, we have a clear division of powers, as the legislative is exercised by the Turkish Grand National Assembly, the executive power resides in the Council of Minister and prime minister, and finally the judicial represented by the High Council of Judges and Prosecutors.

In June 2015, general elections were held. Yet, none of the political parties was able to achieve a majority of votes and after negotiations, no coalition was formed. The political deadlock led to a new call to vote in November. It is worth mentioning that there was a notable division in the population in Turkey, encouraged mainly by the massacre during a peace rally in October 2015. However, it is important to refer to the fact that, according to Pew Research Centre survey, "Turks were split on whether the democratic system in their country was working, and positive views of Erdogan were at their lowest point since 2012." (Poushter) According to this research centre, supporter's of Erdogan were composed of "older, less educated Turks, and Muslims who pray more than 5 times a day", while those supporting the opposition parties were "younger, more educated Turks, followers of the CHP and less devout Muslims". (Poushter)

The new elections were held on 1 November 2015, and resulted on the victory of the AKP (Justice and Development Party) with a majority of 317 MPs out of the 550 seats of the parliament. The other three parties that had representation in the Assembly were the CHP (Republican People's Party) with 134 seats, the HDP (People's Democratic Party) with 50, and the MHP (Nationalist Movement Party) with 40. There are many political theories about the strategies followed by different parties, mainly the AKP, to avoid the deadlock, but they are no subject of this research.

Another concept that must be clarified in order to better understand the situation is the role played by the military since the proclamation of the Republic. The role of the

military dates back to the Ottoman Empire, when the military were part of the elite, as they “represented the highest virtues of the state” (Cilliler) According to Cilliler, the Republic inherited the military heritage of the empire, as it “was established by professional soldiers taking on responsibility from the puppet government in Istanbul and throwing out enemy troops has been the main sources of the military’s prestige, even today.” (Cilliler) In fact, the military is one of the best valued institutions in the country according to the Pew Research Centre, with 52% of the sample highlighting the service of the military. This influence is due to several factors, such as the failures of several civilian governments in terms of public order or economic development, and the military success in fighting the Kurdish separatism. Furthermore, the Turkish military represents the “secular, modern and Western ideals”. (Cilliler)

It all dates back to the Kemalist configuration of the state. Mustafa Kemal Atatürk was an army officer and the founder of the state of Turkey in 1918, after the fall of the Ottoman Empire at World War I. His ideology is based on six tenets, also known as the six arrows of Kemalism. These tenets are: republicanism, referring to the a republic as the best political system, as opposed to the previous Ottoman sultanate; nationalism, as the foundation of the Turkish state, aiming to create a national identity separated from the Ottoman Empire and external influences; populism, directed to eliminate the social classes by the rule of one-party; secularism, to avoid the abuse of power from different religions; *revolutionism*, justifying the overthrow of governments to fight for the progress of the country; and, finally, *statism*, meaning that it is the duty of the state to regulate the economy and social policies, thus avoiding private economic private initiative. In this way, Turkey was a one party state, and it took several years and some coup d'états to achieve a multiparty system. Yet the Kemalist ideology was still present within the military and the judiciary.

The presence of the military has always been prominent during the Turkish democratic history. According, to Esen and Gumuscu, “since its transition to a multiparty system in 1950, Turkey has witnessed six attempted military intervention in politics” (Esen and Gumuscu, Turkey: How the Coup Failed), four of which succeeded (1960, 1971, 1980 and 1997) and two of them (1962 and 1963) did not. However, the election of 2002

supposed a radical shift from that theory, “resulting in a victory of the Justice and Development Party (AKP) with a religious background, civil-military balance began to shift in favour for the civilians.” (Cilliler)

During this period of AKP rule, the party has struggled with “two veto players that have been entrenched in the Turkish society for decades”: the military and the judiciary. (Esen and Gumuscu, Turkey: How the Coup Failed) According to Esen and Gumuscu, the struggle between the Kemalist tenets and the AKP’s ideology “fuelled the rise of a competitive authoritarian regime dominated by the AKP” (Esen and Gumuscu, Turkey: How the Coup Failed). Contrary to Esen and Gumuscu, Önis considers the AKP rule, denominated as the “new Turkey”, more democratic in a number of issues than the “old” Turkey, that represented by the Kemalist establishment. (Önis)

Nevertheless, Cilliler warns that some variables such as “economic downturns, widespread violence, or illegal actions of rulers - may change the degree of popular support for the government, and the backlash of popular support may function as an impetus for military tutelage again due to uncompleted transformation of formal control mechanisms.” (Cilliler) This quote explains generally why the events in July occurred, as the Kemalist tenets still enjoy a great influence over Turkish society.

It is even more important to have a better comprehension of the Turkish situation to explain the many internal and external conflicts that the Turkish society faces nowadays. First of all, Turkey faces a separatist issue, led by the Kurds. Within those pro independence, we find a terrorist organization the PKK (Kurdistan’s Workers Party). This organization was included in the list of terrorist groups of the European Union in 2004. (Council of the European Union). It must be borne in mind that the Turkish Constitution proclaims the integrity of the state in Article 5, which states:

The fundamental aims and duties of the State are to safeguard the **independence and integrity of the Turkish Nation, the indivisibility of the country**, the Republic and democracy, to ensure the welfare, peace, and happiness of the individual and society [...] (The Grand National Assembly of Turkey) (emphasis added)

It is one of Turkish democracy main tenets, and it is also a controversial issue, as it conditions the political life of the country. Besides the Kurd's struggle for independence and the threat of a Kurdish terrorist organization, the current regional panorama that surrounds Turkey is also a matter of great discussions. The proximity of Turkey to the war of Syria and its fight against the terrorist group, DAESH, has made Turkey a focal point for terrorist attacks. During the last year, Turkey suffered some of the worst terrorist attacks of its history under the DAESH threat. Moreover, the war in Syria has implied a massive wave of Syrian refugees that the Turkish state is trying to cope with. In addition, the global economic crisis of 2008 has made Turkey reconsider its adhesion to the European Union and its political stance.

The shades of Turkish history and the current political panorama, with its many constraints, have led Turkey in a controversial situation that resulted in an attempt to overthrow the government. This event has had numerous consequences that will be analysed throughout this project. Due to the complexity of the subject in question, we have had to be concise, so as to be able to highlight those issues that in the author's opinion were determinant to the aim of this research. Once we have introduced a brief background of the political situation in the country, we will now proceed to explain the attempt of a coup d'état in July 2016, and the following declaration of a state of emergency.

3.1 The coup attempt

Once we have introduced the determinants of the current situation and history of Turkey for the events that occurred on 2015, it is time to explain the development of the coup attempt. First of all, it is necessary to clarify whether the happenings the night of the 15 to the 16 of July might be considered a coup d'état or not. Therefore, we will define what a coup d'état is, in order to explain why are we referring to these events as a coup attempt. Once clarified those concepts, we will proceed then to explain the actions that took place during the second half of July 2016.

According to Derpanopoulos et al., coups d'état "are successful efforts by the military or other elites within the state apparatus to unseat the sitting executive using

unconstitutional means.” In certain cases, civilians might also stand by a coup d’état, but according to them, “at their core coups are a technology that can only be used by the military, police and security forces.” (Derpanopoulos, Frantz and Geddes) It is understandable that the final aim of the coup is to change the leadership of the state, although they might also focus on bringing on a deeper political change. For them, there has been a significant shift in the intention of the coups since the end of the Cold War, as some of them “desire to save their countries from autocratic incumbents”. (Derpanopoulos, Frantz and Geddes) In some cases, due to international pressure, coups may also lead to a democratization process.

As we will observe, in this particular case, all the facts indicate that the events and violence in July 2016 are the pure reflection of a coup attempt. Although, there are voices that raise concern on the fact that it cannot be referred as such, as there were suspicious voices stating that the government was behind the attempted coup, due to the quick and planned response to the military threat. Nevertheless, there is no sufficient prove of that theory, while there is a wide consensus of an armed coup. Moreover, our main sources, principally those from the Council of Europe and the Venice Commission, refer as a coup attempt. Therefore, in this case, we will continue to designate the events as a coup attempt or a failed coup d’état.

Once we have clarified the concept of a coup d’état, it is essential to proceed with an analysis of the events of the night of the 15 July 2016 in Turkey. Esen and Gumuscu, in their work titled *Turkey: How the Coup Failed*, make a deep analysis on the coup, its development and its failure.

The coup attempt started around 10 p.m. on a Friday, 15 July 2016. According to them, it was at that time when the “Turkish Air Force fighter jets took to the skies over Ankara while, 325 kilometres to the west, tanks of the Turkish Army stopped traffic on the bridges that tie together the European and Asian portions of Istanbul” (Esen and Gumuscu, *Turkey: How the Coup Failed*) At the same time, the pro-coup armed forces were seizing key strategic objectives such as the General Staff Headquarters in Ankara, Istanbul’s Atatürk airport, the city hall of Istanbul, the national public-broadcasting

station, high schools and strategic facilities to control the telecommunication systems in the country. (Esen and Gumuscu, Turkey: How the Coup Failed) The plotters also “bombed the Parliament, attacked other public buildings such as the Presidential Palace, blocked roads and bridges in major towns, and seized a TV station. (Venice Commission). According to the Turkish Armed Forces, in the coup, around 9651 military officials using 35 planes, 37 helicopters, 246 armoured vehicles participated, including 74 tanks, and around 4000 light weapons. (Monitoring Committee)

During the occupation of the Turkish Radio and Television (TRT), the plotters, on behalf of the “Peace at Home Council”¹, issued a declaration. In this public statement, the plotters referred to the Turkish government and institutions as corrupt, autocratic and treacherous. (Turkish Armed Forces) This statement also accused the current government of having abolished the fundamental rights that encouraged the democratic legal structure and principles of the state of Turkey, based on secularism and separation of power. The declaration ends by stating that “the political power that has lost its legitimacy has been taken away from duty.”² (Turkish Armed Forces)

The first official response was at 11pm, when Prime Minister, Binali Yildirim, spoke on a news network and named the coup as an “insurrection” (Esen and Gumuscu, Turkey: How the Coup Failed). According to the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, hereinafter the Monitoring Committee, President Erdogan achieved to escape from an assassination attempt at a hotel in Marmaris. When the plotters attacked the hotel, Erdogan had already left to Istanbul. Once he had escaped, and approximately at midnight, he was able to address the Turkish society by a videophone call urging the people of Turkey to take the streets and oppose the coup. (Monitoring Committee) He also stated that “a minority within the Turkish Armed Forces - led [...] by Fethullah Gülen and his loyalist – was trying to override the people’s will and to “invade” Turkey.” (Esen and Gumuscu, Turkey: How the Coup Failed)

¹ The name of the Peace at Home Council is a reference to one of the founding principles of the Republic of Turkey, based on the slogan of Mustafa Kemal Atatürk: “Peace at Home, Peace in the World” (*Yurtta sulh, cihanda sulh*, in Turkish) (Republic of Turkey Ministry of Foreign Affairs)

² Personal translation of the author

After the call of President Erdogan, a huge number of Turkish people confronted the plotters. Also, around 8000 mosques joined the call of Erdogan and encourage resistance to the coup. According to Essen and Gumuscu, the plotters were confused as they were facing civilians. This led to some of the officials to give up their arms, while other civilians were shot or run over by tanks. During the early hours of 16 July, the coup was coming to an end: “it was apparent that the bulk of the Turkish Armed Forces were not behind the coup, and that popular resistance was too intense and widespread to overcome.” (Esen and Gumuscu, Turkey: How the Coup Failed) According to them, the coup resulted in 5 anti-coup soldiers’ death, 62 police officers, and 173 civilians, while also leaving more than 2000 wounded. This figures makes the 2016 coup attempt “the bloodiest coup in Turkish history.” (Esen and Gumuscu, Turkey: How the Coup Failed)

Essen and Gumuscu have made a great job illustrating the cause for the failure of the coup. Among others, they highlight the role of the media, as, according to them, “since 2002, the party (AKP) has asserted increasing control over the press and mainstream broadcast networks while orchestrating the rise of a pro-government media established by loyal businessmen.” (Esen and Gumuscu, Turkey: How the Coup Failed) They have also drawn attention to other reasons, such as the success of the AKP in mobilizing the people that led to the disintegration of the coup plotters. Also, it is worth mentioning the role of the Diyanet (Directorate) of Religious Affairs in calling for a counter offensive from more than 8000 mosques. Actually, according to Pinar Tremblay, “the role of the Diyanet against the coup attempt is crucial, because from midnight till dawn we heard the sala prayers of the mosques.” (Tremblay)

Moreover, it is also essential to mention the role of the opposition parties in relation to the coup. (Arango and Yeginsu) All opposing political parties condemned the coup attempt. For Esen and Gumuscu, the declaration of the Peace at Home Council was a failed attempt to appeal to the CHP and MHP, while calling for the unity of the state and other nationalistic principles. However, “all three opposition parties with seats in parliament vehemently denounced the putsch and publicly supported democracy.” (Esen and Gumuscu, Turkey: How the Coup Failed) From then on, the declarations condemning the coup spread. On 7 August 2016, Erdogan gathered in Yenikapi the

leaders of the three main parties (AKP, CHP, and MHP) to condemn the coup. The leader of the HDP was not invited to the meeting. Following this political meeting, millions of Turks marched on 9 August “to express their commitment to democracy.” (Monitoring Committee)

The government blamed FETÖ/PDY (Fethullahist Terrorist Organization/Parallel State Structure) for the coup attempt. This is a “secret, criminal organisation bent on taking over the democratic institutions and destroying the constitutional order in Turkey.” (Commissioner for Human Rights). This movement is led by Fethullah Gülen, an Islamic leader. This movement runs schools and social organisation throughout Turkey, but mainly it entails an Islamic education system based all around the world. When the movement and its supporters increased, they started acquiring professional positions in the machinery of the state, among other important entities- (Turkey coup: What is Gulen movement and what does it want?) This movement was labelled a terrorist organisation by the Turkish National Security Council in 2015. However, it had not been recognised as a terrorist organisation by the Court of Cassation in its final judgement. This is an essential step to confirm FETÖ/PDY as a terrorist organisation.

However, it is important to highlight that before the coup the AKP had teamed up with the Gülenist movement in an attempt to diminish the importance of Kemalism in the Turkish society. According to Esen and Gumuscu, the Gülenists “had been planning to harvest the fruits of the joint victory over the Kemalist establishment by gaining greater control over the state apparatus.” (Esen and Gumuscu, Turkey: How the Coup Failed) Quoting the Commissioner of Human Rights of the Council of Europe, “the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a pervasive and respectable presence in all sectors of the Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business.” (Commissioner for Human Rights) As the government of Erdogan isolated its ally, resentment began to grow among the ranks of the Gülenist movement, as they tried from within the state apparatus to undermine the power of the government by infiltrating in it. The Venice Commission has provided information on the activities of the movement; some of them constitute illegal acts such

as manipulation of entry exams to state institutions, collecting taxes in the form of donations so as to benefit their own movement, but also the fabrication of evidence that incriminated political opponents, such as the Ergenekon and Balyoz trials.³ (Monitoring Committee) Although there is a wide consensus that the movement had been infiltrating in the state institutions, mainly the judiciary, the responsibility of the coup is still disputed and it is not subject to this research.

3.2 The declaration of the state of emergency

As a result of the attempt coup, and once explained the context of terrorist attacks and internal division, the Turkish government needed to reverse the situation and made crucial decisions, so as to re-establish normality. Thus, on 20 July 2016, President Erdogan announced a three-month state of emergency, under Article 120 of the Constitution that provides that:

In the event of serious indications of **widespread acts of violence aimed at the destruction of the free democratic order** established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, **the Council of Ministers, meeting under the chairpersonship of the President of the Republic**, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country **for a period not exceeding six months.**
(The Grand National Assembly of Turkey) (emphasis added)

The Constitution of Turkey also states that this decision must be published in the Official Gazette and be submitted to the Grand National Assembly of Turkey for approval immediately. It is in the Assembly's hand to modify the duration of the state of emergency, either to extend it to a period of four months maximum or to lift it. The Constitution also contains provision for the legislation during this period and grants the

³ These trials were directed against military officials that were supposedly part of a secret organisation within the state apparatus. In the case of Ergenekon, the judgement dealt with a secret organization whose aim was fostering ethnical disputes in the country, while in the Balyoz judgement it dealt with a conspiracy of a coup d'état. At the end of the process, while the partnership between the Gülenist movement and the AKP weakened, it was made clear that the movement of Fethullah Gülen was behind those trials. (Deveci)

Council of Ministers the power, under the supervision of the President of the Republic, to issue decrees having the force of law (decree laws), but specifies that these must related to the needs required under this special situation. These decree laws must also be published in the Official Gazette and approved by the National Assembly, within an establish time limit. As provided by the Constitution, the declaration of the state of emergency was approved by the National Assembly, and the government began to issue decree laws, the first one entering into force on 23 July 2016.

Moreover, according to the international obligations and commitments of Turkey and under a European point of view, the day following the declaration of the state of emergency, on 21 July 2016, the Turkish authorities notified the representatives of the Council of Europe “from its derogation of the European Convention on Human Rights (ECHR) under Article 15 of the Convention”. Article 15 of the ECHR provides that:

In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent **strictly required by the exigencies of the situation**, provided that such measures are not inconsistent with its other obligations under international law. (European Convention on Human Rights) (emphasis added)

It also established that within the ECHR there are non-derogable articles, such as the right to life or the prohibition of torture, articles 2 and 3 of the ECHR. Another non-derogable article is Article 7 of the ECHR that appeals to no punishment without law. The latter is of great relevance for this research as it is explained in the next section. Also, the national authorities shall provide the Council of Europe with “regular information about the implementation of the state of emergency”. (Monitoring Committee)

As we have already explained, the infiltration of Gülenist within the state apparatus and the coup attempt led the authorities to the declaration of the state of emergency and “to launch a vast process to “cleanse” the State institutions from members seen as being loyal to the Gülen movement.” (Monitoring Committee) Therefore, the Turkish

authorities used the decree laws or decrees with the force of law (*Hülmümde Karamanem KHK*, in Turkish) to that end. During the state of emergency, the Turkish government has issued 21 decree laws. The Rule of Procedure of the Grand National Assembly of Turkey requires these decrees to be approved by parliament within a period of 30 days after their publication in the Official Gazette. To date, only five decree laws have been approved by the National Assembly. Two of those 21 decree laws are on the agenda of the relevant committee and 14 are on the parliament's agenda for their approval. For the Monitoring Committee Council of Europe, the fact that most of those decree laws have not yet been approved by the National Assembly raises serious concerns about their constitutionality and the role of the parliament on approving the emergency decree laws.

The state of emergency was prolonged since then three times. On 11 October 2016, the National Assembly approved the prolongation of the state of emergency for another period of 90 days. On 3 January 2017, the National Assembly approved another prolongation on 90 days of the state of emergency. Once renewed in January, the expire date was on 19 April 2017, two days after the referendum. At that moment, Turkey prolonged the state of emergency once again for another period of three months. Thus, the state of emergency has been declared in 4 different occasions (July 2016, October 2016, January 2017 and April 2017). This has raised the concern of numerous agencies and commissions from the Council of Europe and other civil society organisations. The Monitoring Committee of the Council of Europe warned the Turkish authorities by saying that : “[...] the longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools”. (Monitoring Committee) The Monitoring Committee encourages the Turkish authorities to lift the state of emergency as soon as possible and to maintain it within a strict time limit.

The Venice Commission has also commented on the prolongation of the state of emergency. It argues that the declaration of the state of emergency was an adequate and appropriate measure due to the situation that Turkey was facing, referring to it as “a dangerous armed conspiracy”, yet it raises several concerns on the consequences that a

state of emergency may have on human rights protection. Also, despite having derogated from many international commitments, the Monitoring Committee warns the Turkish authorities that: “a state of emergency regime is not a *carte blanche* for the authorities” and should “remain within the limits set by the Constitution and domestic and international obligations of the State.” (Monitoring Committee) Even the Commissioner for Human Rights of the Council of Europe has expressed his concern on the impact of those decree laws under the state of emergency as they “represent a significant deviation from ordinary procedural guarantees in the context of both administrative and criminal law.” (Commissioner for Human Rights)

As we have explained and as it has been expressed by the European authorities, the declaration of the state of emergency was an appropriate and necessary measure to counteract to the threat posed by the coup attempt. Yet, the prolongation of the state of emergency, for almost a year (as the last decision prolongs it until July) raises serious concerns about the conditions of human rights in the country. Moreover, the abusive use of decree laws entering into force without the approval of the National Assembly and the vested power in the executive makes us question the situation of democracy in the country, exacerbated even more by the constitutional amendments that we will explain later. It is mandatory to explain next the effects and consequences of the extension of the state of emergency and the measures implied in the decree laws.

4. The consequences of declaring a state of emergency

There are many voices that have alerted about the consequences of prolonged states of emergency and its influence in human rights. In this particular case, several civil society organisations have raised their concern with regards to the situation in Turkey. For example, Human Rights Watch has condemned the measure to extend the state of emergency as it “would further endanger human rights and the rule of law, which have already been badly damaged in Turkey under the state of emergency” (Human Rights Watch). Also, Amnesty International issued a statement together with other NGOs urging the Turkish authorities to “revoke the measures under the state of emergency, the application of which, in practice is incompatible with Turkey’s human rights obligations.” (Amnesty International) Even the UN Office of the High Commissioner on Human Rights (OHCHR) has issued an statement regarding the derogation from the International Covenant on Civil and Political Rights (ICCPR) and the risk they pose to the protection of human rights. The OHCHR reminded that: “even where derogation is permitted, the Government has a legal obligation to limit such measures to those that are strictly required by the needs of the situation.” (OHCHR)

As a reference to this project, the Council of Europe has stated that “situation has deteriorated and the situations have gone far beyond what is necessary and proportionate.” (Monitoring Committee) The Venice Commission has also alerted on the prolongation of a state of emergency as it “is not always the best solution to re-establish public security and restore the rule of law.” (Venice Commission) It also advises on the risks of prolonging a state of emergency: “the longer the emergency regime lasts, the further the State is likely to move away from the objective criteria that may have validated the use of emergency powers in the first place. (Venice Commission). Once it has lasted for almost a year, one begins to question the justification and whether the situation is an exceptional one, or whether it has become ordinary.

As we have mentioned before, the Turkish government has been ruling through decree laws, while most of them, as we have previously explained, have not been approved nor monitor by the parliament. However, they have had a huge impact on most segments of society, beyond the terrorist organisations. The Monitoring Committee has confirmed that these decree laws go “beyond what is permitted by the Turkish Constitution and by

international law.” (Monitoring Committee) According to multiple NGOs and the Venice Commission, the Turkish authorities have used these decree laws as a discretionary power, so as to purge “from the State apparatus of the persons allegedly linked to the conspiracy.” (Venice Commission) Yet, it has not only reached the public sector, but also private entities, such as schools or media outlets. This purge is significant, as there is an official rhetoric arguing that the country “should be ‘liberated’ and required a ‘second war of independence’.” (Monitoring Committee)

The Council of Europe has advised that “Turkey must adhere to the principles of the rule of law and human rights standards, which require any interference with basic human rights to be defined by law, necessary in a democratic society and strictly proportionate to the aim pursued, in accordance with its international obligation.” (Monitoring Committee) As we have stated before, the Council of Europe and its multiple agencies have acknowledge the need of the state of emergency and respected the possible derogations from the ECHR, yet this statement implies that Turkey is deviating from human rights standards and the rule of law.

The repercussion of decree laws is twofold. On one side, we find an important amount of dismissals of civil servants, judges and prosecutors, as well as professors. The decree laws have also led to the closing down of several media outlets and civil society organisations. This constitutes part of the direct consequences on human rights that we will explain next. Nevertheless, there is also the other side of the coin that concerns the political representation, as a great number of parliamentarians have been arrested, leading to the deterioration of democratic institutions. In addition to this, the government has encouraged the amendment of the constitution, as we will later explain.

The impact of these measures is worth studying, as they affect directly or indirectly the protection of human rights in Turkey. This has been confirmed by the Commissioner for Human Rights that has stated that: “these measures created, directly or indirectly, sweeping interferences with the human rights of a very large number of persons.” (Commissioner for Human Rights) In this sense, the Commissioners considers that there are around 32000 people directly affected by those measures that are held in detention, and around 1500 in police custody. He also sets the number of civil servants dismissed or suspended from their jobs in between 70000 and 110000; the figures referring to closure of NGOs and other organisations are around a 1000. We must highlight that

families, businesses and municipalities indirectly affected by those measures might doubled the amount of those directly affected. The Commissioner also highlights that “the vast majority of the interferences with human rights guaranteed under the ECHR, which occurred during this period were a direct consequence of the exercise of discretionary power.” (Commissioner for Human Rights)

Therefore, it is now mandatory to have a look at the direct and indirect interferences of decree laws in human rights’ protection. Firstly, we will look at the direct consequences, mainly composed of dismissals of public servants and the repercussions of the public sectors, but also on civil society organisations and the private sector. Then, we will examine the indirect consequences, mainly those regarding municipal representation on South East Turkey, other measures such as the removal of parliament inviolability right before the coup took place, and finally the constitutional review of the measures.

4.1 Direct consequences on human rights

As we have stated before, there are a number of Turkish citizens whose human rights have been directly impacted by the measures approved through decree laws during the state of emergency. There are many ways in which human rights might be faded out during states of emergency, and we will proceed to explain some of them. First, it is mandatory to take a look at the dismissal of civil servants and its repercussions; secondly, we will look at the private sector, and the massive closure of media outlets and civil society organisations; finally, we will look at the figures of people held in custody or detention, the allegations of torture and the judicial remedies of those whose rights have been violated.

4.1.1 Public sector

Regarding the massive dismissals of civil servants and the repercussions in the public sector, it is necessary to bear in mind that, according to the Turkish authorities and the Council of Europe, the Gülenist movement had infiltrated the state apparatus. As this movement is the primary responsible of the coup attempt, it is therefore justified to “clean” the state’s institutions in order to prevent a bigger threat. However, this “cleanse” or “purge”, as it has been denominated by the Venice Commission, has gone beyond the strictly necessary. The Commissioner for Human Rights of the COE

provides some numbers that illustrate this fact. Despite not having an official figure, the COE estimates that the amount of civil servants dismissed or suspended from their job stood between 70000 and 110000, of which 3400 were judges and prosecutors. (Commissioner for Human Rights)

Furthermore, most of these dismissals and suspensions have been carried out by a list with the names of those dismissed attached to a decree law. As an example, according to the Venice Commission, “Article 2 of Decree Law n° 668 refers to a list of public servants to be dismissed: the list is appended to this Decree Law.” (Venice Commission)

According to Article 4 of the Decree Law n° 667: “Those who are considered to be a member of, or have relation, connection or contact with terrorist organizations or structure/entities, organizations or groups, established by the National Security Council as engaging in activities against the national security of the State shall be dismissed from public service”. (Decree Law No.: KHK/667) We must bear in mind that the Gülenist network included schools and education centres, as well as other civil society organisation, legal entities and banks. There is no public criteria of the link of the dismissed people to Gülenist network, but, as the Venice Commissions states, some of these evaluations were made according to their contribution to the Asya bank and other companies, by being member of a trade union or using a messenger application, as well as social media contacts, web-sites visited or sending your children to one of the schools of the Gülenist network. One might wonder then what should be the intensity of these connections of the concerned public servants so as to be dismissed or suspended. For the author, this criteria appears to be completely discretionary, as well as a violation of the right to private life (Article 8 of the ECHR) of those dismissed.

One might deduce now that once the name of a dismissed public servant appears in a decree law, the decision of this shall be permanent. As the Venice Commission has put it: “Individual measures may sometimes be irreversible, when the danger may only be averted by an irrevocable action.” (Venice Commission) The fact that these dismissals might be permanent, as they are annexed to laws, imply a permanent ban from working in the public sector or any other entity in connection with the state. Also, one might take into account that all of these measures have been taken very suddenly, as most of the dismissals were carried out within a month of the coup attempt, so “putting tens of

thousands of public servants and thousands of legal entities on lists a few weeks after the declaration of the state of emergency suggests that these cases of those individuals and organisations cannot have been thoroughly considered, and that, consequently, those measures may affect a large number of innocent people and organisations which have nothing to do with the conspiracy.” (Venice Commission) Therefore, these measures appear to be completely discretionary.

Moreover, the Commissioner for Human Rights of the COE also alerts that these measures include among those already said “the annulment of passports, eviction from staff housing and the annulment of rental agreements between these persons and public or semi-public bodies.” (Commissioner for Human Rights) Therefore, that people are not only being subject to an unfair treatment and discrimination, but also indirectly affecting their private life, their freedom of movement, their welfare...One must remember that the Turkish state has the right to derogate from the ECHR, yet the measures taken into account during this period should be “defined by law, necessary in a democratic society and strictly proportionate to the aim pursued”. (Monitoring Committee) To the entities of the Council of Europe, these measures seem to go beyond the requirement of proportionality.

Finally, one should consider also the status of the judiciary, as they enjoy a special category within the state apparatus. Their independence must be guaranteed on a constitutional level, according to the Venice Commission. The fact that around 3400 members of the judiciary have been dismissed poses several questions regarding its independence. The Venice Commissions calls for a major scrutiny in the dismissals of members of the judiciary, as these dismissals may negatively impact the institution.

4.1.2 Private sector

One should also wonder about the situation of the media and the private sector in Turkey. As we have explained before, the Gülenist network also had private entities; and the role of the media in Turkey has been really controversial as it had been really critical with the government. According to the Commissioner for Human Rights, “at least more than a thousand NGOS and trade unions, and more than a hundred media establishments were disbanded and liquidated without judicial proceedings.” (Commissioner for Human Rights)

Nevertheless, although many private institutions might be financing terrorist groups and helping them in logistical issues, that does not require the arbitrariness with which the Turkish government has been treating both the media and private entities. Several decree laws have established provisions regarding the closure and disbandment of media outlets and private institutions. According to the Venice Commissions, only in the Decree Law n° 667 “35 health institutions, 934 schools, 109 student dormitories, 104 foundations, 1125 associations, 15 universities and 29 trade unions have been liquidated.” (Venice Commission)

Moreover, Article 2 of Decree Law n° 667, approved the 23 of July of 2016, that included closure of private entities and media outlets, stated that:

[...] the movables and all forms of assets, receivables and rights, documents and papers belonging to all other disbanded institutions and organizations **shall be deemed to have been transferred to the Treasury against no cost**; immovable properties belonging to the aforementioned shall be **registered to the Treasury at the land registry office**, in a fashion free from all forms of restrictions and immovable liabilities. **No rights can be claimed from the Treasury in connection with any debts** of those, listed under paragraph 1. (Decree No: KHK/667) (emphasis added)

Therefore, according to this and other Decree Laws, all assets of those private entities must be transferred to the State’s Treasury and they will not receive any compensation on these transfers. Also, as we can observe in the latter quote, the state will acquire the entity, but will not take charge of the possible debts that it may have.

According to the Commissioner for Human Rights, the threat posed by these organizations could have also “been eliminated in most cases by freezing their assets or suspending their activities, pending a final judicial decision, based on material evidence and individual reasoning”, instead of establishing a list through decree laws and transferring their assets to the state. (Commissioner for Human Rights) Also, we must highlight that the fact that these organizations are also listed in decree laws makes their disbandment an irrevocable measure. Again, this decision has been arbitrarily taken by the government and poses doubts on the proportionality of the measures taken. Quoting the Commissioner for Human Rights, these measures were not “the most proportionate

measure in order to strike a proper balance between the objective risks considered and the applicable human rights, including the right to a fair trial, to property, to freedom of association, to freedom of expression and to an effective remedy.” (Commissioner for Human Rights)

4.1.3 Judicial and civil rights

Decree laws have also affected other rights with a broader aspect. As we will explain below, decree laws have impacted the judicial rights of those detained or held in custody. Thus, we might say, violating a non-derogable right under the ECHR. There have also been accusations of torture.

Firstly, we will start examining the rights of those held in custody or with pending judicial proceedings. According to Amnesty International, over 40000 people remained in pre-trial detention during six months of the state of emergency. (Amnesty International) Yet there are no official numbers of people detained after the coup attempt. Some of these detainees have been held in custody waiting for indictment and without permission for accessing their files. Some of them are having difficulties in accessing their lawyers (Monitoring Committee) Decree laws also imply for example that a person might be held in custody up to 30 days by the police and what Human Rights Watch calls the “incommunicado detention”, where detainees may be denied their access to a lawyer within the first five days in custody. (Human Rights Watch) They also regulate the lawyer-client confidentiality principle, as the decree laws introduce the possibility of recording their conversation. (Amnesty International) This has led to several critics as Turkey is not fulfilling some international commitments. In fact, one of them is a non-derogable article of the ECHR: article 7 states that:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was

criminal according to the general principles of law recognised by civilised nation (European Convention on Human Rights)

The respect of this kind of rights is also shared by the Commissioner for Human Rights of the COE that urges Turkey to comply with the general principle of law such as “presumption of innocence, individuality of criminal responsibility and punishment, no punishment without law, non-retroactivity of criminal law, legal certainty, right to defence and equality of arms.” (Commissioner for Human Rights) These acts have been denominated as “deviations from normal criminal procedures” by the Commissioner. Obviously, this has involved social consequences, such as having their passport cancelled, having no access to social security or the seizure of their assets. (Monitoring Committee) Thus, violating some other rights such as the freedom of movement or the right to property.

Therefore, the Commissioner for Human Rights has called the Turkish authorities to abide to due process, in order to avoid what he has denominated as “sweeping measures” that use “opaque criteria” and that “derogate from the most basic principles of due process, indiscriminately to all these sectors, groups, individuals and private entities.” (Commissioner for Human Rights)

Due to these generally explained facts, there have been several allegations of torture or ill-treatment in the interaction with detainees. These allegations have been exposed by several actors of the international community and civil society organisations. According to Amnesty International, those changes introduced by the decree laws have facilitated torture and other ill-treatments. Human Rights Watch has also referred to the “weakening of safeguards against abuse in detention” as the main reason for the report on torture. (Human Rights Watch)

However, the UN Committee Against Torture has found that the Turkish legislation provides enough safeguards for torture and ill-treatment, but has acknowledged that torture and ill-treatment in the days following the coup were widespread. (Office of the United Nations High Commissioner). The Committee on the Prevention of Torture of the Council of Europe visited Turkey in May, but its report has not been published yet.

4.2 Indirect consequences on human rights

As we have seen, decree laws have directly affected the Turkish situation of human rights in a negative manner. Yet, it keeps affecting the conditions of human rights in the country in an indirect way. In this part, we will address the negative impact of decree laws at a small scale, but also at a big scale, mainly referring to the political representation. Therefore, we will take a brief look at the impact of the decree laws in society; then explain how the lifting of parliament immunity and parliamentary inviolability has affected the situation and finally examine the status of political representation both at local as well as national conditions.

Prior to the coup attempt, the Assembly of the Council of Europe had already stated in Resolution 2121 (2016) that there were serious concerns on the situation of the media and on the rule of law in the Turkish society. Moreover, the antiterrorist operations in South-East Turkey posed a serious threat to the democratic institutions, due to multiple terrorist attacks by the PKK and retaliation by the Turkish security forces. This has impacted the Turkish democratic institutions due to the Kurdish fight for independence. According to the Parliamentary Assembly of the Council of Europe, several democratic elected pro-Kurdish mayors had been arrested as they were “aiding and abetting a terrorist organisation”, thus diminishing the effectiveness of democratic institutions. (Parliamentary Assembly)

In addition to this situation, the post coup circumstances and the consequences of the decree laws have had a more deep impact in society. It has not only affected those dismissed, or those business or media closed by the decree laws, but also it has impacted society in general. The post coup measures have provoked that critical voices with the government remain silent and according to the Monitoring Committee it has created a climate of fear within society. The impact on media has an indirect consequence on the functioning of a democratic society, as freedom of expression is the basis of a democratic society. Thus, this climate of fear among the critical voices jeopardizes the functioning of democracy and, thus, the respect for human rights. This has been emphasized during the election campaign, as there have been changes, through decree laws, in the legislation regarding the role of the media during electoral campaign. This decree law, according to the Monitoring Committee, has removed the competence of the Supreme Election Board (SBE), the organisation in charge on electoral matters in Turkey, of sanctioning media outlets that released any biased political propaganda, thus allowing the media to be completely partial. It has allowed unlimited political

advertising in any private media. Therefore, taking into account that decree laws have led to the closure of many media outlets opposing the government's view endangers the freedom of expression in Turkey and, therefore, the functioning of democracy.

Moreover, there were other measures that put in jeopardy the Turkish democracy. Prior to the coup, in May 2016, there was an amendment to the Turkish constitution lifting parliamentary immunity. According to the PACE, this “seriously undermined the democratic functioning and position of the parliament.” (Monitoring Committee) For the Venice Commission, this measure is not in line with the standards of the Council of Europe. (Venice Commission)

The consequences of this amendment have been disproportionate, as it led to the lifting of the immunity of 138 members of parliament. It has been disproportionate as it mainly affects the opposing parties, particularly the HDP, as 55 out of 59 deputies were stripped of their immunity and faced investigations on charges of terrorism. This constitutes 93% of their members. It must also be reminded the HDP is the third largest party in Turkey, holding around 11% of the total of votes. It must also be taken into account that the HDP is a pro-Kurdish party, and it maintains the government stream towards the Kurdish issue. Most importantly, the two co-chairs of the party were arrested, after the coup attempt, and hundreds of officials of the party were also arrested. As stated by the OHCHR, by the end of 2016, “eleven HDP parliamentarians, including the two party co-chairs, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, had been arrested on various terrorist charges.” (Office of the United Nations High Commissioner) According to the Monitoring Committee, this “has rendered the party inoperative.” (Monitoring Committee) It must also borne in mind that the HDP was not invited to the meeting in August 2016 to condemn the coup attempt. Moreover, and according to the Monitoring Committee, this behaviour of the political elite of the country “has had a deterrent effect and has led to serious restrictions to democratic debate in the run-up to the constitutional referendum of 16 April 2017 to establish a presidential system.” (Monitoring Committee)

However, this measure did not only affect members of the HDP. According to the OHCHR, a total of 138 members of parliament were stripped of their immunity: 51 members of the main opposition party, the CHP, out of its total of 113 members in parliament, 27 members of the AKP of their total of 317, and 9 members out of 39 of

the nationalist party, MHP, and one independent member of parliament. According to the OHCHR, this constitutional amendment “was proposed by the AKP based on accusations that the HDP had been affiliated with the outlawed PKK.” (Office of the United Nations High Commissioner)

Furthermore, all of these measures and consequences have had a great effect on the efficiency of political representation, and constitute a serious threat to the functioning of democracy. The measures and consequences explained before are part of the great scale illustration of the situation of how the situation of human rights in Turkey is indirectly affecting democracy. Nevertheless, we should also examine the small scale conflicts so as to have a better understand of the repercussions on democracy. The PACE has expressed its concern on local administrations in South-East Turkey, as the government, ruling through decree laws has appoint trustees in those municipalities, thus, replacing the elected representatives. (Monitoring Committee)

Following the several dismissals of public employees and politicians, the government ruled through a decree law and appointed trustees to rule over 28 municipalities, mainly in South-East Turkey, as the majority of elected majors were removed from office. This occurred in late August and beginning of September 2016, and by November “53 had been dismissed and 39 arrested pending investigation.” (Human Rights Watch) This was carried out by Decree Law 674, issued on 1 September 2016, that allowed to appoint “trustees” to replace civil servants, including majors or other members of municipal councils. This situation persisted and by 31 January 2017, “81 co-mayors from the Peace and Democracy Party (BDP, a sister party to HDP) were under arrested, and “trustees” were appointed to 65 of the 103 municipalities won by the BDP at the last local elections of 30 March 2014.” (Monitoring Committee) As we have seen, this has mainly affected the elected officials with Kurdish origins in the South-East region of Turkey. According to the OHCHR, in most of the cases, “the “trustees” were appointed immediately following the arrest of the democratically elected officials, indicating a high degree of coordination between the judiciary and the executive branches.” (Office of the United Nations High Commissioner) This connexion between the executive and the judiciary might not be a coincidence, as we will observe in the next section. According to the Monitoring Committee, this situation represents a grave deterioration of the Turkish democratic institutions, “particularly by weakening the role

of the elected representatives and undermining the legislative and supervisory functions of the parliament.” (Monitoring Committee)

According to the Council of Europe, this situation is not compatible with the standards of the Council of Europe, mainly with the European Charter of Local Self-Government, to which Turkey is part. The Congress of Local and Regional Authorities of the Council of Europe realised a visit to Turkey to inspect the situation and afterwards pointed out that “the arrest and removal from office of many local elected representatives seriously risk damaging pluralist democracy at the local level and seriously weakening political parties and civil society.” (Monitoring Committee) This has seriously damaged local democracy, with almost six millions Turkish citizens, according to the Monitoring Committee, deprived of political representation.

Therefore, we may conclude by stating how indirectly, through the damage to democracy, several civil and political rights of the overall of Turkish citizens have been placed at risk due to the use of discretionary power by the government and the administration. The Commissioner for Human Rights, thus, alerts that the use of discretionary powers always entails “a certain degree of arbitrariness and erode the rule of law, yet protection of human rights is impossible without the rule of law.” (Commissioner for Human Rights) In addition, the Turkish administration is undergoing a constitutional amendment that will change the political regime in the country. By acknowledging the importance of the rule of law, and everything it endorses such as check and balances, the separation of powers or the independence of the judiciary, we must now examine the regime established in the Turkish Constitution and the current amendments. It must be reminded that the amendments of the may affect the rule of law and, thus, the protection and safeguarding on human rights in the Turkish state.

5. The Constitutional amendments

This section will look at the Turkish Constitution, so as to observe whether the proposed constitutional amendments will imply a crucial change in the democratic regime and, therefore, affect human rights conditions. In this way, we should briefly describe the constitutional history of Turkey, as the foundation of democracy in the country, in order to proceed to an explanation of the current Constitution of Turkey, proclaimed in 1982, and its main tenets. As we will see, the Constitution of 1982 has been amended several times; this makes one question the stability of the Turkish constitutional history. This will serve as a background to analyse the current constitutional amendments that are foreseen to enter into force in 2019. Once explained the amendments, we will clarify how these amendments will affect some basic principles of democracy, such as the separation of powers, the check and balances among these powers, and the guarantee of having an independent judiciary.

According to Sencer, constitutional amendments reflect the changes in society, and “the outstanding curves in Turkish history have come to be defined as separate constitutional terms.” (Sencer) In this way, these changes and Turkish multiple constitutions have reflected the evolution of the country. One must take into account that during its constitutional history, Turkey has had five constitutions. However, one must set up our research on the Constitution of 1924, which sets the foundation of the Turkish Republic as we know it nowadays. As one might deduce, this was the constitution inspired and established during Atatürk’s time and proclaimed the idea of a secular republic that we have previously explained. According to Sencer, this constitution focused on “the superiority of the legislative power”, through the Turkish Grand National Assembly, as the representative of people’s sovereignty. (Sencer) It is logical that this constitution prioritized the legislative power, as Turkey had just suffered a War of Independence (1919-1923) after the collapse of the Ottoman Empire after World War I. The end of an authoritarian power, represented by the authorities of the Ottoman Empire, led to the vindication of the rights of the people. This background and the establishment period of the Turkish democracy explained the duration of this Constitution, almost 36 years.

According to Sencer, this fact encouraged the sovereignty of the parliament, and “minimized the role of [...] judicial supervision of the executive and legislative powers. Therefore, it curtailed the calls for a more democratic state “governed by the rule of

law”. (Sencer) This need to control the excessive powers of the legislative function drove the Turkish state to the proclamation of another fundamental set of rules, the Constitution of 1961, thus responding to the demands of the democratic needs of Turkey.

As a counterbalance of the Constitution of 1924, the new constitution prioritized the role of the judiciary, so as to “supervise both legislative power and executive power”, while seeking a balance between the three forces. (Sencer) However, this primacy of the judicial power made the other powers highly ineffective at some times, as they were unable to answer to the demands of the society. The fact that these constitution guaranteed a broad list of rights and freedoms led to the complaints of some parts of society. One might always find difficult to balance rights and freedoms, as they are most of the time written with a broad interpretation. Therefore, this situation led to some turmoil, and the society and political parties began complaining about the Constitution as the responsible of those broad set of rights and freedoms. In addition to this situation, to the economic crises of the 1970’s and to some constitutional amendments in 1971 and 1973, the instability in Turkey was not controlled.

This instability led to the events occurred in 1980, when a successful coup d’état was carried out on 12 September 1980. According to Sencer, the Turkish Armed Forces performed this coup so as to restore the internal order and the integrity of the state, as well as to establish an impartial authority of the State. Their main aim was to set forth a “democratic and free parliamentary system” and, then, set up a new constitution, thus restoring democracy. (Sencer)

As we have seen, the democratic and constitutional history of the Turkish state is nothing else but a mere reflection of the social and economic periods that have taken place in the country in the last century. Each constitution explained here is completely different from the other and reflects a complete different socio-economic and political panorama. One might then wonder whether the Constitution should be amended or replaced so many times in barely a century, or whether the Constitution should be a set of fundamental rules in a fashion closer to the United States’ Constitution. In order to analyse the current amendments, it is necessary that we explainsome of the basic foundations of the constitution proclaimed right after this coup, the Constitution of 1982 and the current constitution of Turkey.

5.1 The Constitution of 1982

As a result of a military coup, in spite of pretending the restoration of the democratic order, the Constitution of 1982 reflects the influence of the military, always following the Kemalist principles. Consequently, although having great similarity with the one of 1961, the Constitution of 1982 changes the pre-eminence of the judicial power and transfers it to the executive one. According to Gunter, the aim of this constitution was to protect the state, as the Constitution of 1961 had given too many rights and freedoms to the people and the government had not been able to control them. For Gunter, the fact that this constitution is considered to be authoritarian is understandable, due to the context of “anarchy” of the Turkish state before the coup of 1980. (Gunter, Turkey: The Politics of a New Democratic Constitution)

In this sense, the Constitution of 1982, in its preamble, emphasizes the need to protect the Turkish state and its legitimate interests against those who are contraries to the Turkish principles, mainly the indivisibility of the state and the territory. It constitutes a defence of the values of Ataturk. Therefore, articles 1 and 2 defines Turkey as a secular and social, democratic republic. In addition, Article 2 stresses the importance of Ataturk as the father of the Turkish values, as it states that the Turkish state is “loyal to the nationalism of Ataturk.” (The Grand National Assembly of Turkey) The presence of the founder of the Turkish state is mentioned, according to Gunter, on eight separate occasions, and the references to the indivisibility of the country appears 14 times. (Gunter, Turkey: The Politics of a New Democratic Constitution)

The Constitution of 1982 also refers to Turkey as a parliamentary democracy, and besides to its authoritarian critics, the Parliament was given a priority, for example in the indirect election of the President of the Republic. Yet this priority was balanced by the strength given to the President in some other issues, such as the powers during states of emergencies. According to the Venice Commission and Gunter, this constitution also brought numerous limitations to fundamental rights and freedoms, as it was established right after a successful coup d'état. Also, it involved limitations of certain articles that had been overprotected by the previous constitution and, therefore, considered as the cause of the turmoil that had shaken Turkey during the 1970's.

Once it was drafted, the Constitution of 1982 was approved by popular referendum and put an end to the military rule. In this way, the military plotters fulfilled their commitment to restore democracy, yet leaving their mark through the Constitution of 1982. Since then, the current Constitution of Turkey has been amended almost 20 times and the governments have redrafted or modified more than 100 articles of the 177 articles of the Constitution, according to the Venice Commission. These amendments “were partly (1987) or fully (2007 and 2010) approved through a referendum.” (Venice Commission) The last constitutional amendment was carried out on 12 September 2010, and regarded the adhesion of some provisions to some freedoms, such as the freedom of movement or the protection of family. It introduced limits to those freedoms. It also regulated the role of the military, for example, by introducing the possibility of being judged by the civil judiciary once a military official had threatened the security of the nation (Article 145 of the Constitution)⁴. However, of the last amendments, the three of them carried out under the government of the AKP (2002, 2007 and 2010), one must highlight the 2007 amendments, by which the role of the President increased. According to the Venice Commission, those amendments made the system “a sort of ‘attenuated parliamentarism.’” (Venice Commission) The Venice Commission has also labelled the Turkish political system after these amendments as a “semi presidential regime”, mainly due to the fact that the 2007 amendments introduced the direct election of the President, while, before that, it was elected by the Parliament as a counterbalance of the division of powers. (Venice Commission)

Nevertheless, the new proposed amendments, approved by referendum on 16 April 2017, will suppose a dramatic change of the original parliamentary system established in the Constitution of 1982. Several scholars, journalist and international organisms have expressed their concerns on these amendments. We will now proceed to a description of the process in which the amendments were approved in order to explain them later. Once explained the amendments and the process followed towards their approval, we will analyse their consequences on the political regime, by looking at the separation of powers, the measures of check and balances among the powers, and the

⁴Article 145 states that: . “Military justice shall be exercised by military courts and military disciplinary courts. These courts shall have jurisdiction to try military offences committed by military personnel and offences committed by military personnel against military personnel or related to military services and duties. Cases regarding crimes against the security of the State, constitutional order and its functioning shall be heard before the civil courts in any case.” (Amendment of 2010) (The Grand National Assembly of Turkey)

condition of the judiciary, in order to see if it supposes a threat to the democratic regime of Turkey.

5.2 The process of amending the constitution

As we have seen, the Turkish Constitution of 1982 has been amended several times. From 2011 to 2013, a Conciliation Commission was created in order to find consensus on the amendment of some provisions. but it could not reach an agreement on the establishment of a presidential system and the process was terminated. (Monitoring Committee) However, in the current context, the process of amending the constitution has got through. According to the Venice Commission, the amendment of the Constitution in order to make the executive presidency the centre of the power was one of the AKP's campaign promises in 2015. Under this special circumstances, on 10 December 2016, the AKP and the MHP submitted the 18 articles amending the Constitution to the National Assembly. Those 18 draft articles were adopted on 30 December 2016 by a constitutional committee and then forwarded to the National Assembly for a discussion of articles on 9 January 2017. (Venice Commission) After the article-by-article discussion, the National Assembly approved the amendments on 21 January 2017, with 339 votes in favour out of 330⁵ needed to approve the referendum and 142 votes against. The amendments could have been adopted directly, if it had reached a majority of 367 votes. (Monitoring Committee) These amendments will bring about a great change in the regime, which has been denominated by the Turkish authorities as "Turkish- style" presidential system. (Ministry of Justice Directorate General for EU Affairs)

The support of the MHP, a nationalist party, to the AKP for the approval in parliament of these amendments was crucial. According to Seyrek and Paul, the change of opinion of the MHP's leader, Bahçeli, "came about in the aftermath of the biggest rebellion against his leadership." (Seyrek and Paul) The party's division suited AKP's desire to amend the constitution. This division was even more visible during the discussion of the articles, as almost half of the 40 MHP's deputies rejected the amendments. According to Seyrek and Paul, "it is likely that Bahçeli secured political gains" by supporting the

⁵ Article 175 of the Turkish Constitution establishes a three-fifths majority votes in favour in order to approve a referendum for constitutional amendments: The adoption of a bill for an amendment shall require a three-fifths majority of the total number of members of the Assembly by secret ballot. (The Grand National Assembly of Turkey)

constitutional amendments of the AKP. Therefore, the AKP and the MHP's supporters launched a campaign in favour of amending the constitution.

Nevertheless, beside the support of the MHP, the rest of political parties (CHP and HDP), those with no representation in Parliament, civil society organisations and some business organisations opposed the amendments, as it jeopardizes the regime by "bringing about one-man rule". (Seyrek and Paul) In this sense, MHP dissenters together with the CHP and the HDP encouraged the vote against the amendments.

However, the state of emergency is an essential condition to take into account while campaigning, due to the limitations of rights. In addition, there are some circumstances that must be taken into account, such as the timing of the referendum as well as other peculiarities. It is not only the timing of the whole process, but also the process itself. According to the Venice Commission, if the amendment procedures had been properly conducted, it would have contributed "to the legitimacy and sense of ownership of the constitution and to the development and consolidation of democratic constitutional traditions", otherwise, if the procedure was controversial, or without democratic debate, it would "undermine political stability and, ultimately, the legitimacy of the constitution." (Venice Commission) Thus, the Venice Commission has repeatedly encouraged the involvement of the society and the respect to some freedoms such as freedom of assembly or expression, as well as the equality of media broadcasting in order to secure a fair process. In this regard, the whole situation seems to be complicated by the declaration of the state of emergency.

The whole process of the approval of the constitutional amendments presents some peculiarities, some of them conditioned by the state of emergency. For example, during the debates of the constitution, there was a significant number of deputies that were absent, mainly from opposing parties, as some of them were detained, or whose immunity had been lifted by the constitutional amendment of May 2016. Also, Article 175 of the Turkish Constitution establishes that the vote has to be made by secret ballot and this provision was not always respected, as some deputies showed their vote publicly. The broadcasting of the debates was also controversial, as the debates lasted many hours, and mainly at night. The length of the sessions and their timing provokes that the Turkish population might not have understood most of the proposed

amendments. Also, the length of the sessions eased the process of such an important issues as it is changing the political system of a country.

Moreover, right on the day that the amendments were submitted to the National Assembly, 9 January 2017, some people demonstrated in front of the parliament to “protest against the constitutional amendments” and it “was dispersed by the police.” (Venice Commission) The following day, the Governor of Ankara, following an Emergency Law, prohibited any public demonstration for a period of 30 days. (Venice Commission) Therefore, freedom of expression and freedom of assembly was not fully respected due to the state of emergency.

On the other hand, there had also been issues with the timing and the adoption of the amendments. This is due to the state of emergency. According to the Venice Commission there are some constitutions that prohibit constitutional amendments during states of emergency, yet the Turkish Constitution does not contemplates this provision. For the Venice Commission, this prohibition illustrates the importance of “protecting the fundamentals of the political system, notably the Constitution and the electoral system.” (Venice Commission) In most of the cases, this prohibition derives from the limitations to the normal functioning of the society, mainly the parliament, the media and other freedoms such as freedom of assembly that a state of emergency may entail. Therefore, for the Venice Commission, “under these conditions, the democratic process of constitutional amendment may not be fully guaranteed.” (Venice Commission) In this sense, the Commission has given the Turkish state with two ideal possibilities, either carrying out the referendum during the state of emergency while lifting the political restrictions, or postponing it until the state of emergency has been lifted.

Another controversial situation is related with the referendum and the campaign. The Election Observation body of the Council of Europe has criticised the environment in which the referendum was held, as “fundamental freedoms essential to a genuinely democratic process were curtailed under the state of emergency, and the two sides did not have equal opportunities to make their case to voters.” (Election Observation) Also, the media coverage of the campaign was uneven, due to the closure of opposing media outlets and it “gives preference to the ruling party and the president in the allocation of free airtime.” (Election Observation) This has been encouraged by two decree laws that

impact the campaign, yet as they have not been approved by the parliament, they cannot be appealed and must be abide. (Office for Democratic Institutions and Human Rights)

Finally, we can conclude this section by clearly stating that the state of emergency has seriously impacted the holding of the referendum and the campaign. The voting procedure in Parliament was uneven, due to the absence of a great number of deputies. The state of emergency also complicated the situation by restricting freedom of assembly or freedom of expression. In addition to this factors, we must also take into account the consequences of some decree laws that have curtailed some human rights, by closing down media outlets. This makes one question its truly democratic value and the fairness of the process. Yet, it is not only subject to this research to wonder about this matters, but also to the possible change in the political system. Then, the amendments to the Turkish Constitution will be explained, in order to assess whether the conditions explained before and the amendments might impact the Turkish democracy, by curtailing democratic rights and freedoms. Therefore, we will briefly explain the amendments, so as to be able to deduce from them several democratic changes.

5.3 Proposed amendments

In this section, we will look at those amendments that may affect democracy and the political system. Particularly, we will examine those amendments that may affect the separation of powers, the balance among them and the judicial system of Turkey. Seyrek and Paul have provided a key summary of the amendments in the Constitution. We will base our approach from their analysis, as well as from the opinion of the Venice Commission.

As stated by the Venice Commission, the amendments to the Constitution will imply a change in the political regime towards a “Turkish-style” presidential regime. The Venice Commission has warned the Turkish authorities, because some of the amendments may undermine the division of powers and its check and balances. In addition, the Venice Commission has asserted that it “has supported constitutional reforms that aimed at decreasing the powers of the President and at increasing those of the parliament.” (Venice Commission)

If adopted, the changes will be implemented in 2019, or earlier if the Parliament decided to hold early elections. Under the amendments, the president would be allowed to two five-year terms in office. This means that Erdogan could remain in power until 2029 or even beyond if there early elections are held before the end of his last term. Next, the relevant and controversial articles to this research project will be mentioned.

There are some provisions in the amendments that lead to the concentration of power in the hands of the President. First, it is necessary to take into account that, according to the amendment of article 105, the executive power will also “belong to the President” (Venice Commission); so the President will become both the head of State and the representative of the executive. In this sense, the proposed amendments grant new powers to the President. Article 104⁶ of the future Constitution establishes a vast series

⁶ D. Duties and powers

ARTICLE 104 - The President of the Republic is the head of the State. Executive power belongs to the President. In this capacity, he/she shall represent the Republic of Turkey and the unity of the Turkish Nation; he/she shall ensure the implementation of the Constitution, and the regular and harmonious functioning of the organs of the State.

If he/she deems it necessary, delivers the opening speech of the Grand National Assembly of Turkey on the first day of the legislative year.

He/she gives message to the Assembly about domestic and foreign policy of the country.

He/she promulgates laws.

He/she returns laws for reconsideration to the Grand National Assembly of Turkey.

He/she lodges an action for annulment with the Constitutional Court for the whole or certain provisions of enacted laws, the Rules of Procedure of the Grand National Assembly of Turkey on the grounds that they are unconstitutional in form or in content.

He/she appoints and dismisses Vice-Presidents and ministers.

He/she appoints and dismisses high level State officials, and regulates the procedures and principles relating to the appointment of these, by presidential decrees.

He/she accredits representatives of the Turkish State to foreign states and receives the representatives of foreign states appointed to the Republic of Turkey.

He/she ratifies and promulgates international treaties.

He/she holds a referendum, if he/she deems it necessary, on laws regarding amendment to the Constitution.

He/she determines the national security policies and takes the necessary measures.

He/she represents the Office of Commander-in-Chief of the Turkish Armed Forces on behalf of the Grand National Assembly of Turkey.

He/she decides on the use of the Turkish Armed Forces.

He/she revokes or commutes the sentences imposed on individuals, on grounds of chronic illness, disability and old age.

The President may issue presidential decrees on matters relating to the executive power. The fundamental rights, individual rights and duties included in the first and second chapters, and the political rights and duties listed in the fourth chapter of the second part of the Constitution, shall not be regulated by presidential decrees. No presidential decrees shall be granted on matters to be regulated specifically by law embodied in the Constitution. No presidential decrees shall be granted on matters explicitly regulated by law.

In the case of a conflict between presidential decrees and the laws due to differences in provisions on the same matter, the provisions of law shall prevail. In case the Grand National Assembly of Turkey introduces a law on the same matter, the presidential decree shall become null and void.

The President may issue by-laws in order to ensure the implementation of laws providing that they are not contrary to these laws and regulations.

of provisions stating the new powers of the President, such as the fact that the President will be able to issue decrees, related to matters of the executive powers. In this sense, although the scope of the right to issue presidential decrees is narrow, it will grant the President with a limited legislative power. Therefore, it also establishes that “in the case of a conflict between presidential decrees and the laws due to differences in provisions on the same matter, the provisions of law shall prevail.” (Venice Commission) However, as we will see later, this is more complicated. In addition to the promulgation of these decrees, the President will enjoy a veto power over some provisions enacted in parliament.

As the President will be the main representative of the executive power, the role of the Prime Minister and the Council of Ministers will be abolished. For the functioning of the government, the president will have the possibility to appoint as many as vice-president as he/she desires. The election of vice-presidents is articulated by an amendment to article 106⁷ of the current Constitution. One of them would act as

Decrees and by-laws shall come into force on the day of their publication in the Official Gazette unless a date later than publication is determined.

The President of the Republic shall also exercise powers of election and appointment, and perform the other duties conferred on him/her by the Constitution and laws. (Venice Commission)

⁷ F. Vice-presidents, Acting President and ministers

ARTICLE 106 – After being elected, the President may appoint one or more Vice-Presidents.

In case the office of the President falls vacant for any reason, the election of the President shall be held in forty five days.

Until a new one is elected, the Vice-President shall act as president, and he/she shall exercise the powers of the President. If the general election is to be held within a year or less, the election of the Grand National Assembly of Turkey shall be renewed together with the election of the President. If the general election is to be held in over one year, the President [newly] elected shall continue to serve until the election date of the Grand National Assembly of Turkey. For the President who is completing that remaining period, this time-frame is not counted as the term of office. Both elections are held together at the date of the general elections of the Grand National Assembly of Turkey.

In the event of a temporary absence of the President of the Republic on account of illness, travel abroad or similar circumstances, the Vice-President shall serve as Acting President of the Republic and exercise the powers of the President of the Republic.

Vice-Presidents and ministers shall be appointed from among those eligible to be elected as deputies and dismissed by the President of the Republic

Vice-Presidents and ministers shall take their oaths before the Grand National Assembly of Turkey, as written in Article 81. If members of the Grand National Assembly of Turkey are appointed as Vice-Presidents or ministers, their parliamentary membership shall cease.

Vice -Presidents and ministers shall be accountable to the President. [Parliamentary] Investigation alleging that they committed a task -related crime may be requested against the Vice-Presidents and ministers through a motion tabled by an absolute majority of the total number of members of the Grand National Assembly of Turkey. The Assembly shall debate on this request within one month at the latest and may decide to open an investigation with a three -fifths majority in secret ballot.

Where a decision to launch an investigation is made, the investigation shall be conducted by a committee of fifteen members, chosen by lot, for each political party in the Assembly, separately from among three times candidates nominated for each seat reserved to party groups in proportion to their number of seats. The committee shall submit its report on the result of the investigation to the Office of the Speaker within

President if the presidency is vacant for whatever reason. The amendment does not establish requisites for being elected as a vice-president, thus anyone can be appointed; yet it does establish that if the person appointed is a member of parliament, their membership shall cease.

Moreover, the President will have a significant control over the judiciary, as a provision of Article 104 states that it is the competence of the President:

“To appoint the members of the Constitutional Court, one fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the High Court of Appeals, the members of the High Military Court of Appeals, the members of High Military Administrative Court and the members of the High Council of Judges and Prosecutors.” (Venice Commission)

Therefore, the President will be appointing one fourth of the High Council of Judges and Prosecutors, a “key institution in terms of judicial independence” (Seyrek and Paul) We will later examine this provision and its impact on the rest of the judiciary.

From another perspective, the amendment on article 77 of the Constitution of 1982 changes the election method. As we may know, the Constitution of 1982 established the indirect election of the President, that it was voted in the National Assembly. However, the 2007 amendment of the Constitution modified the election of the President. Article 102 of the current Constitution states that the President is elected by universal suffrage, and by the absolute majority of votes. (The Grand National Assembly of Turkey)

two months. In case the investigation is not completed within the time allotted, the committee shall be granted a further and final period of one month.

Following its submission to the Office of the Speaker, the report shall be distributed within ten days and debated in the Plenary within ten days after its distribution. The Grand National Assembly of Turkey may decide to refer the case before the Supreme Court with two-thirds majority of the total number of members through secret ballot. Supreme Court trial shall be concluded in three months, if the trial is not completed within the time allotted, a further three months shall be granted for once, and the trial shall absolutely be completed within that time.

The alleged task-related offences committed during their terms of offices shall also be subject to the provisions of paragraphs (5), (6) and (7) after the termination of their duties.

The term of office of the Vice-President or minister, who is convicted by the Supreme Court of a crime that prevents from being elected, shall cease.

During the term of office, for the alleged offences which are not task-related, Vice-Presidents and ministers shall enjoy parliamentary immunity.

The formation, abolition, functions, powers and organisation, and formation of central and regional organisation of the ministries shall be regulated by presidential decrees. (Venice Commission)

Pursuant to the amendment, the mandate of the president remains of 5 years. However, the amendment of article 77⁸ establishes that:

In the event of a decision to hold new elections, the powers of the Assembly shall continue until the election of a new Assembly. and the Presidency shall be held on the same day in every five years (Venice Commission)

Moreover, under the current constitution the President once it became elected must give up its role as a member of his or her political party. Therefore, the President of the Republic untied from a political ideology and avoided conflict of interests. It was a guarantee of an impartial status. Under the amendments, the President is allowed to be a member and even lead a political party. As one may deduce, this poses some problems to the democratic stability of the country.

In this section, the most controversial amendments have been explained. Therefore, it is important to be able to observe and explain their consequences on the democratic institutions of the Turkish state. It is also important to note that during the explanation of the consequences of the amendments, several new amendments not mentioned in this section may appear. We will proceed to explain them then.

5.4 Consequences of the amendments

As we might deduce from the introduction to the amendments, they have affected the general system of the Turkish institutions. In this section, we will take a look at the impacts of the amendments and the deep change in the development of Turkish democracy. According to the Venice Commission, political systems and forms of government are legitimised by their respect to the principles of the rule of law, the separation of powers and the impartiality and independence of the judiciary, “as long as they remain democratic.” (Venice Commission) The lack of respect to one of those principles places the political system or the form of government at risk. For the Venice Commission, the degeneration of one of the so-called “fundamental rules” could make the system authoritarian in nature. This danger is even more probable when introducing

⁸ C. Election term of the Grand National Assembly of Turkey and President
ARTICLE 77- (As amended on October 21, 2007; Act No. 5678) Elections for the Grand National Assembly of Turkey and the Presidency shall be held on the same day in every five years. A deputy whose term of office expires is eligible for re-election.
If the simple majority is not obtained in the first round of Presidential elections, a second round of voting is held according to procedure stated in Article 101. (Venice Commission)

a presidential system. For example, if a government does not comply with the separation of powers, there is a risk of a concentration of power and a derivation to an authoritarian rule, as had happened in some countries trying to implement a presidential system according to the United States model, such as Venezuela. As it has been established by Juan Liz, and supported by the Venice Commission, “presidentialism is often considered to be generally less conducive to democracy” especially when there are more than two political parties in the competition for government. This is the case of Turkey, where, as we have seen, there has been numerous coups d’état and the military plays a big role in politics thus undermining the democratic compromise of the society and the political parties, and where there are more than two main political parties, currently four parties have parliamentary representation.

According to the Venice Commission, establishing a presidential system “requires very strong check and balances” and, as we will explain, the amended constitution does not provide them, especially an independent judicial system, as it is the case of the United States (Venice Commission) As we will see, the Turkish justice system under the amendments will not have such an impact as for example the Supreme Court of the United States has.

In this particular case, the executive power in Turkey will benefit from an increase on the competences of the President. The amendments will also undermine the checks and balances between the executive, the legislative and the judicial power. The Turkish Ministry of Justice in its explanation of the amendments under the request of the Venice Commission compared on several occasions the Turkish amended system with the American one, principally as a justification for establishing and legitimising a presidential system. (Ministry of Justice Directorate General for EU Affairs)Therefore, the Venice Commission has stated that “under the amended Turkish constitution, unlike under the American one, there would be no bicameralism, no federalism, no election of the Vice-president, no influence of parliament on appointments within the executive power, while the President would have the power to dissolve parliament at his or her will.” (Venice Commission) Therefore, we find it impossible to compare both systems.

Then, in order to assess the consequences of the amendments, we should look at the fundamental rules of democracy, mainly the way the separation of powers is structured

under the new system and its check and balances, and also at the independence of the judiciary as to a form of control of the legislative and executive branch.

5.4.1 Separation of powers and check and balances

As we have previously stated, the amendments involve a change in the separation of powers in Turkey. In this sense, the Venice Commission has concluded that the amendments “lead to an excessive concentration of executive power in the hands of the President and the weakening or parliamentary control of that power.” (Venice Commission) Therefore, in this section, we will observe the consequences of this “concentration of powers” in the hands of the executive by assessing some aspects such as the holding of elections, the power to dissolve parliament, parliament’s counter-powers or the accountability of the President.

Firstly, we will see the impact of elections on the check and balances between the legislative and the executive. There are several issues regarding elections. Primarily, both Presidential elections and parliamentary elections are held the same day. This implies mutual influence in the outcome of both elections. Presidential and parliamentary elections demand the Turkish society to be politically responsible so as to distinguish between the members of parliament and the president. Otherwise, elections may lead to confusion.

Moreover, the Venice Commission has also warned about the possibility of a third term of the President. In the case the National Assembly decides to dissolve the parliament and hold elections, as both presidential and parliamentary elections shall be held simultaneously, the President is thus able to run for a third term. This makes the mandate of the President, in particular cases, almost unlimited. Both the Venice Commission and Juan Linz have shown their concerns of the dangers of not limiting presidential mandates. In Linz words, “the power of the President is at once so concentrated and so extensive that it seems unsafe not to check it by limiting the number of times any President can be elected.” (Venice Commission) For the Venice Commission, extensive presidential mandates should be avoided so as to “limit the risk of negative consequences for democracy arising from the fact that a person has the possibility of occupying the presidency for an excessive period of time.” (Venice Commission) Nevertheless, although this provision of the amendments does not comply

with the ideal period of time, we must acknowledge that there is a limitation of the period that the President should be in office. Perhaps, it would be desirable to shorten the period, in order to guarantee the people's will through more regular elections.

In addition, another matter regarding elections is the permission allowing the President to be a member of a political party. Therefore, as stated before, there is major risk that the same party will have both the executive and legislative branch. It sets a high responsibility on the Turkish citizenship. Also, according to the Venice Commission, it is likely that the President is and will remain as the leader of the party in order to be able to have an influence in the legislative branch. For the Venice Commission this situation will give the President almost unlimited powers. (Venice Commission)

In their report to the Venice Commission, the Turkish Ministry of Justice stated that the simultaneous electoral process is a check and balance situation. However, in the author's view, it is impossible to understand how simultaneous elections for the Presidency and the representation in parliament can countermeasure each other. It is true that the holding of simultaneous electoral processes might help the legislative fluency of the country, as it is likely that the same party will be the majority in parliament as well as the head of the executive branch. It is the same opinion of the Venice Commissions when it says: "this entails the consequence, due to a phenomenon of "attraction" of the parliamentary elections under the presidential campaign." (Venice Commission)

Moreover, this entails other controversial issues such as the accountability of the President and his/her discretionary powers. The constitutional amendments have greatly reduce the methods for Presidential accountability, partly due to the extensive competences that he or she is granted by the amendments, so his/her democratic accountability will be only appreciated when he or she runs for a second mandate. In this way, the democratic accountability of the President is severely reduced, as elections are held every five years. Moreover, according to the Venice Commission the "new competences of the President are drafted in vague terms, leaving large space for interpretation and discretion." (Venice Commission)

Now, we will look at the division of the executive power and the legislative one. As we have seen in the explanation of the amendments, the President will be granted vast

executive powers. First one must take into account the role of the President as the Head of State, and thus its symbolic role as the maximum representative of the State, yet this same President at the same time is the head of the whole executive power, as the amendments abolished the Council of Ministers and the role of a Prime Minister and handed all those powers to the President. Plus, even though the President will not be a member of the legislature, so a formal division of powers would be granted, the Venice Commission has stated that this formal situation is “illusory”. (Venice Commission) As we have explained before, it is highly probable that the President will have some kind of influence in the legislative power, either by being the head of the party or by selecting his or her vice-presidents from among them. Also, we must remind that a vice-president selected from the National Assembly has to cease his membership once he is appointed as a minister, yet the influence of the President is still significant, as he or she might agree with them in order to pass some legislation in exchange of the vice-presidency. For the Venice Commission, these powers reflect “an effective source of patronage over the legislature.” (Venice Commission) It is important to remind that the National Assembly will not have the power to place vetoes or approvals on these appointments, as for example it does occur in the United States. In this sense, this situation undermines “the legislature’s control over the executive.” (Venice Commission) This removes any type of check and balance mechanism of the legislative on the executive; thus hindering the democratic process in Turkey.

Moreover, it is important to take into account that the President will be also in charge of declaring a state of emergency. If in the current system, the government may legislate by decrees with the force of law during the state of emergency, under the current amendments, the provisions “would further contribute to the strengthening of the President’s powers, which is not balance by counter-weighting powers.” (Venice Commission)

However, although the President enjoys great powers and barely non counter-measures in the exercise of the executive power, it does not have the power to legislate or propose any legislative initiative, but as we might remind it can issue presidential decrees in matters related to the executive powers. Yet, as we explained, in the case of conflict, those measures legislated in parliament, a law, prevails over the presidential decrees.

Nevertheless, the President enjoys certain powers that render the separation of powers impossible, such as the power to dissolve parliament and the veto power. Regarding the dissolution of the National Assembly, one must bear in mind first that “in purely presidential republics, the power to dissolve the legislature is quite rare, as it would undermine the principle of the separation of powers as classically understood.” (Venice Commission) In this sense, the amendments establish that the Turkish President is perfectly able to dissolve Parliament and call for new elections. According to the Venice Commission, this competence is completely “symmetrical to the power of the TGNA to dissolve itself” (Venice Commission). However, we must take into account that in the case that the President decides to dissolve parliament, new elections would be held for both the President and the National Assembly. The Turkish authorities actually argue that the mutual renewal of elections in both powers constitutes a check and balance mechanism, yet it is highly unlikely that the President dissolves the Parliament in any of his or her mandate, as presidential elections would also be held. Still, there is no impeachment mechanism in the amendments to the Turkish Constitution, so it does not actually provide a check and balance mechanisms, as the parliament cannot carry out a motion of censure on the president. Although the amendments to the constitution greatly expand the criminal liability of the President, the power of the National Assembly to launch investigations and the right to question the government have been abolished, thus it is practically impossible for the National Assembly to decide whether to hold the government accountable.

In addition, the new amendments expand even more the power of the executive by granting him veto powers. In this way, according to draft Article 89, if the President vetoes a law, it is sent back to the National Assembly for a second voting, but it must be approved by an absolute majority of the National Assembly. This veto power complicates the legislative process, and it might be considered as an interference of the executive power in the legislative branch.

Once we have observed how the powers of the President have been increased by the constitutional amendments, one might wonder whether the National Assembly, as the representative of the legislative branch, have been granted equal powers in order to counter-measure those of the President. For the Venice Commission, “in a presidential system, the legislative and executive powers should be kept separate and the system of checks and balances should be put in place to guarantee that neither of the two will

become too dominant in the country.” (Venice Commission) Following this logic, we must check whether the drafted constitutional amendments comply with this recommendations. The Venice Commission argues that it will not be surprising if Turkey establishes bicameralism, as it is in most of the presidential or semi-presidential country such as France, Brazil or the United States, so one of those chambers, normally the upper one, controls the executive. Yet, this counter-measure has not been determined in the constitutional amendments. Therefore, it undermines the competence to control and, therefore, check the government.

In addition, we find that the National Assembly in Turkey has no competence on questioning or ratifying presidential decrees, with the exception of the decrees under a state of emergency. The parliament in Turkey can only refer presidential decrees to the Constitutional Court, so it decides in the annulment or not of the decree, while the President does have a veto power on any law passed in the National Assembly. The Venice Commission has stated that the powers of parliament to control the executive are “insufficient” and that “it is unlikely that the TGNA may stand as a balancing counter-weight to the President.” (Venice Commission) There is not an equal amount of competences in order to balance each other, and the executive power sees itself highly benefited from the constitutional amendments.

5.4.2 Independence of the judiciary

In this section, we will look at an aspect completely indispensable for the stability of democracy: the independence of the judiciary. In the last section, we have analysed the extension of powers of the President and the role of parliament as a counter-weight of the executive branch. However, the situation in the judiciary is also complicated and it reflects the complexity of the Turkish constitution. The independence of the judiciary is one of the main guarantees of a democratic system. As we will see, the amendments of the Constitution and the prolongation of the competences of the President have significantly affected the Turkish judiciary’s independence and impartiality.

The Venice Commission has highlighted that “under the amendments the President will no longer be required to act as a *pouvoir neutre*, with the consequence that there is an actual risk” to be partisan in its decision. (Venice Commission) In this sense, it is

necessary to remind that the President will be engaged in politics as the head of the executive system and as a possible member of a political party.

The Venice Commission has also emphasized the need for an important and independent judicial system in presidential system, as it is the main organism to properly control particularly the executive, but also the legislative. The Venice Commission stated that: “The judiciary has to be fully independent from legislative, and especially, from the executive power and has to be able to check, and if necessary strike down, acts adopted by the parliament and the president.” (Venice Commission) Thus, as we have deduced from the proposed amendments, the independence of the judiciary has been severely affected by the decision, and thus, there is an even greater danger to the system to derive into a one-man rule in the hands of the President.

Under the Constitution of 1982, the President could appoint some judges of the Constitutional Court and a fourth of the members of the Council of State; nevertheless, under these amendments the President will have the competence to appoint directly or indirectly more than half of the members of the High Council of Judges and Prosecutors (HCJP). This institution is the highest judicial entity in the country and thus it has a great importance. If we compare the data of the Constitution of 1982 and the one introduced by the amendments, the President will now appoint directly 4 members of the HCJP, while under the Constitution of 1982 this number amounted to 3. It constitutes almost a third of the total of members of the organism, now comprised of 13 members. Then, almost a third is appointed by the President, yet he or she will also indirectly influence the HCJP. The HCJP is also composed of the Minister of Justice, who chairs the HCJP and its undersecretary, who are now directly appointed by the President. Out of 13 members, the President would have appointed almost half of them. Yet, the rest of the members are appointed by the National Assembly, a total of 7, and, under the present conditions and being the President the leader of the party with a majority in Parliament, either the President or the party ideological tenets can also influence the institution when appointing the members.

As we observe here, the independence of the judiciary is not secured under the current amendments. As the separation of powers between the legislative and the executive is not clear enough and there is not a guarantee securing check and balances mechanisms, the impact of the judiciary just blurs all the lines of the separation of powers in Turkey.

In this sense, the Venice Commission has recommended the Turkish authorities that, under European standards, “at least a substantive part of the members of a High Judicial Council should be judges appointed by their peers.” (Venice Commission)

However, the amendments have not only affected the judiciary in the HCJP, but the Constitutional Court. The changes in HCJP, being the highest judicial institution in Turkey, have a direct impact on the Constitutional Court. It constitutes an indirect relation. The members of the HCJP elect the members of the Council of State and the Court of Cassation in Turkey and “both courts are entitled to choose to members of the Constitutional Court by sending three nominees for each position of the President, who makes the appointments.” (Venice Commission) Therefore, the influence of the executive, through the control of the HCJP and the appointment of members of the Constitutional Court, has notably increased. There is a great risk that this will make the Turkish judiciary biased and influenced by the government’s interests.

Moreover, pursuant to the amendments, the Constitutional Court will not have the competence to control the presidential decrees, as it did before with the laws empowering the former Council of Minister when it issued decrees having the force of law. As the President will not need an empowering law, it is not clear whether his or her rulings will be subject to constitutional review. In addition, it is not clear whether the Constitutional Court will be able to decide on the conflicts that may arise between the legislative activity of the President and that of the Parliament.

As we have seen, the role of the judiciary has been seriously undermined in the current amendments. However, one must remind that the Gülenists were infiltrated mainly in the judiciary, so this might be considered an attempt to renew and protect the judiciary from an external threat. In spite of that, it seems that, instead of making an independent judiciary, the Turkish authorities have increased their control over the judiciary in order to avoid a situation similar to the one in July 2016, by having an excessive control over the judiciary.

6. Conclusions

This research project has tried to assess the current human rights situation in Turkey. As we all know, democracy is the appropriate system in which human rights can be completely developed. There is a direct relationship between democracy and the respect for human rights. Therefore, it was necessary to look both at the current situation of human rights in Turkey, mainly following the coup attempt in July 2016, and the current situation of democracy, right after the approval in referendum of the amendments to the constitution that will change the political system of Turkey. In this sense, our conclusions are twofold.

On one hand, we find the direct and indirect violations of human rights after the measures introduced during the state of emergency. Those violations have affected directly those who have been dismissed or whose assets have been frozen, as we will explain in the next section. Also, we have explained human rights have been indirectly violated, such as those who have been deprived of political representation.

On the other hand, we find the current situation of democracy, that it is likely to impact the whole human rights situation from a near future onwards. This refers mainly to the constitutional amendments and its implications to society. The constitutional amendments, approved in a national referendum on 16 April 2016, will change the political system to a presidential one. Those amendments imply a concentration of powers in the hands of the executive that may jeopardize Turkish democracy, by breaking one of the main tenets of democracy: the separation of powers.

As the project has been divided in two separate issues, the conclusions must be also divided, although interrelated. In this sense, it is necessary to extrapolate first our conclusions on the human rights situation in Turkey, and then the consequences and conclusions on the impacts of the constitutional amendments in democracy. Thus, we will understand how the human rights of the Turkish society is in danger, as the prolongation of the state of emergency is curtailing some basic rights, while the constitutional amendment is undermining their civil and political rights in the long run, by concentrating the power in the hands of the executive. Both interrelated situations imply a serious threat to human rights conditions in Turkey, as one might question the legitimacy of the constitutional amendments under a state of emergency, a situation that

already restricts human rights. It is recommended that Turkey changes its path in order to guarantee human rights conditions. In this sense, the state of emergency should be revoked as soon as possible and restricted human rights should be respected. As the majority of international organisms, the author of this project also warns about the risk of changing the constitution under the state of emergency and we publicly question its legitimacy due to the restrictions of basic civil and political rights. Moreover, the constitutional amendments also present a threat of democracy, as they extend the power of the President of the Republic, while they do not provide check and balances for those new competences. The independent of the judiciary is also questioned by the new amendments, as they will give the executive the power to appoint directly and indirectly members of the highest judicial institutions in Turkey. All this together presents a serious threat for human rights and democracy in Turkey.

6.1 Conclusions on human rights consequences

As we have seen, human rights have been directly and indirectly impacted by the declaration of the state of emergency and the ruling of the government through decree laws. During the project, we have been able to recognize several human rights violations that have affected the Turkish public sector, the private sector, as well as some judicial and civil rights.

The public sector has been seriously affected by the decree laws issued during the state of emergency. According to the Commissioner for Human Rights of the COE around 70000 and 110000 public servants have been dismissed. This situation becomes even more dramatic if we take into account that these dismissals were carried out by publishing a list of names attached to decree laws. The fact that these lists are published as an attachment to the decree laws poses a double threat.

On one hand, we might wonder about the criteria for the dismissals of those public servants. According to the Venice Commission, there were no criteria that had been published so as to link the dismissed civil servants with the Gülenist movement. In fact, one might say that the criteria were totally discretionary, as one of those criteria was for example taking your children to a Gülenist school. In this sense, these criteria violate the right to private life, stated in Article 8 of the ECHR. The Commissioner for Human Rights also warned about the violations to private life, such as the annulment of

passport or rental agreements between those dismissed and public bodies. On the other hand, these dismissals were published in decree laws. This poses a fundamental issue, as decree laws are nothing but laws. Therefore, one might wonder about the permanent character of those dismissals, as they were published in the Turkish Official Gazette. After all, although the Turkish authorities had the right to derogate, according to Article 15, from the ECHR, the question of whether these measures fall within the recommendations of the COE (defined by law, necessary in a democratic society and proportionate to the aim pursued) still remains.

Moreover, the private sector has also been affected by the declaration of the state of emergency, as more than a thousand NGOs, trade unions, and media establishments were closed down and liquidated without judicial proceedings. Those closures were also carried out through decree laws. Actually, this situation is even aggravated as the provisions of decree laws also regarded the transfer of the assets of those private entities to the State's Treasury. Private entities have not received any compensation for these transfers and the Treasury has not been taking charge of any possible debts. In this particular situation, one might also wonder about the necessity of publishing the list in decree laws. In addition, the Commissioner for Human Rights of the COE proposed a not-radical alternative: the freezing of those companies assets and the suspension of their activities, while waiting for a final judicial decision that stated the link between these entities and the Gülenist or any other terrorist network related to the coup attempt in July 2016.

As we had previously stated, decree laws have had consequences on judicial, political and civil rights in a direct manner. In this matter, we might find several issues, as those regarding with judicial proceedings. Many NGOs, such as Amnesty International or Human Rights Watch, and international organism, such as the OHCHR or the Council of Europe, have publicly shown their concern on how judicial proceedings were been carried out in Turkey. There have been violations to judicial proceedings such as holding people in custody for 30 days, being denied their access to a lawyer for their first five days, or for example, breaches on the lawyer-client confidentiality agreement, as conversations between those two agents could be recorded. Many of the detainees were not even aware of the reasons for their detention and had been held in prison without a proper judicial proceeding. All these measures were also established by decree laws following the coup attempt. In fact, these measures constitute a serious breach of a non-

derogable article of the ECHR: Article 7 that establishes that there shall be no punishment without the law. These events had led the international panorama to talk about allegations of torture and ill-treatment of detainees during this period, by, in the words of Human Rights Watch, the “weakening of safeguards against abuse in detention”. (Human Rights Watch) Yet, these allegations cannot be held as truthful, as the UN Committee Against Torture has not found any systematic failure of the Turkish legislation, although it has acknowledged that ill-treatment on the days following the coup attempt were widespread.

Furthermore, the state of emergency has had some indirect consequences on human rights, mainly on the functioning of a democratic society, by tackling essential rights such as the freedom of expression or freedom of assembly. The climate of fear created after the coup and continued through decree laws and their direct effects were more notable during the election campaign, as changes were made on legislation regarding the role of the media. One might remember that some provisions of decree laws established the closure of media outlets, mainly those that opposed the views of the government. This seriously threatens freedom of speech in Turkey, and impacts the society as freedom of expression is one of the basic tenets of democracy.

Moreover, prior to the coup, there was an amendment to the Turkish Constitution, the lifting of parliamentary immunity, that has undermined the position of parliament in society and has facilitated the “clean” or “purge” of opposing parties. This is shown by the numbers: 55 out of 59 of HDP deputies were stripped of their immunity, 51 out of 113 MPs of the CHP; while the numbers for the nationalist parties were, in proportion, better off: 27 out of the 317 deputies of the AKP, and 9 out of 39 of the MHP. The Venice Commission stated that these measures were not in line with the standards of the Council of Europe. (Venice Commission) In addition to these violation to political representation, there was a more serious one at the local level. The government, through decree laws, have replaced elected local representative with trustees in around 28 municipalities where mayors were dismissed, after the coup d'état. This occurred mainly in south-east Turkey, the hotspot of the Kurdish independent movement, thus establishing an authoritarian, not democratically elected rule, and seriously undermining the plurality of democracy.

Both direct and indirect consequences present a serious threat to human rights' conditions in Turkey and threaten both the stability of the political regime, by deriving towards an authoritarian rule, and the stability of the country in the long run. However, it is necessary to bear in mind that Turkey remains under a state of emergency, yet the use of these powers in the hands of the executive could have been exercised in a manner more compliant with human rights.

6.2 Conclusions on constitutional amendments

The amendments of the Constitution of 1982 will entail a regime change in Turkey, from a parliamentary system to a presidential one. However, we must remind that it remains within the Turkish society to decide which regime they prefer. The matter with this issue does not refer to whether a presidential system is better or worse than a parliamentary one, but the way this system is established. These amendments entail a weaker separation of powers, with a fragile check and balances mechanism, and a vulnerable and dependent judiciary. In this particular case, the Council of Europe and its commissions have warned the Turkish authorities of the danger that a presidential system might carry if it is not properly settled.

According to the Venice Commission, a presidential system requires strong checks and balances between the executive and the legislative powers, as “both derive their powers and legitimacy from the people”. (Venice Commission) The separation between those two powers must be effectively separated, as to avoid conflicts between those two powers. However, the amendments establish some provisions that do not guarantee this separation of powers, such as the holding of presidential and parliamentary elections at the same time. This implies the risk of mutually influencing each other. In addition, the President will be allowed to be a member of the political party. In this way, the mutual holding of elections may blur the line between the legislative and executive power, and even the party's political ideology. In case the President stays as the head of the party, it is more likely that he or she influences the legislative, if his or her party holds the majority in the National Assembly. This phenomenon has been referred to by the Venice Commission as the “attraction” phenomenon.

Moreover, there are other provisions such as the veto power of the President on legislations of the National Assembly that seriously hinders this separation of powers.

The President will also have the competences to dissolve parliament; a competence that is quite rare in presidential system, “as it undermined the principle of the separation of powers as classically understood.” (Venice Commission)

In this sense the competences of the National Assembly have not increased, while the amendments have conferred the President with extensive powers. The amendments establish that the President is now both the Head of State and the head of the executive power. Although he or she will not remain as a member of parliament, it can appoint vice-president from within the legislature, thus influencing its legislative process. Also, parliament will not have the competence to approve or veto the appointment of vice-president, thus hindering one of the main check and balances mechanisms of a presidential system. Moreover, the President will be allowed to issue presidential decrees on matters related to the executive powers. Although in case of conflict between a law and a presidential decree, the law will prevail. In this sense, the National Assembly of Turkey will not be able to question the executive branch about the presidential decrees, but they can refer them to the Constitutional Court. Here, we see how the President has been granted a veto power on the legislation of the parliament, while Parliament is not able to counterweigh the competence of the executive.

In sum, we find that these amendments erased the thin line between the executive and the legislative branch of government. They imply a concentration of power in the executive “and the weakening of parliamentary control of that power.” (Venice Commission).

Moreover, the power of the President also affects the judiciary, by making it less independent. We must bear in mind that the independence of the judiciary is a fundamental guarantee of democracy. In this regard, the amendments have introduced some basic changes that will grant the President decisive power in judicial terms, mainly as it will be engaged in politics by being the head of the executive power. The judiciary is the main checking mechanisms of both powers in a democratic system; it must rule on legislation adopted by parliament, the legislative branch, and the President, the executive. This has been modified by introducing several changes in the appointments of judges, mainly the High Council of Judges and Prosecutors. Its members will be directly or indirectly elected by the executive and legislative powers. The President will be able to appoint 4 members, and another two if we count the

appointment of the Minister of Justice and his or her undersecretary. In this sense, out of the 13 members of the HCJP, the President will be appointing almost half of them. The rest of the members will be appointed by the National Assembly. As we have explained, it is likely that the President has a say in those appointments, by exercising his or her influence in his or her party and, thus, in the National Assembly.

The current amendments also affect the Constitutional Court by an indirect relation. The HCJP elects the members of the Court of Cassation and the Council of State; then, both courts submit three nominees to the President that will finally make the appointments. As we see here, it all comes down to a closed circle. The President has a notable influence on the HCJP, that elects members of another two courts, thus indirectly influencing the appoints for the Council of State and the Court of Cassation. Those will submit three candidates, and the final decision resides in the President. Therefore, the President's say in judicial matters is significant.

As we have seen, although one might argue that the Gülenist network was primarily infiltrated within the judiciary is not a sufficient reason for undermining its independence. The executive and legislative will enjoy severe influence on the judicial power in Turkey and it will affect the stability of the democratic system as a whole and in the long run. The influence of the other two powers in the judiciary completes a vicious circle that is likely to jeopardize the Turkish democracy and the respect for human rights.

7. Bibliography

- Amnesty International. “Joint Statement: Turkey: State of emergency provisions violate human rights and should be revoked.” EUR 44/5012/2016. 2016.
- Arango, Tim and Ceylan Yeginsu. “Turkish President Returns to Istanbul in Sign Military Coup is Faltering.” 15 July 2016. *New York Times*.
<https://www.nytimes.com/2016/07/16/world/europe/military-attempts-coup-in-turkey-prime-minister-says.html?_r=1>.
- Bora, Birce. “Turkey's constitutional reform: All you need to know.” 17 January 2017. *Al Jazeera*.
- Cagaptay, Soner. “IS and Russia Could Exploit Turkey's Political Divisions.” *The Washington Institute* (2016).
- —. “Turkey’s divisions are so deep they threaten its future.” *The Guardian* 18 October 2015.
- Cavanaugh, Kathleen and Edel Hughes. “Rethinking What is Necessary in a Democratic Society: Militant Democracy and the Turkish State.” *Human Rights Quarterly* (2016): 623-654.
- Cilliler, Yavuz. “Popular Determinant on Civil-Military Relations in Turkey.” *Pluto Journals* (2016): 500-520.
- Commissioner for Human Rights. *Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey*. CommDH(2016)35: Council of Europe, 2016.
- Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). “The functioning of democratic institutions in Turkey.” Doc. 14282. 2017.
- Constitute Project. “Turkey's Constitution of 1982 with Amendments through 2002.” 2017.

- Corke, Susan, et al. *Democracy in Crisis: Corruption, Media and Power in Turkey*. New York: Freedom House, n.d.
- Council of the European Union. *Council Decision of 27 January 2017 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2016/1136*. Brussels: Official Journal of the European Union, 2017. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0154&from=EN>>.
- Criddle, Evan J. and Evan Fox-Decent. “Human Rights, Emergencies, and the Rule of Law.” *Human Rights Quarterly* (2012): 39-87.
- “Decree Law No.: KHK/667.” 22 July 2015. *Council of Europe*. <<https://rm.coe.int/168069661d>>.
- “Decree No: KHK/667.” Official Gazette, 23 July 2016.
- Derpanopoulos, George, et al. “Are coups good for democracy?” *Research and Democracy* (2016): 1-7.
- Deveci, Hifzi. “Ergenekon Once Again: an Exemplary Story of How the Law was Abolished.” 14 June 2016. *Research Turkey*. <<http://researchturkey.org/ergenekon-once-again-an-exemplary-story-of-how-the-law-was-abolished/>>.
- Election Observation. *PACE to observe the referendum on constitutional amendments in Turkey*. Strasbourg: Parliamentary Assembly of the Council of Europe (PACE), 2017.
- —. *Turkey’s constitutional referendum: an unlevel playing field*. Strasbourg: Parliamentary Assembly of the Council of Europe (PACE), 2017.
- Erdemir, Aykan. “Turkey Needs a New Social Contract.” *Turkish Policy Quarterly* (2016): 87-91.
- Esen, Berk and Sebnem Gumuscu. “Rising Competitive Authoritarianism in Turkey.” *Third World Quarterly* (2016): 1581-1606.

- —. “Turkey: How the Coup Failed.” *Journal of Democracy* (2017): 59-73.
- Esen, Selin. “Analysis: The 2017 Constitutional Reforms in Turkey: Removal of Parliamentarism or Democracy?” 14 March 2017. *Blog of the IACL, AIDC*.
- European Commission for Democracy Through Law (Venice Commission). *Code of Good Practice in Electoral Matters*. CDL-AD(2002) 23 rev. Strasbourg: Council of Europe, 2003.
- —. *Code of Good Practice on Referendums*. CDL-AD(2007)008. Strasbourg: Council of Europe, 2007.
- European Commission for Democracy through Law (Venice Commission). *Extract Emergency Decree Laws*. Strasbourg: Council of Europe, 2017.
- European Commission for Democracy Through Law (Venice Commission). *Information Note of the Ministry of Justice on the Constitutional Amendment as to Lifting Parliamentary Immunity Introduced by the Law No. 6718*. CDL-REF (2016)055. Strasbourg: Council of Europe, 2016.
- —. *Opinion on the Measures Provided in the Recent Emergency Laws with Respect to Freedom of the Media*. CDL-AD(2017)007. Strasbourg: Council of Europe, 2017.
- —. *Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to Be Submitted to a National Referendum on 16 April 2017*. CDL-AD(2017)005. Strasbourg: Council of Europe, 2017.
- —. *Opinion on the Measures Provided in the Recent Emergency Laws with Respect to Freedom of the Media*. CDL-AD(2017)007. Strasbourg: Council of Europe, 2017.
- —. *Report on Constitutional Amendments*. Strasbourg: Council of Europe, 2010.
- European Commission for Democracy through Law (Venice Commission). *Unofficial translation of the amendments*. Strasbourg: Council of Europe, 2017.

- European Commission for Democracy Through Law. *Opinion on Emergency Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016*. CDL-AD(2016)037. Strasbourg: Council of Europe, 2016.
- —. *Opinion on the Suspension of the Second Paragraph of Article 83 of the Constitution (Parliamentary Inviolability)*. CDL-AD(2016)027. Venice: Council of Europe, 2016.
- European Commission. *Joint statement by High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn of the Venice Commission's Opinion on the amendments to the Constitution of Turkey and recent events*. STATEMENT/17/588. Brussels: European Union, 2017.
- *European Convention on Human Rights*. 4 November 1950.
<http://www.echr.coe.int/Documents/Convention_ENG.pdf>.
- Farrell, David M. "'Stripped Down' or Reconfigured Democracy." *West European Politics* (2014): 439-455.
- Genckaya, Ömer, et al. "Sustainable Governance Indicators: 2015 Turkey Report." 2015.
- Gidengil, Elisabeth and Ekrem Karakoç. "Which matters more in the electoral success of Islamist (successor) parties- religion or performance? The Turkish case." *Party Politics* (2014).
- Gluck, Jason and Michele Brandt. *Participatory and Inclusive Constitution Making. Giving voice to the demands of citizens in the wake of the Arab Spring*. Washington DC: United States Institute of Peace, 2015.
- Gönenç, Levent. "2010 Proposed Constitutional Amendments to the 1982 Constitution of Turkey." 2010.
- Gorvett, Jonathan. "A Turkish Freeze." *Washington Report on Middle East Affairs* (2017): 36-37.
- Gunter, Michael M. "Erdogan and the Decline of Turkey." *Middle East Policy Council Journal Essay* (2016).

- —. “Turkey: The Politics of a New Democratic Constitution.” *Middle East Policy* (2012): 119-125.
- Human Rights Watch. “Turkey: End State of Emergency after Referendum.” 17 April 2017. *Human Rights Watch*.
- Jenkins, Gareth. “Revolution and Counter-Revolution: Kemalism, the AKP and Turkey at 90.” *The Turkey Analyst* 6 November 2013.
- Keith, Linda Camp and Steven C. Poe. “Are Constitutional State of Emergency Clauses Effective? And Empirical Exploration.” *HUMAN RIGHTS QUARTERLY* (2004): 1071-1097.
- Kontny, Oliver. “From Dissensus to Conviviality: Cultural Politics of Difference in Turkey.” *FOCUS* (2017): 51-63.
- Ministry of Justice Directorate General for EU Affairs. *Information Note on the Issues to Be Handled in the Visit of the Venice Commission Regarding the Constitutional Amendments (20-21 February 2017)*. CDL-REF(2017)015. Strasbourg: Council of Europe, 2017.
- Öden, Merih and Selin Esen. “Fundamental Rights and Freedoms in Turkey And the Turkish Constitutional Court.” Arnold, Rainer. *The Convergence of the Fundamental Rights Protection in Europe*. Springer Science+ Business Media Dordrecht, 2016. 127-162.
- Office for Democratic Institutions and Human Rights. “Interim Report (17 March-7 April 2017).” 2017.
- Office of the United Nations High Commissioner. *Report on the human rights situation in South-East*. Geneva: United Nations, 2017.
- OHCHR. “UN experts urge Turkey to adhere to its human rights obligations even in time of declared emergency .” 19 August 2016. *OHCHR*.
<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394>>.

- Önis, Ziya. “Sharing Power: Turkey's Democratization Challenge in the Age of the AKP Hegemony.” *Insight Turkey* (2013): 103-122.
- Özbudun, Ergun. *The Constitutional System of Turkey: 1876 to the Present*. New York: Palgrave Macmillan, 2011.
- —. “Turkey’s Search for a New Constitution.” *Insight Turkey* (2012): 39-50.
- —. “Turkey's Constitutional Reform and the 2010 Constitutional Referendum.” *Mediterranean Politics* (2011): 191-194.
- Öztürk, Ahmet Erdi and Istar Gözaydin. “Turkey's draft constitutional amendments: harking back to 1876?” 30 December 2016. *Verfassungsblog.de*.
- Parliamentary Assembly. *The functioning of democratic institutions in Turkey*. Resolution 2121 (2016). Strasbourg: Council of Europe, 2016.
- Poushter, Jacob. “Deep Divisions in Turkey as Election Nears.” 15 October 2015. *Pew Research Center*.
- Republic of Turkey Ministry of Foreign Affairs. *Synopsis of the Turkish Foreign Policy*. 2017. <<http://www.mfa.gov.tr/synopsis-of-the-turkish-foreign-policy.en.mfa>>.
- Sencer, Muzaffer. “From the Constitution of 1961 to the Constitution of 1982.” *Turkish Yearbook on Human Rights* (n.d.): 15-72.
- Seyrek, Demir Murat and Amanda Paul. “Constitutional changes in Turkey: A presidential system or the president's system?” 24 January 2017. *European Policy Centre*.
- Sezgin, Yüksel. “How a Constitutional Amendment could end Turkey's Republic.” *Washington Post* 24 January 2017.
- The Grand National Assembly of Turkey. “Constitution of the Republic of Turkey.” 2010. *The Grand National Assembly of Turke*. <https://global.tbmm.gov.tr/docs/constitution_en.pdf>.

- Tremblay, Pinar. “How Erdogan used the power of the mosques against coup attempt.” 25 July 2016. *Al Monitor*.
- “Turkey coup: What is Gulen movement and what does it want?” 21 July 2016. *BBC*. <<http://www.bbc.com/news/world-europe-36855846>>.
- Turkish Armed Forces. “Soldier at TRT: Here's the 'blow' report.” 16 July 2016. *Haber3*. <<https://www.haber3.com/guncel/asker-trt-binasinda-iste-039darbe039-bildirisi-haberi-4401863>>.
- Tuysuz, Gul and Arwa Damon. “Turkey's ruling party wins big.” 2 November 2015. *CNN*.
- UN News Centre. “State of emergency should not overshadow rights protection, UN experts stress ahead of Turkey referendum.” 13 April 2017. *UN News Centre*. <<http://www.un.org/apps/news/story.asp?NewsID=56562#.WTzdEuuGPIW>>.