FOREWORD

AN ANALYSIS OF THE 27TH LEGISLATURE FROM THE PERSPECTIVES OF CONSTITUTIONAL LAW AND POLITICAL SCIENCE

The 1982 constitutional revision, which was approved on April 16, 2017, through a referendum, took effect right after the legislative and presidential elections held on June 24, 2018. It has now been in force for five years.

I.- The "IS" and the "OUGHT"

The 27th Legislative Assembly, which was elected on June 24, 2018, and concluded its term on May 14, 2023, holds a distinct place in the constitutional and political development in the history of Ottoman Empire and the Republic of Turkey.

The 2017 constitutional amendments took effect upon the Turkish Grand National Assembly assuming office in its 27th term. In this regard, the **"ought"** was evident: enforcing the provisions of the Constitution.

The implementation process, however, remained uncertain in terms of how and to what extent these amendments would be enforced in practice.

What was certain, therefore, were the PROVISIONS OF THE CONSTITUTION in force; what was uncertain was how implementation would take place considering the underlying assumptions of POLITICAL SCIENCE. Consequently, the discernible contrast between "the ought" and what did actually happen ("the is"), could only expose itself after the end of the 27th legislature.

According to the Article 87 of the Constitution, the powers of the Parliament can be categorized into 6 groups as follows:

-to enact, amend, and repeal laws;

-to debate and adopt the budget bills and final accounts bills;

-to decide to issue currency and declare war;

-to approve the ratification of international treaties, to decide with the majority of three-fifths of the Grand National Assembly of Turkey to proclaim amnesty and pardon;

-to exercise the powers and carryout the duties envisaged in the other articles of the Constitution.

The foreword will be limited to the law, which is one of Parliament's core competencies.

II.- THE LAW

The legislative power, having primacy and general regulatory competence, "shall not be delegated" (Art.7). Generality, objectivity and equality are the defining principles of law. The criteria of conformity with the letter and spirit of the Constitution and public interest, predictability, accessibility and intelligibility are the characteristics that determine the law. To what extent were these principles, characteristics and qualities realized during the 27th legislature?

1. **Quality and Quantity:** One initial observation may be the discrepancy between quantity and quality. Although the laws enacted during the 27th legislature are numerous, they raise certain qualitative concerns in meeting the minimum standards of a legal norm.

-The number is the defining factor in determining quantity, as evident from the figures: the first law being 7145, the last law being 7454, resulting in a total of 310 laws enacted (see for the details below in Constitutional news: Annex 1).

-Regarding quality, both the style of law-making and the content are influenced by the negative aspects that appear during the proposal stage and extend to committee and plenary discussions. These negative elements in the legislative process may be evident even following the decisions made by the Constitutional Court.

2. **Legislative Proposal Power and Its Use**: While the provision "MPs are authorized to propose laws" (Art. 88/1) grants the TGNA a monopoly on legislative proposals, this power is de facto exercised by the Presidency and ministries. In an ideal practice, the executive and the administration inform the legislature of their needs and prepare impact analyses on the regulations to be amended or proposed to be amended. However, in the 27th term, legislative proposals were limited to the texts prepared by ministries and signed by MPs in the form of a "bill".

3. **Distinguishing between fundamental laws and non-fundamental laws:** Omnibus bills were discussed in the parliament as if they were fundamental laws, despite their complete contradiction with the definition of a fundamental law outlined in Article 91 of the Rules of Procedure of the Parliament. This practice, which clearly violated the Rules of Procedure, expedited the legislative process but diminished the deliberative aspect. The style of omnibus laws, above all, poses a significant hurdle to achieving quality lawmaking. The requirements of predictability, comprehensibility, and accessibility are often compromised due to inherent qualitative weaknesses in such laws. In fact, numerous omnibus bills have been submitted and enacted without any explanatory title.

4. **Impact analysis:** Bills are drafted and debated without a legislative impact analysis. Without an impact assessment, it is not possible to examine the needs and "public interest" criteria, especially in the case of omnibus bills. As a result, the effectiveness of the law in question is in doubt from the very beginning. For example, an environmental impact assessment report has not been submitted for any of the laws affecting the ecosystem.

5. **In terms of justification**: Besides the direct relationship between the inadequacy of the general justification and the article justifications and the omnibus law style; legislative sloppiness emerges as a general problem and manifests itself in the justifications.

6. **Expertise of commissions**: The practice has not respected the principle of expertise of committees. The formation of legislative committees normally occur according to the principle of expertise. However, each of the omnibus law proposals, which envisage amendments to a large number of laws, falls under the jurisdiction of several committees, creating a practice that fails to abide by the principle of expertise. A legislative proposal is referred to three committees, one primary and two secondary, but discussions are usually limited to the primary committee. This makes it difficult for commissions to deliberate in line with the principle of expertise, and is compounded by the fact that commission meetings are compressed into certain time periods by coinciding with the days and hours of the General Assembly deliberations. In this way, the rapid enactment of omnibus-style legislative proposals also makes it difficult for the Constitutional Court to conduct effective review.

7. **Legislative memory and legislative diligence:** Combining unrelated proposed articles into a single bill has become an ordinary way of "law-making". Sometimes disputed articles were removed from the bill over the objections of opposition parties, only to be reinserted into another omnibus bill in the following weeks and months. Not only is the bill on the same subject being discussed in different commissions, but the proposers are also different; the MPs who have signed the text of the bill act as if the previous texts do not exist. Deputies who have signed the text of the proposal act as if their previous texts do not exist. All these practices create serious problems in terms of "legislative memory" and are a sign of a lack of seriousness in "legislative diligence".

8. **Examination of conformity with the Constitution:** "Commissions are required first to examine whether the proposals submitted to them are contrary to the letter and spirit of the Constitution". (Rules of Procedure of Parliament, art. 38/1). Compliance with the minimum requirements of this obligation is, in practice, quite rare.

9. **Ad Hominem Laws:** These are legal regulations that privilege certain individuals and groups and do not have their basis in the constitution. Such regulations, which are materially incompatible with rule of law, aimed to make the State of Emergency law permanent. In this, the intention of severing the relationship of responsibility between the crimes of the State of Emergency period and their possible sanctions has been decisive. The five laws that immunize those who took and implemented unconstitutional and unlawful decisions during and after the State of Emergency period from any kind of responsibility result in the same protection armor. They are as follows: "... no legal, administrative, financial and criminal responsibility arises." (18.10.16/ 6749 8.11.16/6755; 1.2.18/7071; 5.12.19-7194; 11/11/20- 7256).(Annex 2: State of Emergency Report).

10. **General norm characteristic:** More generally, these are the deficiencies that arise in terms of the characteristics that the law should bear in a material sense. It has prevented laws from reflecting the definition of a general, abstract, impersonal norm that is established for the public interest and the common good within the framework of respect for the Constitution.

III.- THE PRESIDENTIAL DECREES

Whereas the legislative power is a primary and general power, the Presidential Decree is a regulatory act that is prescribed within the limits set out in Article 104/17 of the Constitution and is below the law in the hierarchy of norms. In the event that the TGNA enacts a law on the same subject, "the presidential decree becomes invalid".

-In terms of quality, the number of decrees - if international treaties are not counted - is high enough to rival the number of laws.

-In terms of quality, the vast majority of decrees are drafted and enacted in the style of "omnibus decrees", just like laws.

-The lack of reasoning is the main drawback that distinguishes decrees from laws. This shortcoming is problematic in terms of judicial review by the Constitutional Court , as well as in terms of the implementation of presidential decrees (see Annex: 4 on Presidential Decrees)

-While the Constitutional Court has annulled a number of presidential decrees that regulated areas falling within the exclusive competence of Parliament, or areas explicitly regulated by law, Parliament has avoided exercising its oversight role and competence in this area. As for the Constitutional Court's review of presidential decrees, this was delayed, limited and postponed.

-The presidential decrees on the state of emergency and the letter that became law were implemented for the first time in the final weeks of the 27th legislature. In fact, a total of 25 presidential state of emergency decrees were enacted after the massive earthquakes in Kahramanmaraş. They were submitted to parliament with reasons, but although they were referred to the relevant committees, none of them were considered by them. As for Presidential Decree no. 126, it was examined directly at the plenary session accompanied by a letter from the President, and directly obtained the force of law even though there was no bill as stipulated in Article 87 of the Constitution (Annex 3)

IV.- CONSTITUTIONAL COURT REVIEW

During the 27th legislature, three categories of measures were submitted to the Constitutional Court for constitutionality review: decrees with the force of law(*KHKs*), laws and presidential decrees.

A total of 6 decree-laws, 108 laws and 92 presidential decrees were the subject of appeals for annulment. The Constitutional Court is-

sued a total of 90 rulings on all appeals lodged during the 27th legislature up to June 1, 2023: 48 rulings were issued on appeals against laws, of which 29 resulted in partial or total annulment, and 20 appeals were rejected. Of the 35 appeals lodged against presidential decrees, 21 resulted in partial or total annulment, while 14 were rejected. With regard to KHKs, 5 appeals were rejected and 1 KHK was annulled. Of the 90 decisions, 51 were in the direction of annulment. (For a detailed list and further information, see Annex 4: Report on the assessment of the abstract control exercised by the Constitutional Court).

In the decisions of the Constitutional Court, we can identify four main problems.

-Decision time: The Constitutional Court usually decides very late in relation to the date of application. The average decision time is 15 months for laws and 16-17 months for presidential decrees. Moreover, some applications have not yet been decided even though years have passed. Presidential Decree No.1 is a typical example of a case without a decision.

-Agenda: The example of presidential decree no.1 raises legitimate and justifiable questions about the criteria for determining the Constitutional Court's agenda. In terms of the agenda, the criteria used for the order of priority are not clear.

-Nature of the decisions: The Constitutional Court generally renders partial annulment decisions and, with this characteristic, it is contented with minimal (minimum) scrutiny through self-restraint, which is its general tendency. It also avoids interpreted refusals, and if it does so as an exception, it uses reserved and veiled expressions. The scrutiny process on the omnibus law is problematic from the very beginning in terms of the principle of expertise, even in the assignment of rapporteurs; a deepened scrutiny is avoided.

-Giving a deadline: In its annulment decisions, and especially in its presidential decree annulment decisions, the Constitutional Court determines the "date of entry into force of the annulment decision" (Art. 153/3), giving the legislature and the executive a long period of time (usually 9 months) for readjustment.

V.- FROM THE POINT OF VIEW OF POLITICAL SCIENCE: THE STATE OF THINGS THAT ARE HAPPENING OR HAVE HAPPENED

Although there were five political party groups in the 27th term of the Turkish Grand National Assembly, the majority of the legislative activity was dominated by the People's Alliance[1]. The Nation's Alliance[2] and the HDP participated more actively and intensely in the work of the Grand National Assembly, both intellectually and physically, than the People's Alliance. However, their contribution was limited due to the People's Alliance bloc. In general, against the AKP-MHP majority, the CHP-HDP and the İYİ Party can be characterized as the 'democratic opposition' in terms of legislative work.

How to read the 27th legislative period as a law-making process in terms of political science?

First of all, one may consider the legislative process in terms of conformity with the Constitution and public interest as prerequisites for every law: The lack of reference to general principles of law and public interest criteria can be noted as a general trend. The absence of constitutional references in the reasonings, let alone constitutionality review, is also noteworthy. In fact, the constitutional oath contains normative, moral and ethical obligations for lawmakers (Art. 81). However, aside from the search for constitutionality, the general tendency of the People's Alliance MPs has been to trivialize such demands.

The striking contrast in the legislative proposals prepared by circumventing Article 87 of the Constitution is the abundance of signatures but the absence of MPs. That is to say, the draft texts, which are actually prepared by bureaucrats, are signed by deputies from the AKP and sometimes the MHP and transformed into law proposals. The proposals are usually signed by tens or even hundreds of deputies. However, at the Commission stage, even the members of the relevant commission lack the discipline to participate; sometimes even the proposers do not feel

[1] This Islamo-nationalist alliance was created during the elections of June 24, 2018 by the AKP (the Justice and Development Party) and the MHP (the Nationalist Movement Party) as well as the BBP (the Great Union Party).).

[2] This alliance was created by the CHP (the Republican People's Party) and the İYİ Party (the good Party) as well as the SP (the Bliss Party) and DP (the Democratic Party) during the elections of June 24, 2018.

the need to be present in the plenary session. MPs of the majority alliance, who almost never attend the plenary debates, enter the hall either for the quorum count or for the final vote.

This process, which can be characterized as 'legislative sloppiness', reveals the following three phenomena:

-One can note a general tendency of lack of engagement and listening, and the lack of interest in the legislative proposals by the deputies proposing legislation after its presentation. In the General Assembly, the disinterest in speakers is a general tendency, so much so that many speakers are not even listened to by MPs of the party to which they belong.

-The legislative memory, the same proposal articles that are repeatedly placing the same proposed articles in different omnibus bills and circulated them among commissions, not only obscures the transparency of legislative activities, but also prevents the formation of a legislative memory.

-The "legislative cheating" is the last-minute addition of articles in the plenary session; "legislative cheating" by voting on the most critical regulations without debate is far from being an exceptional practice.

While party discipline is often so rigid as to degrade MPs, "non-serious legislative work" is related to constitutional democratic deficits, particularly in terms of representative merit.

Another distinctive feature of the 27th parliamentary term is the divergence between **ideology and practice.**

-Since the majority usually acts with the understanding of getting its proposed text adopted and rejecting opposition proposals, numbers can often be seen as a "criterion of rightness".

- The process of deliberative democracy cannot therefore be properly implemented. Opposition parties often make intense intellectual efforts to get their proposals accepted, or to withdraw proposals that are contrary to the Constitution or the public interest, while the People's Alliance, without providing an intellectually sound response to such proposals, generally leaves them unresolved through the voting process.

-Reference to presidential instructions, rather than the Constitution, has become the most distinct area of separation between law and politics. Reference to "the President's instructions" rather than to the Constitution has become commonplace in the speeches and actions of

deputies, the Vice-President and ministers sworn to uphold the supremacy of the Constitution. In committee and plenary deliberations, as well as in budget debates, instructions from the President and/or party leader were used as a general criterion of legitimization and justification. The difference of reference in discourse was also reflected in implementation. This process can be interpreted as a divergence between the de facto situation and the de jure constitutional situation.

The 2017 redesign's main argument was to put an end to the "two-headed executive" and coalition governments. However, the situation of "de facto bicephalism" has persisted, with "coalition legislation" maintained. Here are some examples:

-Executive: although the executive power belongs to the President alone (Art. 104), this power was exercised de facto by the deputy CB "without the authorization of proxy".

-TGNA While the executive does not need the confidence of the legislature, the coalition formed in the parliament under the name of the People's Alliance has been the biggest obstacle to the making of laws in accordance with the requirements of respect for the letter and spirit of the Constitution.

On the one hand, the difference between the de jure and the de facto; on the other, the fusion of person+party+state can be seen as political realities of the 27th legislature. Rather than a contradiction, this can be seen as the inevitable result of the cumulation of functions of the Head of State and the Executive through the Party Presidency.

Abuse of legislative power: Much like the State of Emergency period that was made permanent, the COVID-19 pandemic state of emergency was also abused. Despite being obliged to direct state duties in social and economic areas to the priorities required by the pandemic (Constitution, Art. 65), the People's Alliance, on the contrary, accelerated regulations and wasteful projects that favored privileged social groups. The laws enacted during this period were far from meeting even the minimum requirements of the social state, let alone maximizing it.

As a result, the 27th period laws have been characterized by subjective regulations that create discrimination rather than equality and objectivity. The material characteristics that the law should reflect were often lacking. As the areas that should be regulated by law were left to regulations and administrative decisions, the principle of non-

delegability of legislative power was often violated. The criterion of public interest and the requirements of a social state have also been neglected, as the requirement to respect the letter and spirit of the Constitution has not been fulfilled.

In terms of subject matter, many regulations that undermine the right of future generations to live in a balanced environment, from unbridled market economy regulations, constitute the negative aspects of this legislature's balance sheet.

I hope you enjoy reading,
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