

CONSTITUTIONAL FRAMEWORK OF **EXECUTIVE PRESIDENCY** **IN TURKEY**

SERDAR GÜLENER, NEBİ MİŞ





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ABSTRACT

To overcome the crisis in Turkish parliamentarianism, constitutional transformation of the political system has been discussed in Turkish political life for more than forty years. Since the 1970s, rightist political parties and actors have voiced a demand for a change in the political system and the government model in general, and the elimination of the pro-tutelary parliament and weak coalition governments in particular. Actors have repeatedly advocated a transformation in the system of government for years with the purpose of putting an end to the bureaucratic tutelage and the double-headed character of the government, materializing fast and effective administration, providing political and economic stability, democratizing politics, and increasing the involvement of the national will in the state administration.

In the aftermath of the failed coup attempt by the Fetullah Gulen Terror Organization (FETÖ) on July 15, 2016, restructuring the state has become inevitable and urgent. Yet, as clearly seen, the state can fight against implicit and explicit threats both from inside and outside only by adopting a government model based on a strong and stable leadership. Only an elected executive body with unshakeable legitimacy can eradicate autonomous terror entities and vested interests deep-seated in the state.

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The analysis will examine the outstanding features of the constitutional design in pursuit of executive presidency in addition to the historical background of the transformation.

A course of reconciliation followed the July 15 failed coup attempt. Social and political mechanisms of dialogue grew stronger as the process encouraged political parties. The July 15 attempt also led to a new kind of awareness - both in politics and in society - on the matter of Turkey's perpetuity. The ruling Justice and Development Party (AK Party) and the opposition Nationalist Action Party (MHP) reconciled their differences in this atmosphere. In search of a presidential system of governing, the two parties prepared a package of constitutional amendments and the Grand National Assembly of Turkey (Türkiye Büyük Millet Meclisi, TBMM) approved the package.

The executive presidency can be considered the masterpiece of the conciliation reached in Turkey's political theater after the FETÖ failed coup attempt on July 15, 2016. There seem to be two critical points in the draft concerning the prospective system of governing, i.e. executive presidency. The first involves a few unique arrangements in the emerging presidential system that ensure that past political crises will never be experienced again. The second is that the architecture of the amendment package examined presidential systems of government in other countries and lent an ear to the recommendations that resolve the system-related crises in these countries. In this regard, the impending model of government in Turkey is a rationalized presidential system.

In the constitutional amendments package, the new system of government is called "Executive Presidency" (Cumhurbaşkanlığı Sistemi). The proposed system has been crafted based on a model of government with a president with regard to the arrangement of relations between the legislative, executive and judiciary branches.

In the quest for a rationalized system of governing, executive presidency propounds a redesign of the constitution with touch-ups among others on the election of the executive, legislative and judicial bodies; the duties of the executive body; the renewal methods of elections; the regulations concerning the judiciary; the investigation and trial procedures for the president, ministers, and vice presidents; the president's power of executive order; and the approval of the budget.

INTRODUCTION

Following the reconciliation between the AK Party and the MHP for a presidential system of government, the AK Party prepared a draft package for constitutional amendments, shared and revised it with the MHP, and introduced it to the TBMM. The Assembly and President Recep Tayyip Erdoğan approved the package pending a popular vote on April 16, 2017. In this sense, Turkey imminently ends the crisis of the Turkish parliamentary system that has been debated for the last forty years. Executive presidency seems to have emerged as the culmination of the AK Party's long years of efforts, yet, it is principally formed upon the reconciliation of the two parties. Therefore, the final version does not reflect the respective individual views of the involved parties in their entirety.

Although the constitutional amendments package is called "Executive Presidency," the draft itself is designed according to a presidential system of government.¹ In this respect, the draft is prepared in particular to overcome the crises in the Turkish parliamentary system and to prevent new crises in the new system. For instance, one

of the characteristics of a presidential system is that the legislative and executive branches cannot terminate each other's tenure. However, executive presidency regulates the issue differently. In order to beat the deadlocks encountered in the U.S. political system, mutual and simultaneous renewal of the elections of the legislative and executive branches has been discussed in the U.S. for quite some time. The remedy for the issue is being implemented in the Turkish-style presidency. Hence, a possible deadlock that would stem from a crisis between executive and legislative bodies will be prevented as both branches, according to the amendment package, are required to hold (re-)elections simultaneously, on the basis of reciprocity, should one of them decide to call for an early election.

A review of the general preamble of the amendments package's draft addresses, in a nutshell, all of the system of government-related discussions so far in Turkey.² One of the most important reasons for constitutional amendments is the imperative to end the crises rooted in the tutelary system established by the Constitutions of 1961 and 1982. Two critical aspects of this imperative are mentioned in the general preamble. The first is that the boundaries of the parliamentary system are exceeded by the granting of vast authorities to the president, in particular, in the 1982 Constitution. The second is that the double-headed character of the parliamentary system emerged following Turkey's interim constitutional amendment in 2007 by referendum which resulted in the president being elected by popular vote; this went into effect for the 2014 presidential election. The general preamble also underlines that the existing system of government fails to maintain stability and yields

1. Nebi Miş, "AK Parti'nin Önerisinde Siyasal Sistem Tasarımı", *Kriter*, December 2016.

2. For discussions and justifications about the transformation of the political system in Turkey since the 1970s, see Burhanettin Duran and Nebi Miş, "The Transformation of Turkey's Political System and the Executive Presidency", *Insight Turkey*, Fall 2016, Volume 18, No: 4, pp.11-29.

to the bureaucratic tutelage of the government; and that such problems can only be solved by the adoption of a new system of government.

In the light of past experiences, a de facto transformation of the system into a semi-presidential system seems not to be a remedy for the problems of the parliamentary system. This is also the reason for crafting the new amendments package based on a viable model of a presidential system. Without doubt, presented as a rational system design, there may be drawbacks, deficiencies and disputable aspects in the draft. However, faults and flaws may be eliminated through intra-system regulations in the upcoming periods.

The draft is prepared in particular to overcome the crises in the Turkish parliamentary system and to prevent new crises in the new system.

The proposed constitutional amendments mostly involve the system of government. Thus, modifications are made in related areas such as the elections of the executive, legislative and judicial branches; the duties of the executive body; the renewal of elections; the regulations in the judiciary; the procedures for impeachment of the president, ministers, and vice presidents; the president's authority and limitations of executive order; and the approval of the budget. The draft seeks no new regulations in the crux of the state, the state's unitary characteristic, fundamental individual and political rights and freedoms, the structure of the legislative branch, the duties of the Constitutional Court, and the elections of its members.

The package's most crucial amendment is the elimination of the double-headed character of the executive branch which results from the

parliamentary system. With the amendment, the president, as the head of state, will also have the executive power to appoint vice presidents, ministers and high-ranking civil servants; to form and dissolve ministries; and to decide their tenures and duties. Additionally, the clause stating that "...his/her relationship with his/her party shall be severed..." in the current Constitution is to be removed. Therefore, the nature of relationship between an elected president and his/her political tradition is definable. Also, the criminal accountability of the president is expanded and facilitated in the draft.

On the other hand, there are also numerous changes in the functioning of the parliament. The number of parliamentary representatives is increased from 550 to 600 as the age of eligibility to become a representative is lowered from (the current) 25 to 18. The term of office for the parliament and the president will be five years, and the presidential election will be held concurrently with the parliamentary election. With the exception of the budget law, the right of initiative for legislation is granted only to the representatives. In case of a deadlock in the system, the president and the legislature are granted the authority to mutually or independently decide for the simultaneous renewal of presidential and parliamentary elections.

The AK Party submitted the amendment package to the Parliamentary Constitution Commission on December 20, 2016. Following heated discussions and deliberations, the commission narrowed down the number of articles from 21 to 18 and approved the package on December 29, 2016. The proposed provision to introduce substitute deputies in the first version of the draft was removed as the number of the Supreme Board of Judges and Prosecutors (HSYK) members was increased to 13 - with the inclusion of the undersecretary of the Ministry of Justice on board. The condition of "being a natural born Turkish citizen"

was replaced by “being a Turkish citizen,” and the vice presidents and ministers taking their oath at the TBMM was added to the draft. Under the section titled “Central Administration” of Article 126 in the Constitution, the authority granted to the president for the formation of central and local administrative bodies by issuing an executive order was also removed from the draft. Furthermore, the scope of the proposed article stating that the president shall represent the commander-in-chief of the Turkish Armed Forces (TSK) was expanded after a modification made in the Parliamentary Constitution Commission; accordingly, the clause “the president shall use this authority on behalf of the TBMM” was added to the article.

The TBMM began deliberations on the proposed articles during a plenary session on January 9, 2017. The discussions ended in the second half of January 2017. The amendments package sponsored by the AK Party consists of 18 articles and is entitled “The Draft Law on Amendments to the Constitution of the Republic of Turkey.” The TBMM approved the package with 339 votes (out of a possible total of 550 votes), and sent it to the president. The president signed the bill which is now pending the popular vote on April 16, 2017.

This study will examine the outstanding features of the constitutional design in pursuit of executive presidency. Circles that have raised objections to the system change, as soon as the framework of executive presidency emerged, analyze the amendments package through a parliamentary system perspective. For instance, while discussing mechanisms of checks and balances in legislative and executive relations, the new system is questioned for the absence of a motion of censure and vote of confidence. Or the president’s authority of rulemaking, known as “executive orders” in presidential systems, is confused with “statutory decrees” in parliamentary systems. In this sense, the platform of discussion is

erroneous since executive presidency is designed according to the presidential system of government.

Similarly, in case of a system deadlock, the decision-making mechanism to hold elections for the legislative and executive branches on the same day fails to be distinguished from the president’s (or the head of state’s) power to unilaterally annul the legislature in parliamentary systems. In this regard, this study intends to discuss executive presidency based on the presidential system of government. It should be noted that the amendments package also includes regulations to reinforce democracy and the rule of law, such as lifting the martial law as it is not directly related to the system of government, opening the Supreme Military Council (YAŞ) decisions to the supervision of the judiciary, and the TSK to the State Supervisory Council.

HISTORICAL BACKGROUND OF THE TRANSITION TO THE EXECUTIVE PRESIDENCY SYSTEM³

Political parties and politicians from different political positions have advocated the transformation of the political system for different reasons since the 1970s. Parties have mentioned in their programs the failing aspects of the parliamentary system, emphasizing the need for radical changes in the political system to overcome these flaws. Political parties have thoroughly covered the issue and offered changes they would make if elected. Those who defended the transformation of the political system to a presidential system

3. For a more detailed assessment, see Burhanettin Duran and Nebi Miş, “Türkiye’de Siyasal Sistemin Dönüşümü ve Cumhurbaşkanlığı Sistemi”, *Türkiye’de Siyasal Sistemin Dönüşümü ve Cumhurbaşkanlığı Sistemi*, SETA Yayınları, İstanbul, pp. 15-51; Serdar Güleler, “The Constitutional Amendment Draft: The End of Debates on Change in the Turkish Political System?”, *Insight Turkey*, Fall 2016, pp. 109-125.

have put this need into words by scrutinizing the political crises of their times.

The history of debates on the presidential system in Turkey dates back to the 1970s. In this period, the National Order Party (MNP), and the National Salvation Party (MSP), both of which constitute the core of the “National View” tradition, launched debates for the transformation of the political system into a presidential government model. Founded in 1970, the MNP stated in its party program: “For the productive, expeditious and potent conduct of public services in our Turkey, which is obliged to develop more rapidly, the president should be elected by universal direct suffrage, and the order of the executive body should be organized in accordance with a presidential system (presidantielle).”⁴ In its election statement in 1973, the MSP proposed a presidential system, universal direct suffrage and that the Office of the Prime-Ministry and the Presidency should be unified. “The National Salvation Party decided to bring a system of democratic state, government and parliamentary system in harmony with our national character and features. To this end, the presidential system will be introduced. The presidency of the state, as the head of state, and the prime-ministry, as the head of the government will be merged; the executive branch will be provided with strength, speed and efficiency. The people will directly elect the president. Therefore, the fusion and union of the state with the people will come into existence naturally, and speculations inside and outside that wear out our regime in respect to the presidential election will disappear.”⁵

In his book entitled *Nine Lights*, a prominent political figure of the period and the late chairman of the MHP, Alparslan Türkeş, writes,

“Strong and speedy execution is possible only if the executive power is gathered in one hand. For this reason, we advocate for a presidential system in line with our history and tradition...A double-headed execution is extremely disadvantageous as it weakens authority.” From this viewpoint, Türkeş says, “We are determined and destined to merge the president and the prime minister as the head of state and grant executive power to one person.” To overcome the authority crisis, Türkeş suggests a political system that “[w]e call ... ‘the presidential system’” and continues, “if it is carried into effect, the people will directly elect the head of the state in a referendum; therefore, they will participate in the government and the decisions that are of interest to the nation; national democracy will be constituted from there on.”⁶ In this respect, both political traditions justify the need for a presidential system by pointing out the “authority crisis” and “political instability” in the periods of coalition governments.⁷

After the September 12, 1980 military coup d’état, presidential and semi-presidential systems were concurrently kept on the agenda in the process of constructing a new constitution; debates on both systems mainly concentrated on the election of the president by popular vote because the TBMM had failed to elect a president although more than 115 rounds of voting were held before the September 12 coup.⁸ So, the system was deadlocked and the need for a new system became increasingly evident. However, the will behind the September 12 Constitution subdued the debates on a presidential system since it defined the presidential office based on their own “ideological congruence” and the tutelage system through a “protective mission.” There-

4. “Milli Nizam Partisi: Program ve Tüzük”, Haktanır Basımevi, İstanbul, p.10, <https://www.tbmm.gov.tr/eyayin...>

5. “Milli Selamet Partisi, 1973 Seçim Beyannameesi”, Fatih Yayınevi Matbaası, İstanbul 1973, p.17, <https://www.tbmm.gov.tr/eyayin...>

6. Alparslan Türkeş, *Dokuz Işık*, (Prepared by Cengiz Zengin, Bilgeoğuz Yayınevi, 2015).

7. Alparslan Türkeş, *Temel Görüşler*, (Dergah Yayınları, İstanbul: 1975), pp. 156, 164.

8. See Osman Balcıgil (Editor), *İki Seminer ve Bir Reform Önerisinde Tartışılan Anayasa*, (Birikim Yayınları, İstanbul:1982).

fore, if presidents were to be elected by popular vote, plotters would not have a chance of having a president-elect who shares their ideology.

After the enactment of the 1982 Constitution, the late President Turgut Özal reinitiated the debates on a presidential system. Özal stated that a presidential system was essential to the economic development of Turkey and that a breakthrough in the economy could be achieved through a presidential system. Özal, underlining that the culture of political reconciliation was feeble in Turkey, said it was difficult for the ruling and opposition parties to reconcile on the country's vital issues, and for Turkey to seize the historic opportunity and become the leader of the region.⁹ Hence, if Turkey were to adopt a presidential system, a strong separation of powers would be instituted, and that would accelerate the decision-making process, Özal asserted.

In the 1984 local elections, the votes for Özal's Motherland Party (ANAP) dropped approximately 5% compared to the general election held the year before. Özal interpreted the result as a possible return to coalition governments in Turkey, and consulted with those who advocated a presidential system.¹⁰ However, Özal postponed public debates on the subject in order to avoid any potential confrontation with President Kenan Evren, the 1980 coup's leader.

From 1988 until he passed away in 1993, Özal continued to promote the debates on a transition to a presidential system in Turkey.¹¹ He advocated the presidential system, as the engine of change and the ideal system of government for Turkey. He considered that Turkish parliamen-

tarianism slows down necessary reforms.¹² While doing so, Özal highlighted the fact that weak coalition governments could not rule Turkey in an effective manner. He asserted that the country's diverse social fabric and the significance of politicians' hometowns in Turkish politics inevitably fueled political fragmentation – a problem, he believed, only presidentialism could address. According to Özal, the presidential system was “more suitable for countries where multiple large ethnic groups [lived] together”; imposing a parliamentary system on a diverse society fuels ethnic, religious and sectarian tensions and, along with politicians' ties to their hometowns and regions, distracts elected officials from public service, while conciliation in politics becomes more difficult.¹³

The history of debates on the presidential system in Turkey dates back to the 1970s.

Özal not only explained why Turkey needed a presidential system of government but also presented a road map for the country. He advocated that the president must retain the authorities as were granted by the 1982 Constitution; that a presidential election must be held every five years by a national vote based on a two-round absolute majority system; and that the presidential election must be held concurrently with the parliamentary election.¹⁴

9. See, “Türkiye’de Başkanlık Sistemi Tartışmalarının Yakın Tarihi: ...”, (323)

10. “10 Yıllık Tartışma”, *Sabah*, 5 Ekim 1999; Also see Halil Şıvgın, *Türkiye için Umut Krizden Çıkış, Yeniden Yapılanma ve Başkanlık Sistemi*, (Türk Dünyasında Demokrasiyi Geliştirme Vakfı Yayınları, Ankara: 1997).

11. “ANAP’ın Hem Yerel Seçim, Hem De Anayasa Değişikliği Formülü, Ekim’de Çifte Sandık”, *Milliyet*, 8 Şubat 1998.

12. “ANAP’ın Hem Yerel Seçim, Hem De Anayasa Değişikliği Formülü, Ekim’de Çifte Sandık”.

13. “Özal’dan Farklı Bakış”, *Milliyet*, 17 July 1990, p. 11.

14. Mehmet Barlas, *Turgut Özal’ın Anıları*, (Sabah Kitapları, İstanbul 1994), p. 141.

Contrary to Özal's push for a presidential system, his biggest rival and the chairman of the True Path Party (DYP) Süleyman Demirel initially opposed a presidential system albeit he would eventually change his mind and advocate a constitutional reform. According to Demirel, Özal's calls for the adoption of a presidential system reflected the ANAP leadership's concerns over their declining popularity. When 65 percent of the people voted against a plan to hold early municipal elections in 1988, his attacks on Özal and his party became even more aggressive and concentrated particularly on the presidential election. Demirel's argument was simple: The ANAP's failure to hold municipal elections one year earlier than planned meant that his biggest rival had lost the people's support. Under the circumstances, Demirel argued, it would have been wrong for an ANAP-dominated parliament to elect Turkey's next president. He proposed that the people, not the legislature, elect their president.¹⁵ In other words, Demirel had come out in support of a direct presidential election in an effort to prevent Özal from clinging on to the presidency with the backing of a parliament with 'no legitimacy.' However, he repeatedly said that he did not support Turkey's transition to a presidential system – mainly to distinguish his own position from Özal's approach to political transformation.¹⁶

Having developed concrete proposals by mid-1989, Demirel started to draft a constitutional reform bill to introduce a direct presidential election. Although the DYP-sponsored bill failed to receive the support of other political parties, Demirel's plan remained an important item on Turkey's political agenda for a long time.¹⁷

15. "Özal Yeni Bir Türkiye Önerdi", *Milliyet*, 30 November 1990; "Üç Parti Üç Anayasa", *Milliyet*, 11 November 1990, p. 9.

16. "Cumhurbaşkanını Müdahaleci ile Tastikçi Arasında Bir Yerde Olmalı: Demirel'in Formülü", *Milliyet*, 23 October 1988, p. 8.

17. "DYP Israrlı ANAP 'Gelsin Görelim' Diyor", *Milliyet*, 7 April 1989, p. 9.

In December 1990, the DYP under Demirel's leadership raised the issue of constitutional reform again at their party convention. Specifically, the party supported a system of government akin to a semi-presidential system, which they described as an "empowered presidency." Demirel's proposal sought to grant the president the power to call for referenda, to dissolve the parliament, shape foreign policy and identify national security priorities. The DYP leadership also maintained that governments should not have to receive a vote of confidence from parliamentarians, two-round elections should be introduced, and that the parliament should become bicameral.¹⁸

Having charged Özal with "seeking to reinstate the sultanate" for advocating a presidential system, Demirel, upon becoming president himself, rekindled the debate in 1997. "I have been residing at Çankaya [Palace] for four years and three months. During this period, I approved six governments. The situation inevitably raises questions about the merits of parliamentarianism," he noted. "If the parliament cannot form a government, certain problems will arise and compel Turkey to look for alternatives such as semi-presidentialism and presidentialism – which are products of certain circumstances as well. What happens [under the two systems]? You move from a government elected by the parliament to a government elected by the president."¹⁹ Ironically, Demirel made the exact same arguments as Özal had made in his advocacy for presidentialism: "The presidential system is necessary to promote and maintain political stability. The executive and legislative branches must be separated. [Adopting] [T]he presidential system is inevitable. [The Turkish people] should debate this proposal." When faced with the criticism that a presidential sys-

18. "DYP, Topluma Yeni Bir Anayasa Sunuyor", *Milliyet*, 20 November 1990, p. 16.

19. "Türkiye, Başkanlık Sistemi ile Yönetilmeli" *Hürriyet*, 19 September 1997.

tem would pave the way to dictatorship, he argued that “the most concrete example [of the need to debate presidentialism] is the common misconception that the presidential system of government could lead to dictatorship.” To make such a claim, Demirel added, “One ought to be able to sufficiently analyze it – which is not being done.”²⁰

Debates on the presidential system have frequently made the agenda with the arrival of the 2000s – in particular since 2011. One of the reasons for the intensity of discussions was that, following a constitutional amendment in 2007, the president would be elected by popular vote. Considering the ratification of electing the president by popular vote in link with a model of presidency where the president has authorities without having any responsibility as introduced in the 1982 Constitution, it can be argued that the parliamentary system in Turkey is currently one of a “semi-presidential system”.²¹ The AK Party proposed a draft for a presidential system to the Constitutional Reconciliation Commission in 2013, and since then the presidential system has been advocated by many government officials and President Recep Tayyip Erdoğan. The debates have intensified with the first-ever election of the president by a national vote in 2014, and the president’s power and affiliation with his party have become the center of discussions. In the scope of the debate, politicians of the period voiced the need for a constitution change.²² In the 2015 general elections, in the declaration of the party platform for the election, the AK Party referred to a presidential system.²³

20. “Demirel: Başkanlık Sistemi Tartışılmalı”, *Hürriyet*, 21 October 1997.

21. Ergun Özbudun, “Başkanlık Sistemi ve Türkiye,” *Liberal Perspektif Analiz*, No. 1 (2015): 11.

22. Çiçek: “Cumhurbaşkanlığı Seçiminde Sorun Yok”, *CNN Türk*, 7 April 2014.

23. Özbudun, “Başkanlık Sistemi ve Türkiye”.

PROPOSAL BY THE AK PARTY AND MHP FOR A CONSTITUTIONAL AMENDMENT

Perhaps the most critical development in debates on a presidential system in Turkey occurred following the statement by Devlet Bahçeli, chairman of the MHP, on October 2016; AK Party and MHP agreed to work on a draft for constitutional amendments. Bahçeli stated that a de facto presidential system existed in the executive branch, and a constitutional framework must be established to formalize it and that the MHP, to this end, was open to any AK Party proposal in the parliament.

It must be noted that the MHP’s position in debates on a presidential system differs from those of other opposition parties. The MHP does not categorically oppose a presidential system. Although the party many times has issued statements giving precedence to a parliamentary system, the MHP repeatedly stated that their red lines are the irrevocable articles of the current Constitution in case of a possible constitution change. After the July 15, 2016 failed military coup attempt by the Fetullah Gülen Terror Organization (FETÖ), the MHP clarified their view on a presidential system, stating that Turkey struggles to survive against internal and external terror threats and in such a period of time, the MHP wishes for Turkey to reach a conclusion (either positive or negative) without wasting any more time in debates on the system of government.²⁴

Following this, the AK Party prepared a draft package for constitutional amendments, and shared it with the MHP. After the meet-

24. See Serdar Güleler, “Cumhurbaşkanlık Sistemini Gerçek Kılan Uzlaşma”, *Star Açık Görüş*, 4 December 2016.

ings between top officials of both parties, the proposal was introduced to the Grand National Assembly on December 9, 2016. The proposal was first submitted to the Parliamentary Justice Commission and then transferred, as an 18-article amendment package, to the Parliament's General Council. Following deliberations, the TBMM approved the package by 339 votes (out of a total of 550 possible votes), and sent it to the president. The president signed the bill and presented it for a popular vote scheduled in April 2017.

The draft that seeks modifications in the Constitution stipulates the election of the president and legislature on the same day.

The main objective of this section is to disclose the constitutional layout of the amendments package pending popular vote. In this frame, first, the timing of presidential and parliamentary elections and the relationship between the executive and the legislative branches with regard to the method of election will be examined. Then, assessments will be made on the ways of obtaining information and supervision by the parliament, presidential executive orders, the criminal liability of the president, vice presidents and ministers, the appointments and dismissals of public servants, the approval of the budget, the president's authority to address the parliament, and his/her relation to his/her political party. Lastly, changes in the judicial branch will be discussed although they are not directly related to the system of government.

CONSTITUTIONAL LAYOUT OF THE PRESIDENTIAL SYSTEM OF GOVERNMENT

The Relationship Between the Legislative and Executive Branches

The nature of the relationship between the executive and legislative branches determines the main character of a system of government. It is defined in the frame of the formation and the elections of these two branches, the authorities and responsibilities of the executive branch over the legislative branch, and vice versa. If the two bodies strongly interact with each other, the system approaches parliamentarianism, whereas a strict separation between the two leads to a presidential system of government. The AK Party's proposal for constitutional amendments submitted to the parliament sets a typical presidential model although it has several unique features.

In the proposal presented to the TBMM, key features exist in terms of potential factors that may affect the parliamentary majority's support to the president. These factors may be elucidated through the timing of presidential and parliamentary elections and the method of electing the president.

1. Timing of presidential and parliamentary elections

A key feature of a presidential system which ensures a strict separation of powers is the formation of legislative and executive branches through separate/individual/independent elections. If there is a president, i.e. an executive body, who is elected by the people and a legislature elected by the people, that marks a strict separation of powers. At this point, whether a president and a legislature are elected simultaneously, or at different times, becomes important.²⁵

25. For assessments on the subject, see Serdar Gülezer, *Başkanlık Sistemlerinde Denge ve Denetleme*, (SETA Rapor, İstanbul: 2016), pp. 17-19.

There are two different approaches with regard to the effect of the timing of elections on the legislative majority's support of the president: the first group advocates that on-cycle/concurrent elections of the president and legislature will create a problem in the separation of powers, and that elections on the same day may lead to a president and a legislative majority of the same political view. Thus, there will be no "lame duck" that causes instability, in the prospective presidential system.

The second approach asserts that off-cycle/separate elections increase the likelihood of having a president and a legislative body with different political views. This especially becomes more evident in a two-round presidential election. Those who advocate this approach assert that checks and balances between legislative and executive branches will function more effectively.

Electing a president and a legislature simultaneously is a method suggested to prevent a deadlock between the legislative and executive branches. This approach is based on the hypothesis that a president backed by legislative majority will control the legislative body if both are elected concurrently. Although such an interpretation is correct to some extent, a multiparty parliament is always the likely outcome of an on-cycle election. Besides, in a two-round election system, elections will not be simultaneous if the president cannot be elected in the first round.

The draft that seeks modifications in the Constitution stipulates the election of the president and legislature on the same day. In presidential systems, the legislative majority and the president coming from different political traditions yields a divided government and, therefore, poses a risk to the stability of the system. As mentioned above, implicit parliamentarism, in a sense, may emerge, creating a serious problem in a system prioritizing stability and predictability. For this reason, holding elections on the same day can have a significant contribution to

the stability of the political system as possible administrative crises stemming from a government model divided between legislative and executive bodies, will be prevented. In the presence of the disciplined party structure in the Turkish political system and the absence of a federal system in Turkey, such a remedy is needed.

Another point that needs to be considered along with having presidential and parliamentary elections on the same day is the mutual renewal of executive and legislative elections. This is described by some as a "termination." However, one should see that both branches will reciprocally renew each other's elections. In presidential system models, it is out of question to have the president unilaterally call for parliamentary elections. Besides, it should be noted that unilateral termination is a characteristic of a parliamentary system.²⁶ In the Turkish-style of executive presidency, the president cannot unilaterally abrogate the legislative branch. If the legislature decides in favor of a parliamentary election, the president, as well, goes for a presidential election, and vice versa.

One of the most important issues in presidential systems is the potential "deadlock" between the executive and legislative branches. Deadlocks are potential crises both for the president and the parliament as their terms are to begin and end concurrently. For this reason, the renewal of elections becomes critical. Renewing parliamentary elections requires three fifths of the majority in the TBMM. This number should be considered as a number that would prevent the parliament from arbitrary exercise of that power. This may be considered a step to prevent potential risks, in case the parliamentary majority and the president come from different political traditions.²⁷

26. "Cumhurbaşkanı Başdanışmanı Şükrü Karatepe: 'Başkanlık Sistemi İçin 4 Ayrı Model Hazırladık'", *Habertürk*, 19 December 2016.

27. Serdar Gülener, "Anayasa Değişikliğinde Aslında Ne Nedir?", *Star Açık Görüş*, 1 January 2017.

2. Method of electing the president

Another factor to determine the legislative majority's support to the president is the method of electing the latter.²⁸ Research shows that whether a president is elected in a one-round or a two-round voting affects whether legislators will come from the same political majority as the president. Both models have their advantages and disadvantages. First of all, the one-round voting prevents arbitrary outcomes, but prompts questions about the democratic legitimacy of candidates, who can be elected by receiving quite a relatively small number of votes. On the other hand, in the run-off voting model, only two candidates, who generally have received the highest votes in the first round, continue to the second round. Thus, in order to preclude political polarization and fragmentation, different political tendencies agree on one candidate. In some countries with a two-round voting system, popular figures outside politics may become presidential candidates and even win elections.

In the AK Party's proposal, the president is elected in a two-round ballot. Since this was passed in a popular vote in 2007, no amendment has been made in the method of electing the president. If the absolute majority cannot be achieved in the first round, candidates continue to the second round. Only the top two candidates who garner the highest number of votes in the first round continue to the second round. Therefore, it will be possible to reach a consensus on a candidate who receives the majority of votes – even if s/he wins insufficient number of votes to be elected in the first round, and that helps the consolidation of democratic legitimacy. However, one should pay attention to the fact that popular figures outside the political sphere may be presidential candidates and even win elections in a two-round voting system. A modification to allow this is included in the package. Accordingly,

parties which receive - singularly or in combination - at least 5% in the most recent election can nominate a presidential candidate; or signatures of at least 100,000 electors are considered sufficient to nominate a person for the post.

Ways of Obtaining Information and Supervision by the Parliament

Another factor determining the relationship between parliament and president is the ways of parliamentary supervision and gathering information. Four main ways are mentioned in the amendments package: "parliamentary inquiry," "general debate," "parliamentary investigation," and "written-interrogation/parliamentary petition." All four are regulated by Articles 98 and 106 in the Constitution. A "parliamentary inquiry" is an examination conducted by the parliament to obtain information on a specific subject. A "general debate" is the consideration of a specific subject relating to the community and the activities of the state in a plenary session of the TBMM. "Parliamentary investigation" is authorized and requested by the parliament against vice presidents and ministers pursuant to the fifth, sixth and seventh paragraphs of Article 106. "Written-interrogation/parliamentary petition" is an act of questioning in written form, circulated and directed by parliamentary members, to vice presidents and ministers to be responded to in writing within fifteen days at the latest.

The ways, contents and scope of submitting motions for a parliamentary inquiry, a general debate, and a written-interrogation (parliamentary petition) are subject to regulations pursuant to parliamentary bylaws. All supervisory mechanisms of the existing system – except motion of censure – are retained in the package. Motion of censure is a mechanism that exists due the nature of a parliamentary system since the executive body is born of it, therefore, is accountable to the legislative body. In the presidential system, on the other hand, the executive branch

28. Gülener, *Başkanlık Sistemlerinde Denge ve Denetleme*, p. 19.

is directly accountable to the people; since it is directly elected by the people, censure by the parliament is unwarranted.

Presidential Executive Order

An in-depth examination of comparative examples reveals that the president, as the leader of the executive branch, is granted the authority of rule-making in order to let him/her materialize his/her policies. In the case of the U.S.A., the president is not directly granted such power; however, presidents exercise this authority, based on Article 2 of the U.S. Constitution. Albeit executive orders yield rule-making power, they are exercised as prime tools to issue bureaucratic regulations and changes, to create various public bodies, and to allow the execution of the laws passed by legislature.²⁹

The AK Party amendments proposal approved by the legislature grants executive power to the president. In the scope of a planned amendment in Article 104 of the Constitution, and as stated in Article 9 of the draft, the president may issue an executive order under executive power. Exceptions and/or limitations regarding executive orders are also listed in the same article as follows:

- Executive orders may not regulate fundamental rights, rights and duties of individuals stated in Chapter 1 and 2 of the Constitution, and political rights and duties stated in Chapter 4 of the Constitution.
- The president may not issue an executive order on matters which are (to be) regulated solely by laws as stipulated by the Constitution.
- The president may not issue an executive order on matters already expressly regulated in the law.
- If any provisions of a presidential executive order contradict the law, the provisions of the law shall override, be in effect, and the executive order is void.

- If the Grand National Assembly of Turkey passes a law on a particular issue (on which president may have issued an executive order), the law shall override/annul the executive order and be in effect.

It must be noted that the exceptions listed above are considered constructive as they set the framework for executive orders, and do not allow the executive power to harm the essential character of the legislative authority; the major criticism of executive orders is that they enable the executive branch to de facto seize legislature's most fundamental characteristic, i.e. rule-making power. Such a deduction is made because, without doubt, executive orders are mistakenly considered to have a similar status with the existing Council of Ministers' authority to issue statutory decrees.

In the parliamentary system, the Council of Ministers' statutory decree authority was granted to it by the TBMM based on an empowering act. However, it should not be forgotten that the authority of the statutory decree in the existing system also includes the power to amend or abrogate laws, especially during states of emergency. Whereas the draft, at this point proposes a narrow frame of regulation and the president's executive order power is limited to executive matters only.³⁰

At this point, another criticism is that the limits of the executive orders to be issued by the president appear not to be clearly set in the proposal. Against such ambiguity, the issue is regulated in Article 104 of the Constitution, and refers to taking measures against harming fundamental rights and freedoms through decrees or orders which one often sees in comparative examples.

29. Güleler, *Başkanlık Sistemlerinde Denge ve Denetleme*, p. 54.

30. Haluk Alkan, "Cumhurbaşkanlığı Sistemi Yasama Alanını Daraltıyor mu?", *Star Açık Görüş*, 28 January 2017.

The draft clearly underlines that executive orders issued, (or to be issued), by the president may not be about individual rights and duties, or about political rights and duties.

It is plausible to think in practice that presidential executive orders will have regulatory power on the presidential bureaucracy, that is to say the executive branch. The situation is ensured in Article 106 of the Constitution. Accordingly, appointments of vice presidents and ministers will take place through presidential executive orders. The number of ministers to be appointed from inside and outside the parliament, names of ministries, organizational structures, responsibilities and duties of ministries will be regulated by presidential executive orders. From this perspective, all kinds of regulations concerning ministries may be established through executive orders.

The draft proposes a narrow frame of regulation and the president's executive order power is limited to executive matters only.

Evidently, the authority for judicial review of executive orders rests with the Constitutional Court (or other courts). Considering potential disputes between laws and executive orders in particular, judicial review becomes more meaningful.

Although the amendments package articulately states that only executive power may be exercised via executive orders, to maintain the delicate executive-legislative balance in particular, it becomes important to determine which type of regulations will be considered executive matters. It will be possible, however, to determine

the framework and the boundaries of executive power by inserting clear-cut statements in (adaptation) revisions to be made in legal regulations concerning the administrative organization.

The amendments package proposes issuance of presidential executive orders for state of emergencies as well. Executive orders are considered to have a similar purpose with the existing Council of Ministers' authority to issue statutory decrees, and are regulated in Article 119 of the Constitution under the heading of "Extraordinary Administration Procedures." The president is granted permission to issue executive orders under the requirements of extraordinary circumstances but without the limitations of the second clause of the Paragraph 17 of Article 104 of the Constitution. Presidential executive orders - in this case, considered to be statutory decrees -, will be sent to the legislature for approval on the same day they are published in the Official Gazette; if not debated and approved by the TBMM within three months, such executive orders will become null automatically.

Criminal Accountability of the President

The double-headed character of the executive branch in parliamentary systems renders the president politically unaccountable but regards the Council of Ministers as the accountable wing of the executive branch. The single-headed executive body in a presidential system, however, and the election of president by popular vote unquestionably necessitate the accountability of the president in other areas as well as politically. The accountability of the president is mostly in regards to criminal liability. Even more so, the president's accountability, is also in the form of the annulment of his tenure, which is considered as a "check and balance." Also referred to as "impeachment," the annulment of the presidency is regulated in Article 105 of the Constitution.

An important point that deserves attention is that the criminal charge mechanism is

quite broad in scope. In the existing parliamentary system, despite the amplitude of duties and authorities of the president, the president is exempted from any criminal liability except “treason.” It is remarkable that the amendments package expands the scope of criminal charges, for which the president will be held liable, to include all crimes stemming from his/her personal acts.

According to Article 105 of the Constitution, if the president allegedly commits a crime, s/he may be subject to investigation. The investigation shall be requested through a motion signed by one more than half of the total number of members of the Grand National Assembly. The assembly discusses the motion within one month at the latest and may decide for the launch of an official investigation in a secret ballot of three-fifths of the total number of members.

If a decision to launch a formal investigation is made, the investigation shall be conducted by a committee of fifteen members, chosen by lot, from among candidates nominated by each political party in proportion to its strength in the assembly. Accordingly, each party shall nominate as many members as three times the number of members assigned to the party for the investigative committee. The committee shall submit its report on the result of the investigation to the assembly within two months. If the investigation is not completed within the time allotted, the committee shall be granted a further and final period of one month.

The report shall be submitted to the speaker of the TBMM, and distributed to the general assembly within ten days of submittal; it is then to be debated within ten days of its distribution. If deemed necessary, a decision to formally charge may be taken to bring the president before the Supreme Court, which shall require a secret ballot by two-thirds of the total number of members in the TBMM. The Supreme Court is to reach a verdict within three months. If the Supreme

Court cannot reach a verdict within the time allotted, it shall be granted additional three months to finalize the matter. The president’s term may be terminated only if s/he is convicted (by the Supreme Court) for a crime that would violate the terms of eligibility for the office.

As noted, a three-stage prosecution for the criminal liability of the president is suggested. This appears acceptable considering that the system to a greater extent resembles a presidential model. In the existing system, the president is the unaccountable wing of the executive branch and subject to trial only in case of treason. As a result of the responsibilities of the president being broadened, and of the fact that s/he is in charge of the whole executive branch, the prosecution of the president is arranged as suggested. At this point, one must not forget that the president may be put on trial not only for treason but also for many other crimes and, therefore, the criminal liability of the president is expanded accordingly.³¹ Hence, the president is politically accountable to the people, whereas s/he is criminally accountable to the TBMM.

Furthermore, any function of the executive presidency will be subject to auditing, whereas, in the existing system, the actions of the president are exempted from judicial controls. This should be noted as another point of progress, for it increases the president’s responsibility and accountability.

Vice-Presidency and Ministers

In the draft, one of the most important harvests of substantial changes in the system of government is the formation of a vice-presidency. In this new system, the president is the lead actor of the executive branch, but two types of important posts grab the attention as well: vice-presidents and ministers.

31. “Mehmet Uçum: Bu Değişiklik Bir Reform Sürecini Başlatmaktadır”, *Habertürk*, 21 January 2017.

As in many presidential systems, the vice-presidency is one of the significant elements of the presidential office³²: if the president is away from office for any reason, a vice-president has the authority to act as president.

Article 106 of the Constitution regulates the vice-presidency under the heading of “Vice-Presidents, Acting for the President, and Ministers.” Again, by looking at the comparative examples, there will be more than one vice-president according to the draft. However, the most critical duty of the vice-presidency seems in harmony with the equivalent posts around the world. According to the proposed arrangement, if the presidential post is vacated for any reason, (in which case a new presidential election is to be conducted within 45 days; and if on-cycle elections are less than one year away, then both presidential and parliamentary elections are conducted concurrently) the vice-president becomes the acting president and exercises all his/her authorities until the new one is elected. Other than this, if the president cannot fulfill his/her duties for any temporary reason, such as sickness or travel abroad, a vice-president acts in the place of the president.

In the new system, the president is the lead actor of the executive branch, but two types of important posts grab the attention as well: vice-presidents and ministers.

The procedures to elect the vice-presidents substantially differ from those seen in comparative examples. In many countries governed by a presidential system, the vice-president is elected on the same day as the president. The vice-pres-

32. For the position of vice presidents in comparative cases, see Nebi Miş et. al, *Dünyada Başkanlık Sistemi Uygulamaları*, 2nd Edition, (SETAV Yayınları, Ankara: 2015).

idency exercises the powers of the president, if necessary, and, therefore, regulating the vice-presidency post is important in terms of the democratic legitimacy of the position. At this point, the package adopts the method of appointment rather than an election for vice-president(s). In our opinion, this way, the legitimacy of vice-presidents is associated with that of the president elected by popular vote. Therefore, there should not be any objection to the presence of a person who is directly appointed by the president, accountable to the president, and removable by the president, if necessary. Additionally, one should not ignore the possibility that electing a vice-president simultaneously with the president in a popular vote may give way to an adversely competitive dual-legitimacy crisis between the elected president and the elected vice-president.³³

Other critical posts important for the president to fulfill his/her authorities and duties as the executive body are the “ministries.” The draft regulates ministers and vice-presidents under the same heading. Ministers may be appointed or dismissed from office by the president. Ministers are accountable to the president. If both vice-presidents and ministers are appointed from among TBMM members, their tenures as parliamentary representatives come to an end.

According to Article 106 of the Constitution, both vice-presidents and ministers have criminal liability. The package adopts the same procedure in reference to their liabilities as it does for the president.

Under executive presidency, however, adopting the same procedures of criminal investigation both for the president and vice-presidents and ministers is an issue open to criticism and gives the impression that all posts have equal power. Since the positions in the Council of Ministers are appointed by the president, ministers may be subject to politics-related judicial proceedings to

33. Nebi Miş, “Başkanlık Anayasa Teklifi”, *Türkiye*, 15 January 2017.

settle scores with the president, and this possibly may be viewed as one of the important reasons for the aforementioned arrangement.³⁴

Appointment and Discharge of Public Officers

Comparative cases further detail that heads of states, in many systems, have the authority to appoint and dismiss high-ranking public officers.³⁵ Ambassadors, governors, central bank chairpersons, etc. are among few of these. The most notable feature in this scheme is that the approval of the legislature is required for the president's appointments.

In the amendments package, one of the important headings on the system of government is the authority granted to the president for the appointment of high-ranking public officials. However, Article 104 of the Constitution does not clearly state who these officials are. Nonetheless, it is possible to make some presumptions by examining some of the previous legal regulations. For instance, according to Article 2 of the "Law for Promoting Top Level Administrators,"³⁶ No: 3149, quashed by the Constitutional Court later on, these officials are listed as: point undersecretary, assistant undersecretary, director general, chairmen, chairmen of boards, deputy director general, department chairs, ambassadors, governors, district governors, and public servants who may be appointed as regional directors, in addition to the other high-ranking officials to be determined in accordance with the proposal of the State Personnel Administration and the Council of Ministers. In this context, considering that the president is

granted with executive power to do so, s/he will possibly appoint the aforementioned officials.

The President's Authority to Address the Parliament on the Country's National and Foreign Policies

One of the most important outcomes of the strict separation of powers in presidential systems is the scarcity of elements for mutual interaction between legislative and executive bodies which reduces their capacity to influence each other. This, however, could be overcome by using several mechanisms, and the authority granted to the president for delivering "messages" to the legislature is one of them.

Such an authority is not unique to presidential systems. It is also a constitutional right vested in heads of states in countries which are not governed by a presidential system, such as France, Italy, Norway, Portugal, Greece, and the Netherlands.³⁷ Delivering messages to the legislature is a method that needs to be considered together with presidents' authority to make legislative proposals. Addressing the legislative body is effective in such systems where presidents do not have the power to make legislative proposals. Such presidential addresses affect legislative processes particularly in areas that require legal regulations.

The authority granted to heads of states for delivering messages to their parliaments is seen in many examples. This may be interpreted as an arrangement to bring the desired system of government closer to a presidential system of government. On the other hand, the president addressing the parliament may be considered as a medium both to soften the existing strict separation between executive and legislative bodies, and to increase interaction between the legislature and the president, who lacks power to make legislative proposals.

34. Abdülhamit Gül (interview), "Cumhurbaşkanlığı Sistemi En Rasyonel Model", *Kriter Dergisi*, January 2017.

35. See. Güleler, Başkanlık Sistemlerinde Denge ve Denetleme, p. 17-19.

36. Official Gazette No: 18640, 19 November 1985; Also see. Ahmet Ünlü, "Yeni Düzenlemeye Göre Üst Düzey Kamu Yöneticilerinin Atama Usulü Nasıl Olacak?", *Yeni Şafak*, 12 December 2016.

37. Kemal Gözler, *Devlet Başkanları*, (Ekin Yayınevi, Bursa), p. 143-145.

Budget

In systems of government, the budget is a critical mechanism that comes under the heading of ‘checks and balances’ and a determinant feature of the relationship between legislative and executive bodies. Commonly, the executive branch in budget preparation and the legislative branch, i.e. the parliament, in budget approval carry the respective authorities. The scope of the authorities of both bodies differs according to whether the system of government is parliamentarianism or a presidential system.

Article 5 of the amendments package states budget approval among the duties and responsibilities of the TBMM. Article 15 assigns the preparation of the budget to the president. In accordance, the president submits a budget proposal to the TBMM at least 75 days in advance of the beginning of the fiscal year, and the Bill for Budget is examined by the Parliamentary Budget Commission. The bill is adopted by the commission within 55 days; thereafter, it is debated and voted in a plenary session of the TBMM before the beginning of the fiscal year. However, it is the second paragraph of the amendment that makes a unique noteworthy contribution to the proposed presidential system. The proposed paragraph reads,

“If the budget bill cannot be carried into effect within due time, a temporary budget bill is passed. If the temporary budget bill cannot be passed, the budget for the previous year is put into effect, after an adjustment is made to its figures based on a revaluation (for inflationary adjustments), until the new budget law is adopted.”

The adoption of the particular aforementioned budget bill procedure offers an effective solution to the issue of probable deadlocks between executive and legislative bodies threatening shut-down of government operations due to absence/delay of budgetary approval. One should keep in mind that discussions to find solutions to

such potential deadlocks between the president and the legislature continue in many countries including the U.S.³⁸ Therefore, if the budget bill prepared by the president is not adopted by the parliament, enactment of a temporary budget based on the revaluation of the previous year’s budget eliminates possible deadlocks - and government shutdowns - in this regard.

Amendments on Judicial Bodies

The amendments package also includes several modifications that are of particular interest to judicial bodies, although they are not directly related to the system of government.

Article 9 of the Constitution stating, “Judicial power shall be exercised by independent courts on behalf of the Turkish Nation,” is amended with the inclusion of the phrase “independent and impartial courts.” Impartiality is an indispensable feature of judicial power. With this change, the impartiality of the judiciary is emphasized by the Constitution. This seems a quite positive development given the history of judicial cases and practices in Turkey.

The abolishment of military judiciary is a very significant development taking place in the constitutional amendments package. This particular amendment aims to provide integrity to judicial order. Accordingly, military courts along with the Military Court of Appeals and the Military High Administrative Court will be abolished. A change in Article 142 of the Constitution bans the formation of military courts, with the exception of disciplinary courts and military courts to be established only during wartime to try for crimes committed by military personnel due to their duties.

Such a change concerning military courts had been planned for a long time. Even in the aftermath of the July 15, 2016 failed coup attempt, the AK Party together with the MHP and

38. See Yavuz Atar, “Neden Cumhurbaşkanlığı Sistemi”, *Star Açık Görüş*, 21 January 2017.

the main opposition Republican People's Party (CHP) formed a Parliamentary Reconciliation Commission and considered the issue. The commission worked on a seven-article proposal in which four of the articles concerned the abolishment of military courts.

Dropping the word "High" from the title of the 'High Council of Judges and Prosecutors (HSK),' reducing the number of council members from 22 to 13, and branching it out into two are also proposed in the amendments package. The minister of justice and the undersecretary are two natural members of the HSK. Three members from among first category civil court judges and prosecutors who have not lost the qualifications required for being first category judges, and one member from among first category administrative court judges and prosecutors who have not lost the qualifications required for being first category judge are appointed to the HSK by the president.

Three members of the HSK are appointed from among applicant faculty members of Law Schools and lawyers; three members are appointed from among applicant members of the State Court of Appeals, and one member is appointed from among applicant members of the Council of State, by the TBMM. The total of seven members to be appointed by the TBMM are distilled from among all applicants to the presidency of the TBMM for the posts; their applications are to be procedurally sent to the joint commission consisting of the members of the Parliamentary Justice and Constitutional Commissions.

The commission selects three candidates, for each membership, with the votes of two-thirds majority of total members. If a member cannot be elected in the first round of voting, three-fifths majority of total members will be required in the second round. If a member cannot be elected in the second round, then candidates will be determined by a lot drawn between two candidates who receive the highest number of votes.

The TBMM will elect each member by separate secret ballots from among three candidates for each position, determined by the commission as explained above. For each position, two-thirds majority of total number of members is required for the first round; if a member cannot be elected in the first round, three-fifths majority is required for the second round; if a member still cannot be elected, selection of the member will be completed by a lot drawn between the two candidates who receive the highest number of votes.

In addition, the HSK members are to be elected for four-year tenure and members may be re-elected at the end of their terms. The amendment seeks to reduce the total number of members and, thus, aims to prevent the council from sluggishness. Besides, some (4) council members will be elected by the president and others (7) by the TBMM. This obviously will contribute to democratic legitimacy of the council.

In terms of democratic practices, the election method of the council members has a potential to create a medium for compromise and consensus in the TBMM. If the qualified majority required in the first two rounds is failed, members will be determined by lot between the two candidates who receive the highest number of votes. This may also prevent the parliamentary majority from electing candidates who share the same political tendencies with the majority group.

According to the package, HSK members will no longer be elected by first category judges and prosecutors nationwide. Although this system, introduced by the AK Party in the 2010 constitutional referendum, seemed to be a feasible democratic approach, the seven-year implementation has proven otherwise. All parties in the judiciary have been complaining that the election method culminated in polarization and politization within the judiciary.

The method of electing HSK members by first category judges and prosecutors was also withdrawn in the constitutional amendment pro-

posals submitted by political parties to the TBMM in 2012 after considering the experience. Another drawback of this method was that there is always a possibility that latent structures within and/or outside the judiciary will manipulate the elections of HSK members and take the entire judiciary under control as was experienced in the FETÖ case, where its members were embedded in the judicial system.

The abolishment of military judiciary is a very significant development taking place in the constitutional amendments package.

With the abolishment of the High Military Administrative Court and the Military Court of Appeals, also the number of the Constitutional Court members will be reduced from 17 to 15 – two of whom are members of these military courts.

During the periods of tutelage, martial law was declared, and law enforcement duty was assigned to military posts and court martials were formed. The military, thus, took control of the entire justice system. For this reason, the state of emergency (OHAL), subject to parliamentary approval although declared by the president, is authorized in the amendments package, as the only legal framework for extraordinary circumstances and any authority to declare martial law is eliminated from the Constitution entirely; this is of historical importance. In addition, the decisions of the YAŞ are opened to the supervision of the entirely civilian judiciary. The Gendarmerie General Commander is removed from YAŞ membership. Furthermore, an existing provision exempting the TSK from the supervision of the State Supervisory Coun-

cil is removed. This aims at the complete civilian control of TSK.³⁹

The President – Political Party Relation

There is no general feature for the president-political party relation in democratic systems of government. The relation between a head of state/president and a political party is shaped by a country's political culture. Besides, this relation differs from one system of government to another. The president retains symbolic powers in parliamentary systems.

There is no restriction keeping presidents from political party memberships. However, presidents tend to adopt a supra-party position in accordance with established practices. No constitutional regulation has been introduced in the Western parliamentary systems that prohibits party memberships of presidents. Still in some Western parliaments, constitutions ban parliament membership of presidents and any public or private duty that earns them an income.

According to some interpretations, the annotation of “public or private duties” in constitutions includes party membership as well. However, this argument is disregarded in political practice. Hence, even in republics governed by parliamentary systems in which presidents are elected by members of parliaments, presidents are usually members of a political party or have political backgrounds, but remain inactive in their parties.

In presidential systems, where the head of state is elected by popular vote or an Electoral College, as in the U.S., there is no constitutional provision or criterion, in general, that asks of the president to end his/her affiliation with his/her political party. Thus, it should be assessed that the president being a political party member, or in most countries being the chairman of a political party, is in the nature of the system.

39. Cem Duran Uzan, “Türkiye'nin Eskimeyen Gündemi Yeni Anayasa: Nerede Kalmıştık”, *Star Açık Görüş*, 3 January 2016.

The level of the relationship between the president and his/her party in presidential government systems varies from one country to another. For instance, the president of the U.S., which is accepted as the origin of such a system, is traditionally the candidate of one of the parties. Therefore, s/he is a member of a political party, i.e. a partisan. However, the chairman of the party with which the president is affiliated is someone else.

In semi-presidential systems, presidents do not terminate their membership in their parties. For instance, the president in France, under a semi-presidential system, has extremely close relations with his party. The president is the most influential political actor who determines and directs the course of his/her party. In comparison with other systems of government, a sound political interaction and the existence of such a relation between the president and a political party are crucial in terms of the sustainability and stability of a semi-presidential system.

In semi-presidential systems, compared to presidential and parliamentary systems, relations between executive and legislative bodies - therefore, between executive branch and political parties - are more complex in nature. The likelihood of possible disputes involving three different branches, i.e. the president, the executive branch and the parliament, is very high.

For a non-partisan presidential candidate in semi-presidential and presidential systems, it is quite difficult to organize election campaigns which to be successful require substantial financial resources. Besides this, it is likely that a non-partisan presidential candidate will face difficulty in gaining the support of the legislative body in executive functions. A president without the support of a political party cannot effectively administer and execute.⁴⁰

In Turkish political life, the regulation banning the president from being affiliated with his party was introduced in the 1961 Constitution. Until then, the presidents of Turkey were members of political parties. The last clause in Article 101 of the 1982 Constitution regulates the president-party relation as such: “If the president-elect is a member of a party, his/her relationship with his party shall be severed and his/her membership of the Grand National Assembly of Turkey shall cease.”

Although ending the president’s membership with his party is justified by “impartiality” in the 1961 Constitution, presidents were elected from among retired military members or junta leaders, and sided with the tutelage mechanisms for the sake of being on the same page in terms of ideology. However, former presidents Özal and Demirel were presidential candidates of political parties and had intimate relations with their party politics.

For instance, Özal responded to the criticisms on the subject while he was in office, saying, “How can I deny that I founded the ANAP. I cannot say ‘I am from SHP’ since I became the president. That’s why the president should be elected by popular vote from among candidates nominated by political parties.”⁴¹

In the proposed amendment regulating the presidential system, the clause stating “If the president-elect is a member of a party, his/her relationship with his party shall be severed and his/her membership of the Grand National Assembly of Turkey shall cease,” is removed from Article 101 of the Constitution. Therefore, the amendment allows for the relation of a president with a political party to shape it via political dynamics. Presidents will have a choice to retain the chairmanship of their parties, to remain as party members, or not to be affiliated with any political party at all.

40. See David J. Samuels ve Matthew S. Shugart, *Presidents, Parties and Prime Ministers*, (Cambridge University Press, New York: 2010).

41. “Özal Yeni Bir Türkiye Önerdi”, *Milliyet*, 30 November 1990, pp. 5.

In the first instance, the president-political party relation should be examined from the angle of political culture and the party system in Turkey. To begin with, the double-headed character of the executive body is likely to reappear if the president is not the chairperson of his/her party. The difference in political agendas of the party chairperson and the president may cause new deadlocks in the system. The party chairperson may influence the party's parliamentary group to prevent the approval of laws that the president needs in order to conduct his/her executive duties. On the other hand, if the party's chairperson is more influential over the party than the president, the president, in case of dispute, can be disbarred from the party.

The president acting as party chairperson directly affects many factors, such as the "party discipline," "election campaigns," "voting tendencies," and the "candidacy of parliamentary deputies." A president who is not the chairperson of his/her party may fail to control his/her party group in the TBMM, s/he may then have to be involved in political bargaining with opposition parties, which will create a problem for the governability and political stability of the country.

On the other hand, presidents having strong ties with their parties will play a determining role in electors' heading to the ballot box to vote and in the party organization's effective participation in the election campaigns. The president's popularity and approval among people will increase the legitimacy of the presidential office as the most important institution in the public eye. The splitting of electors among the party group, the party chairperson and the president will increase the fragility of the system vis-à-vis bureaucracy. Besides, even if the president appoints members of the cabinet, if the party's chairperson is strong, inner-party tendencies will differ.

CONCLUSION

Turkey is about to wrap up debates, which have continued for a long time, over the transformation of its political system. After the AK Party and the MHP agreed on the constitutional amendments package, the TBMM adopted the system of government named "Executive Presidency" that is proposed in the package. Following the president's endorsement, the package is now pending a national referendum, scheduled on April 16, 2017. If the people of Turkey approve the package, Turkey will take a new turn in this forty-year-old issue.

Since the 1970s, right-wing parties have voiced arguments about the need for a political system change. Discussions began as a way to overcome the political instability caused by coalition governments in the 1970s, and were justified by the desire to energize the executive endeavors. From there on, in order to overcome the crises faced by the parliamentary system, politicians focused on issues such as an "effective executive," "political stability," and "fair representation" in an attempt to change the election system first. However, any change in the election system led to a more fractured and more fragile political structure.

Political actors realized that changes in the election system did not create a durable solution. They thought a radical change may be a way out and suggested a change from the parliamentary system to a presidential system. Their first attempt, on the eve of the 1980 military coup d'état, was to launch debates over a presidential system and the election of a president by popular vote.

However, the tutelary structure and political blocs that believed that election of the president by the people may harm their sphere of power, invariably postponed the efforts to find a solution. Still, heated debates over a presidential system continued in every political crisis. In the late 1980s, Özal, while advocating a presidential sys-

tem, asserted that coalition governments hinder an effective administration.

He claimed that social texture, political sociology and politics in Turkey were falling apart and that the parliamentary system accelerated this. Therefore, Özal believed that the unity of Turkey would be better served if a presidential system were adopted.

In the second half of the 1990s, President Demirel, who had previously argued against Özal for defending the presidential system, supported the presidential system himself by using similar arguments. Demirel blamed the governing dynamics of the parliamentary system for political splits in the center-left and center-right. He defended the position that the election of the president by a national referendum could solve the problem of the country's ungovernability.

As for current President Recep Tayyip Erdoğan, he has emphasized, in every phase of his political life, that Turkish parliamentarism enables tutelage centers to intervene. According to Erdoğan, in order to realize fast decision-making, direct accountability to the people, and curb the bureaucratic tutelage, the system of government in Turkey must promptly be transformed into a presidential system. He believes Turkey can achieve long-lasting stability by an administrative structure equipped with well-defined responsibilities and authorities. Erdoğan maintains that a system of government that has reached economic and political stability will allow the reinforcement and entrenchment of democratization.

Erdoğan has underlined for a long time that Turkey must adopt a presidential system - this has finally yielded results. As seen in the justification of the constitutional amendments package that the AK Party submitted to the TBMM, constitutional amendments have been made for the transformation of the political system in Turkey by assessing the country's past political maladies and crises. Again, by looking into the ratio decidendi, one realizes that decent implementations

of presidential systems around the world have been studied and utilized while crafting a system change for executive presidency in Turkey. In this respect, AK Party officials defend the package as a "rationalized political system."

Executive presidency draws the boundaries of the executive, the legislative and the judicial branches according to a political system "with a president." The method of elections and the proviso of the renewal of elections have been drafted as the most significant mechanisms to prevent the system from falling into crises. Parliamentary supervision of the executive branch is regulated through the budget approval process and by the mechanisms of parliamentary inquiry, general debate, parliamentary investigation, and written-interrogation (parliamentary petition).

The requirement of more than 50 percent of votes for the election of the president will allow expansion of political culture and strengthen the center of politics. In this sense, owing to the proposed election system, compromise and cooperation in politics will become a necessary condition for gaining the support of the people in elections.

Electing the president only for two terms at the most with a five-year tenure for each term will nullify the criticism of "one man administration" from the beginning. On the other hand, electing the chief executive by a popular vote will shift the center of gravity from the appointed bureaucracy towards the elected executive.

The executive and the legislative branches will become stronger in the system of executive presidency. In this regard, the likelihood of government crises stemming from political designs through intertwined executive and legislative bodies, ambiguity, double-headedness of the system, and the expectations of favoritism will diminish. Ultimately, the sustainability of political stability will usher in economic stability in the new system; stability in both will perpetuate the deepening and reinforcement of democracy.

A total of six referenda were held in the history of the Republic since 1923. The referendum for the constitutional amendments package on April 16, 2017 will be the seventh. This will also be the third referendum under AK Party governments. Turkish society has always voted in favor of changes that prevent crises, require transformation, democratize politics, and allow the people to exercise their will over the government.

APPENDIX

Constitutional Amendments Regulating The Presidential System

- The “impartiality” principle is appended to the independence of the judiciary in Article 9 of the Constitution.
- The number of deputies will increase from 550 to 600 due to population growth. The age of candidacy for parliamentary membership is reduced from 25 to 18. The term “who have not performed compulsory military service” is changed with the term “who have military obligations” performed or are exempted from military service or officially postponed compulsory military service.
- Executive power is vested in the president; the prime ministry and the Council of Ministers are abolished.
- A presidential election and TBMM elections must be held together every five years on the same day. A two-round absolute majority system is the method of election of the president.
- Article 87 of the Constitution concerning the duties of the TBMM is amended. Accordingly, to issue decrees having the force of law on certain matters is removed from the text. Since the president, as the head of the executive branch, is not allowed to submit draft laws, the concept of “draft law” is also removed from the text.
- Following an amendment in Article 98 of the Constitution, TBMM supervision mechanisms such as parliamentary inquiry, general debate and parliamentary investigation are retained. However, the “question” mechanism is adopted only as “written questions.” As a characteristic of parliamentary systems, “motion of censure” is eliminated in executive presidency.
- Articles 101 and 102 of the Constitution are merged; therefore, the candidacy of the president and the method of electing the president are regulated. The clause “If the president-elect is a member of a party, his/her relationship with the party shall be severed” is removed to pave the way for having party-member presidents. A person cannot run for president more than twice. The president, as the head of the executive branch, can no longer be a member of the legislative body.
- Also, Turkish citizens who are over 40 years of age, have completed higher education, and who meet the qualifications to become parliamentary representatives, are eligible for presidential candidacy. Political parties that received at least five percent of votes (singularly or in combination) in the last election, and at least 100,000 electors with signatures can nominate a qualified person for president. The candidate who receives more than 50 percent of votes in the first ballot shall be elected president. If no candidate receives more than 50 percent of votes, the second Sunday following the elections, a new round shall be organized for the two candidates who received the highest number of votes.

- With the amendment in Article 104 of the Constitution, the president is the head of state but also has executive power. Vice presidents and ministers shall be appointed by the president via executive order.
- The president is also granted the power for rulemaking. The frame of this regulation is determined as: “Executive orders may not regulate fundamental rights, rights and duties of individuals, political rights and duties. The president may not issue an executive order on matters expressly regulated in the law. If the Grand National Assembly of Turkey passes a law on a particular issue on which president may have issued an executive order, the law shall override/annul the executive order and be in effect. If any provisions of a presidential executive order contradict the law, the provisions of the law shall override and be in effect.”
- The president is not granted the power to draft laws; however, s/he will be able to address the parliament to make non-binding requests for laws.
- Following an amendment in Article 105 of the Constitution, if the president allegedly commits a crime, s/he may be subject to investigation. The president is responsible for his/her acts whether or not these acts are part of his/her duties. The president may be charged by the parliament and put before the Supreme Court by due procedure. The president may be subject to a parliamentary investigation which may be launched by three-fifths of the total number of members. If the president is under parliamentary investigation s/he may not call for renewal of elections. A related provision is introduced which states, “The president’s term may be terminated only if s/he is convicted of a crime that would violate the terms of eligibility for the office.”
- Article 106 is amended allowing the president to appoint more than one vice-president and designate the acting president. If vice-presidents and ministers appointed by the president are members of the legislature, they shall no longer be deputies.
- Members of the executive branch are responsible to the president and may be sent to the Council of State via parliamentary investigation based on criminal liability. The formation, abrogation, duties, authorities and organizational structure of ministries are regulated by presidential executive orders.
- Article 116 of the Constitution regulates the power of mutual annulment of the president and the TBMM. The president decides on his/her own for the concurrent renewal of both presidential and parliamentary elections. The Grand National Assembly may decide for the concurrent renewal of both parliamentary and presidential elections with the three-fifths majority of parliamentary members. If the parliament rules for the renewal of concurrent parliamentary and presidential elections during the president’s second term, s/he may once again be a candidate for presidency.
- Military courts –except disciplinary courts and wartime courts– are abolished through modifications in Article 142 of the Constitution.
- With the amendment of Article 159 of the Constitution, the HSK’s structure is redesigned. The word “High” (represented in Turkish by the letter “Y”) is discarded from the title of the High Council of Judges and Prosecutors (HSYK). The number of coun-

- cil members is reduced to 13 and branched out into two. Similar to the existing provision, the chairperson of the council is the minister of justice, as the undersecretary of the ministry of justice also becomes a member of the HSK. The total number of council members is reduced from 22 to 13. The number of chambers is decreased from three to two. Four out of 11 members are appointed by the president and the remaining seven members are elected by the parliament based on qualified majority.
- Provisions between Articles 161 and 164 regarding the budget are simplified and adapted to executive presidency; they are merged into a single article. The budget law is prepared and submitted by the president to the TBMM. If the budget bill is not approved in the parliament, a temporary budget law is adopted. If a temporary budget law cannot be passed, the budget of the previous year is carried into practice in accordance with a revaluation until a new budget law is passed.
 - The state of martial law where law enforcement officials are appointed to military positions is abolished; only the state of emergency is allowed in the proposal.
 - The decisions of the YAŞ are opened to the supervision of the judiciary. The Gendarmerie General Commander is removed from membership in the YAŞ. A provision exempting TSK from the supervision of the State Supervisory Council is removed. This aims at the civilian control of TSK.
 - Clauses and expressions in articles of the Constitution are changed, appended and discarded in conformity with the presidential system and other changes; some parts are removed in accordance with the new system.
 - With the inclusion of a temporary article in the Constitution and after the amendments are put into effect, the first presidential election and parliamentary election will be held on November 3, 2019. The TBMM Bylaws amendment and other legal regulations will be made within six months. The election of the HSK members will be conducted within thirty days after the approval of the amendments package by the referendum. The Military Supreme Court of Appeals will be abolished within forty days after the approval of the amendments package by the referendum.

To overcome the crisis in Turkish parliamentarianism, constitutional transformation of the political system has been discussed in Turkish political life for more than forty years. Since the 1970s, rightist political parties and actors have voiced a demand for a change in the political system and the government model in general, and the elimination of the pro-tutelary parliament and weak coalition governments in particular.

In the aftermath of the failed coup attempt by the Fetullah Gulen Terror Organization (FETÖ) on July 15, 2016, restructuring the state has become inevitable and urgent. Yet, as clearly seen, the state can fight against implicit and explicit threats both from inside and outside only by adopting a government model based on a strong and stable leadership.

A course of reconciliation followed the July 15 failed coup attempt. Social and political mechanisms of dialogue grew stronger as the process encouraged political parties. The July 15 attempt also led to a new kind of awareness –both in politics and in society– on the matter of Turkey’s perpetuity. The ruling Justice and Development Party (AK Party) and the opposition Nationalist Action Party (MHP) reconciled their differences in this atmosphere. In search of a presidential system of governing, the two parties prepared a package of constitutional amendments and the Grand National Assembly of Turkey approved the package.

In the constitutional amendments package, the new system of government is called “Executive Presidency” (*Cumhurbaşkanlığı Sistemi*). The proposed system has been crafted based on a model of government with a president with regard to the arrangement of relations between the legislative, executive and judiciary branches.

This study will examine the outstanding features of the constitutional design in pursuit of executive presidency in addition to the historical background of the transformation.



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