

Reconsidering the Presidential System in Turkey

GÜLGÜN ERDOĞAN TOSUN*

ABSTRACT Debates on the system of government have been on the political agenda in Turkey since the 1960s, gaining momentum in recent years. Disengagement from the parliamentary system began with the election of the 12th President of Turkey by popular vote in 2014. To this end, the ruling AK Party and the MHP submitted a proposal to Parliament on December 10, 2016 to amend the Constitution. This article aims to discuss the advantages and disadvantages of a presidential system for Turkey. As the debate unfolds, examining fully the pros and cons of a presidential system is vitally important.

Debates on the System of Government in Turkey

In pursuit of political stability, the debate about the system of government, and the advantages and disadvantages of a presidential system, is a critical factor in Turkey's democratization process. Debated since the 1980's, a transition from a parliamentary system to a semi or full presidential system was mooted by the late Presidents Turgut Özal and Süleyman Demirel, in addition to former Prime Minister Tansu Çiller. Proponents of a presidential system argue it offers greater political stability. Özal saw the parliamentary system as an obstacle to his reforms, describing the presidential system as a "generator of the transformation." Demirel, who was elected president after Özal by the Grand National Assembly of Turkey (TBMM) on May 16, 1993, described the presidential post, in contrast to Özal, as one that should remain politically impartial. Demirel suggested a presidential system would have benefits beyond managing economic difficulties, arguing it offered a way out of various crises such as the weakening of the execution, the formation of fragmented politics after non-political interventions, the failure of the parliament

* Ege University,
Turkey

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For a new Turkish-style presidential system, the latest version of the draft has been crafted around the concepts of “indigenous and national”

if an American-type presidential system were to be agreed.² The debate has waxed and waned in the intervening years but has gradually gained momentum since 2013.

The course of discussions reveals that the issue of political (in)stability most of the time has been degraded to government instability and that institutional arrangements (e.g., granting the president with more power and the authority of annulment, and electing the president by popular vote) are proposed to consolidate the stability of the executive body.³ Some lean towards a presidential system as a solution while others prefer a semi-presidential system.

Since 2014, discussions about a semi-presidential system have, without doubt, dwindled. Elected the 12th President of Turkey by popular vote on August 10, 2014, President Recep Tayyip Erdoğan, as head of the State, shares executive power with the Prime Minister. According to Giovanni Sartori, these two characteristics indicate a semi-presidential system.⁴ As such, a semi-presidential system is *de facto* in force – and it is viewed as a stepping stone to a complete system as both the President and the governing AK Party have stated a transition to a full presidential system is the ultimate goal. The first draft of a presidential system prepared by the AK Party was brought forward in November 2013. For a new Turkish-style presidential system, the latest version of the draft has been crafted around the concepts of “indigenous and national” as declared by Erdoğan. It is dubbed as the system of “President/Head of The People – *Cumhurbaşkanlığı Sistemi*.”

When it comes to the presidential system, Sartori describes three basic criteria: accordingly, “a political system is a presidential system if and only if the head of the state (president) (i) is elected by popular vote, (ii) cannot be removed from office by a parliamentary voting, and (iii) presides over the governments s/he appoints or directs them in other ways. If all these three conditions are satisfied, we face a genuine presidential system.”⁵ One of the most well-know examples of the presidential system is the American system, the most distinctive characteristic of which is the separation of powers both organically and functionally between the legislative, judicial and executive branches. With some nuances in practice, as far as functionality is concerned, it means a hard separation of areas of responsibility, and their legal indepen-

to form a government, or the failure of a government to win the vote of confidence.¹ Shortly after the establishment of the 59th Government in 2003, then Prime Minister Recep Tayyip Erdoğan reignited the debate declaring Turkey would be poised to make a great leap forward

dence from each other. Legislative body establishes rules (writes and enacts laws) as executive branch executes and enforces established rules, that is to say, it governs and administers. Their being “organically” separated means that legislative and executive functions are fulfilled by separate bodies, and both act independently.

Congressional elections are held every two years while presidential elections every four. The legislative, judicial and executive branches are independent and co-equal. Unlike a parliamentary system, the president is not accountable to the Congress. The president is the head of the executive branch, elected for a fixed single term of four years (not to exceed 8 in total), and the legislative branch can only remove a president from office by “impeachment.” Thus, the president is accountable only to the electorate. The president’s cabinet is generally made up of individuals close to the president or from his/her party. Members of the cabinet cannot be elected to the legislature.

When the legislative branch sends a bill to the executive, the president has veto power. This separation of powers is ultimately designed to lead to a system of checks and balances.⁶ In addition, the president may issue executive-orders (derived from the Constitution by interpretation) although not stated explicitly in the constitution in the U.S. case.⁷ Unlike in a parliamentary system, the principle of separation of powers means that the legislative and executive branches do not have the power of mutual termination.⁸

Criticism of the Parliamentary System in Turkey

As Turkey moves towards a presidential system, there are valid criticisms of a parliamentary system which deserve attention. Recently, there has been significant debate and criticism of the political and economic instability that arose during the Özal and Demirel governments. According to Ali Aslan, a research specialist on Turkish politics, the advantages of migrating away from a parliamentary system hinges on four issues: “uncertainty in the system of government, tutelary parliamentarism, failure of the institutionalization of politics and a crisis of parliamentarism.”⁹

We presume that political-practice issues listed above originate from the fragility of democracy in Turkey and from weak institutionalization. Only one political party constituted the parliamentary majority and formed single-party governments since 2002. However, the process in which single-party governments shaped the execution was interrupted in 2015. The dosage of criticism deservedly increased upon the failure to form a government at the end of the June 7, 2015 general election, a snap election that followed it on November 1, 2015, and a heinous coup attempt on July 15, 2016.



The Constitutional amendment draft was accepted with 339 votes in the Turkish Parliament, on January 21, 2017.

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The past coup experiences had hit a blow on the constitutional order. Yet again, Turkey faced a coup attempt on July 15, 2016. Despite the July 15 coup attempt, the fragility has been deepened by the on-going security operations in the eastern and southeastern provinces; terror attacks targeting masses and security officials of the state in metropolitan cities, and the developments in Syria. From this perspective, the parliamentary system is further undermined as it failed to respond to multiple crises.

A new study by SETA Foundation highlights the vulnerabilities of the parliamentary system including:

The tangling up of functions of the legislative and the executive branches; the difficulty to form a coalition government; ineffective governments because of the pressure of vote of no-confidence; authority and government crises stemming from double-headed execution; the diminishing quality of parliamentary members due to loyalty to the party leader at the expense of merit; the weakness of the elected executive body vis-à-vis the appointed state bureaucracy; the environment of conflict created by the deepening ethnic, religious and ideological splits; and the gaps in democracy.¹⁰

Another study categorizes major deadlocks on the system of governments as follows:¹¹ (i) the lack of democratic participation, (ii) the lack of democratic control mechanisms, (iii) the oligarchic structures of political parties and their

As the cabinet will be accountable to the president, rather than multiple members of parliament, decision making becomes more effective and efficient. Therefore, it may be possible to interfere instantly in crises situations

resistance to change, (iv) the weakness of local administrations, and (v) the impact of economic crises on governments and public administration in the face of the pressure created by the expectations of the economic structure from the public. If we consider the findings of both studies, one might conclude critics of the parliamentary system are not solely limited to the system of government.

The Turkish parliamentary system suffers from political instability, giving body to a crisis that is deeper than it may appear. If we think of it as an iceberg, and were we to look below the water, the issues facing the system include: occasional interruptions in civilian order and constitutional continuity, the lack of internalization of democratic norms amongst the political elites, the understanding of “the state-driven politics” originating from the built-in political culture, a political style influenced by the tension between tutelage and populism, the tradition of authoritarian reformism, prioritizing the state over the individual and the absence of societal control over the state tradition, and a search for legitimacy which ignores social opposition, interpreting opposition as enmity towards the regime.

The Proposal for a Presidential System in Turkey

In the face of the current situation, the Presidency of the TBMM proposed constitutional amendments on December 10, 2016 which were subsequently sent to the Parliamentary Constitutional Committee on December 12. The 18-article draft (reduced from 21 articles after discussions in the Committee) includes constitutional amendments to the executive and legislative branches. A technical evaluation of these articles will, without doubt, go beyond the scope of this paper. Therefore, we will limit our discussion to the advantages and disadvantages of a transition to the presidential system within the framework of the proposed amendments. To this end, it is also proper to examine the amendments in the legislative, the executive and the judicial branches.¹²

In the legislative branch, the number of parliamentary representatives increases from 550 to 600 while the age of eligibility for deputy is lowered from 25

to 18. Members of the parliament and the president will be elected every five years on the same day. The president will have unconditional power to annul both the parliament and his/her presidency and take both the parliament and the presidency to early simultaneous election at his/her discretion; and by-elections will be eliminated. Moreover, an absolute majority of deputies (300) will be required for the approval of a draft law if the president sends it back to the parliament for re-deliberations. In addition:

- Only the president shall exercise executive power; however, according to the text of the amendment, the presidential decree is subject to supervision of the Constitutional Court.
- The Council of Ministers shall be abolished and replaced with vice-presidents and ministers responsible to the president.
- The parliamentary membership of a deputy shall be revoked if s/he is appointed minister.
- The president, as head of the executive branch, may address the parliament regarding national and foreign policies.
- The president shall determine policies of national security and take necessary measures on the matter.
- The president shall have the authority to prepare the budget, and submit it to the Parliament for approval, and execute it.
- The president shall appoint and dismiss vice-presidents, ministers and high-ranking public officials.
- The president may issue executive orders and by-laws in matters of interest to the executive.
- The president shall not need an empowering act to issue executive orders – similar to current statutory decrees issued at times of State of Emergency.
- The president may issue executive orders not only during the periods of State of Emergencies but also during normal periods without needing an empowering act.

Restrictions on executive orders are as follows: fundamental rights, rights and duties of individuals, and political rights and duties, matters regulated by law, and matters that concern public institutions shall not be regulated by Decree Laws. The Assembly may cancel the Presidential Decrees if so requested. Since the Council of Ministers shall be revoked, the President may issue executive orders unilaterally. The affiliation of the president with his/her party may not necessarily be terminated. The title “The Head of the State” shall be appended to the President (The Head of The People). A three-stage prosecution shall be conducted for criminal liability of the President. A proposal to initiate an investigation (against the President) may be launched by the motion of the absolute majority in the parliament (300). To establish a commission if a crime may have been committed by the president, a secret ballot of three-fifths

(360) of the total number of members shall be required. In the case of charges, the president shall be called before the Supreme Court by two-thirds (400) of the total number of members. If an investigation is opened by a majority of three-fifths, the president may not call for election.

The separation of the legislative and executive branches will no longer be the duty of the TBMM, including its supervision of the Council of Ministers. The mechanism for the motion of no-confidence shall be revoked; therefore, parliament shall not have the power to dissolve the government. Parliamentary inquiry and verbal questioning, in other words, parliamentary supervision over the executive branch, shall be transformed into mechanisms to obtain information only.

The Military Court of Appeals and the Military High Administrative Court shall be abolished. Military courts shall not be established except for disciplinary matters. The only exception shall be the formation of military courts in times of war. In supreme judiciary institutions, the State Supervisory Council shall be granted the duty of administrative inquiry in addition to its duties of inquiry, investigation and supervision. The Armed Forces shall be under the Council's jurisprudence of supervision. The functioning, personal rights and the term of duty of its members shall be regulated by executive-order. Courts shall also be expressly characterized as 'impartial' in addition to their pre-existing 'independence.' The number of the Supreme Board of Judges and Prosecutors members shall be lowered from 22 to 13, four appointed by the president and seven by the TBMM. The remaining members are the Minister of Justice and his/her undersecretary.

When we look at the proposed amendments about legislative, executive and judiciary powers, it can be said that there are three debatable areas: the election of a party-member president by the people, authority of the president to issue executive orders, and the simultaneous mutual termination power. Given these provisions, it is not possible to characterize the proposed amendments as a U.S.-type presidential system. Rather, it can be argued the draft proposes a system of government unique to Turkey.

With regard to collective efficacy of the nation, personality and charisma of the president play a critical role, and that may be supporting the amalgamation of divided societies in particular. This stands in contrast to “a party-member president,” as mentioned in the proposal, which may weaken the objectivity at the heart of the cementing role of the president

Advantages and Disadvantages of a Presidential System from the Perspective of the New Constitutional Amendments

In this section, a comparative examination will be made on the aforementioned and underlying reasons for a new system of government, and the proposals put forward in the amendment package. In the comparisons, general principles of a presidential system and the contents of the amendment package will be considered rather than comparing the U.S. style presidential system. Potential advantages and disadvantages regarding the proposed amendments and their potential impact on democracy in Turkey will also be analysed.

Advantages of a Presidential System

i) Rapid Decision-Making: From the perspective of the advantages of the presidential system, the expanded power of the executive may well speed up decision making in the event of crises. For example, as the cabinet will be accountable to the president, rather than multiple members of parliament, decision making becomes more effective and efficient. Therefore, it may be possible to interfere instantly in crises situations.¹³

ii) Eliminating Confusion on Authority: The bifurcation of the executive branch will come to an end with the abolishment of the Prime Ministry, the direct election of the president by the people, and the president's authority by executive power. For example, ambiguities and conflicts that may arise between the individuals, particularly when they are from different political parties will not be encountered in the presidential system. In addition, eliminating such confusion increases the constitutional power of the head of the state under the presidential system, and provides a clear line of accountability for decisions made by the executive. As the aforementioned three-stage process before the Supreme Court, the people will bring the president to account in elections.

iii) Stability and Effectiveness: Due to the principle of separation of powers, the legislative and the executive branches are not mutually dependent. The president, as the sole holder of executive power, may easily form a government following elections. The possibility of coalition governments seen in parliamentary systems is eliminated under the presidential system. As the president has a fixed-term of office, and cannot be ousted by a vote of no-confidence; the presidential system has more capability to ensure the stability.

iv) Increased Democratic Legitimacy: As the legitimacy of the president derives directly from the people via their votes, the president's influence over the society increases. With regard to collective efficacy of the nation, personality and charisma of the president play a critical role, and that may be supporting the amalgamation of divided societies in particular. This stands in contrast

to “a party-member president,” as mentioned in the proposal, which may weaken the objectivity at the heart of the cementing role of the president.

v) Improved Legislative Functioning: The legislative body will only conduct activities in its own area of responsibility. Members of the legislative body who have no expectation of becoming ministers will, thus, act more independently. In the U.S. case, Congressmen act freely in legislative activities without the pressure of party discipline, and that increases the quality in their legislative functions.¹⁴ Due to non-concurrent elections of the president and the Parliament, arrangements to allow the representation of small parties in the legislature (such as the election threshold) will broaden the sphere of democratic politics and strengthen the legislature’s ability to act in a more participatory and democratic manner. However, the presence of a strong party discipline in Turkey may negatively affect parliamentary members’ independence. Because the president and the legislature will have equal tenures, and the president and the legislature will be elected on the same day, the independence of the legislative functions may be affected.

Disadvantages of a Presidential System

i) The Issue of Double Legitimacy: The major criticism pertains to the issue of separation of powers. The election of legislative and executive branches, by the people, may lead to legitimacy issues between the two bodies. As it seeks to transition, Turkey remains a society with multiple, ideologically divided political parties and it is likely that legitimacy discussions and conflicts thereto will arise over policy agendas.¹⁵

According to Ergun Özbudun, a well-known professor of law,

Those who advocate transition to a presidential system in Turkey usually lean on two arguments although they seem to contradict each other. One of them is that the presidential system will provide a strong, stable and harmonious executive body, and the other is that the legislature, in this system, will act more independently and effectively in making laws and supervising the executive body. In other words, one of these arguments aims a strong executive branch and the other aims a strong legislative branch. It seems impossible to achieve these two objectives simultaneously.¹⁶

In fact, Özbudun draws attention to the probability that if one is preferred over the other, the other will be invalidated. According to the amendment package,



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the TBMM can call for an early election with the support of 360 deputies. As the president can take the parliament to an early election without any conditions, there is a consideration regarding the state of double legitimacy which contradicts the principle of separation of powers.

ii) The Individualization of the Administration: The president's legitimacy is strong in the presidential system as s/he is elected by the people. Nonetheless, as executive power is invested in one person, there may be a danger of individualization in the government.¹⁷ The president appoints high-ranking

public officials, and can even act as a legislative figure owing to presidential executive orders. The motto of "overspeeding invites death" comes to mind and it is possible to say that fast legislative process may lead to irreversible mistakes; in some cases, it may even make the parliament meaningless. Under a one-person administration with a fixed-term in office; in case the president-elect suffers from power-poisoning by exploiting his/her democratic legitimacy, then the situation will have a potential to evolve into a regime crisis beyond a government crisis.

Another point worth mentioning is that it is unclear how many times a president can be elected consecutively. The article seeking to amend Article 116 of the Constitution states "If the parliament decides for the renewal of elections during the second term of the president, (in this case) the president may become a candidate for the office one more time." The proposed article invalidates Article 101 of the Constitution which states that "The president's term of office shall be five years. A person may be elected as the president of the Republic for two terms at most."

iii) The Probability of a Rigid System: With two legitimate branches of government elected by the people for fixed terms, there is a risk of system rigidity or deadlock when policy differences escalate.¹⁸ Presidents in Latin American countries try to control such rigidity by pushing the legislature aside and issuing executive orders to govern their countries.

This rigidity of the system may be qualified as "a degeneration rendering the president excessively powerful and pushing the presidential system away from its democratic spirit."¹⁹ The proposed amendments package attempts to address the risk of rigidity by looking at similar cases in Latin American countries where presidential executive power is accepted as a general rule of thumb with a few exceptions. To override a Presidential veto, 300 votes are required in the legislature. These, still, cannot stop the loss of power of the legislative



Leaders of the three main parties in Turkey, before their meeting on December 14, 2016.

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body before the executive body, although the conditions specified are softer implementations compared to the U.S. case.

iv) Style of Politics and Polarization: In presidential systems, whether it is a single or two-round election, the election of the president is ultimately a race between two candidates – by definition a bipolar process, which may lead to significant polarization. The referendum nature of a presidential race and its political process, combined with its zero-sum game outcome, exacerbate polarization. In the end, factors encouraging polarization rather than compromise come to the forefront.²⁰

The adoption of a polarizing discourse by leaders in societies with high ethnic and religious vulnerabilities, like Turkey, may encourage social conflicts. Furthermore, if the president and parliamentary majority are of the same party and simultaneously elected, the president will be assured of preserving power and may turn insensitive to the demands of the opposition and electorate.

The head of the state may be tempted to define his/her policies as reflections of the popular-will and those of his/her opponents as the selfish designs of narrow interests.²¹ In the end, delegational democracy is most likely to surface – as is the case in the Latin American countries that have departed from the participatory democracy.²²

Some would argue the system, by definition, tends towards populism and populist leaders. In such a system, those come to power may prefer authoritari-

an methods if social opposition rises against presidential executive orders or parliamentary fails to pass the laws the executive promised. Considering the proposal grants extraordinary authority to the executive power *vis-à-vis* the legislative power, the way to prevent such risks befits further discussion.

v) Zero-Sum-Game, Winner Takes All: As we know in a presidential system, it is winner takes all. In other words, the election process proceeds on the rule of ‘all or nothing.’ The loser will not be effective at all in the government as the winner totally controls the executive power until the next election. As such, politics can turn into a zero sum game, and the risk of polarization emerges along with tendencies for conflict and political struggle.²³ We cannot ignore the risk of the head of the state pushing his/her limits and the system transforming into an authoritarian government²⁴ if s/he falls prey to excessive self-confidence or the euphoria of power.

The opposition, on the other hand, faces the danger of being excluded, or even isolated. Since in-system channels will be closed, the opposition may resort to extra-system methods (terror, coup, etc.) in order to be effective. According to the proposal, the president can appoint one or more vice-presidents, meaning, the head of the state, directly elected by the people, may transfer important and broad authorities to his/her appointees – with potentially controversial effect on a democratic system.²⁵ Hence, the relevant article in the proposal does not eliminate such a disadvantage, but exacerbates it.

vi) Checks and Balances: One of the most important mechanisms that enable optimal functioning is the system of checks and balances which is enabled by the separation of powers between the executive, legislative and judicial branches.²⁶ An executive branch that is overly powerful may well weaken democracy. Analysing the relevant articles in the proposal, one might argue the legislative branch has insufficient ability to ‘check and balance’ the executive and that it has excessive power over the legislature due to clauses that are in contradiction to the principle of separation of powers. As such, polarization may increase in societies at high risk of political fragmentation like Turkey.

Conclusion

In her history, Turkey has never been so close to moving towards a presidential system of government and many would argue is a positive step towards stability. To this end, a proposal jointly crafted by two political parties to modify some articles in the Constitution has been submitted to the Turkish Parliament. That having been said, there is an Achilles heel given that the amendments have been proposed during the state of emergency (OHAL). The OHAL rules will prevent vast social segments from having fair and free discussions

and negotiations on the proposed amendments in advance of parliamentary deliberations.

In fact, stability is not defined by a single party government. The AK Party held the power from 2002 and subsequently the presidency from 2007. Turkey enjoyed a relatively stable period until the June 2015 elections and one cannot ignore the fact that the elections are only one factor in the ongoing crisis. The economic crisis and its resultant global fluctuations, terrorist attacks and the failed coup by Fetullah Gülen Terror Organization (FETÖ) all contribute to a general feeling of instability.

Hence, the real issue for Turkey is how to consolidate democracy. Academic studies in the area of comparative politics assert that research and theory should be handled together. Abstract ideas generated in theory should be fastidiously applied to real situations and real conditions in real countries.²⁷ To put it differently, a comparison of the system of government in a country with that of another country simply based on theoretical principles is impossible. Political-cultural-social and historical circumstances must be taken into account as well. Considering the dominant political culture and tradition of state administration in Turkey, it is obviously impossible to establish a system that will yield similar results in the U.S. or elsewhere. According to Üskül, no country has copied the U.S. system exactly – naturally adopting the system to suit their national interests and issues. Nonetheless, it is not possible to renounce the defining characteristics of the proposed amendments either.²⁸ It is also not possible to say the proposal before Parliament, as is, is a model of a presidential system based on hard separation of powers given the following clauses: the affiliation of the president with his party continues; the executive branch is granted a great deal of power over the legislative; mutual annulment power is granted both to the legislative and the executive bodies, and as a result of this, the executive power's term of duty being questionable; and calling for presidential and parliamentary elections on the same day.

Whether or not a political regime is democratic, is not in fact determined by the system of government. Around the world, we can see examples of presidential, semi-presidential and parliamentary systems of government – some of which are democratic and some are not. Evidently, the degree of democratization and the institutionalization of a regime are not contingent upon the system of government in force, just as a change of government alone will not bring democracy. Therefore, debates on the substance – the rule of law, human

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rights, and a strong civil society – deserve attention than simply focusing on the system of government.

The most frightening aspect of the presidential system is the danger of authoritarianism. Even if the president does not transform into an authoritarian figure, the probability is the presidential system will cause individualization exists.²⁹ The crux of the matter is to debate how the proposed amendments take us closer to, or farther from, democracy.

A change in the system of government may take us to the breakdown of democracy and a never-ending period of transition, if the protection of fundamental rights and freedoms cited in the Constitution and the standards and criteria to facilitate ‘checks-and-balances’ mechanisms are not clearly elaborated.

From the perspective of institutionalizing democracy, the Constitution may become a toy in the hands of the majority rather than a stable point of reference for all. How the parliament has the power to control the executive power when the president is a party-member is debatable. Efforts are needed to simultaneously satisfy the principles of a stable government and justice in representation.

One could argue that constitutional amendments should not only be limited to a change in the system of government, but debated simultaneously to a comprehensive change in the electoral system. The existing system is based on proportional representation – in contrast to outright majority systems on which stable examples of presidential systems are based. Considering the social splits as represented by Turkish political parties together with a fragmented parliament that proportional representation can create, this may set an insurmountable obstacle to optimal functioning in the short and the long runs. In the worst-case scenario, Turkey may become a country governed by presidential executive orders. ■

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