ARTICLE

The Constitutional Amendment Draft: The End of Debates on Change in the Turkish Political System?

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ABSTRACT *Debate over the government system has occupied Turkey's political and constitutional agenda for many years. Yet the discussions that have taken place have not, until very recently, progressed beyond the level of popular discourse. In the last quarter of 2016, however, the possibility has emerged of debating the government system in a concrete way through the proposal of a constitutional amendment. This proposal, the product of negotiations between the AK Party and MHP, seems to be elaborated on a design that considers the interplay of presidential systems in relation to legislative, executive, and judiciary powers. In this article, the basic features of the proposed government system are addressed in comparison with various examples from around the world.*

Introduction

Debates on the system of government in Turkey have been on the agenda since the 1960s; however, they increased in urgency towards the end of 2016. A proposal for constitutional amendments was made following talks between the ruling Justice and Development Party (AK Party) and the opposition Nationalist Action Party (MHP). The proposal suggests a critical transformation from the existing parliamentary system to a presidential system of government.

A motion for the draft was submitted to the Presidency of Turkey's Grand National Assembly (TBMM) while this article was being written. It may be said that the proposal is a product of efforts to blend the positive aspects of many successful presidential systems, e.g. particularly the one in force in the United States of America, with a unicameral legislature and the principle of a unitary State having the traces of Turkey's historical and political reservoir. In fact, the structure described uniquely for Turkey is officially dubbed, "the System

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Considering the ratifications of electing the president by popular vote in connection with the model of presidency wherein 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 a "semi-presidential system"

of 'President of the People'" (*Cumhurbaşkanlığı Sistemi*), variously referred to as President, Presidential System or Presidency, hereafter.

This study will present the technical outlines of the proposal jointly crafted by the AK Party and the MHP. The article begins with a closer look at the history of debates on presidency in Turkey. It will assess the main parameters of a possible change in the system of government based on relations between the legislative and executive branches, addressing such topics as "the structure of the legislature," "the method of electing the president," "presidential executive orders," "the authority of mutual annulment," "the penal responsibility of the president," and "vice presidents and ministers."

History of Debates on the Presidential System in Turkey

The beginning of the debates regarding the presidential system goes back a long way, although the debates increased in frequency in the 2000s. Although debates on the system were held during the periods of the 1961 Constitution and the 1982 Constitution, they have intensified since the 1970s. It could be said that the unstable and short-lived coalition governments that emerged in the 1960s were the starting point for all debates over the presidential system.

Intensified political debates on the presidential system were initially found in the 1969 party platform of the National Order Party (MNP), which urged, "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."[1] Following the dissolution of the MNP, debates on the presidential system continued through the MNP's successor, the National Salvation Party (MSP), whose party platform included references to a presidential system. It would not be inaccurate to say that debates on the presidential system flared up again in connection with the presidential election and the parliamentary system crises that occurred in the late 1970s.

After the enactment of the 1982 Constitution, then President Turgut Özal reinitiated the debates regarding a presidential system. Özal stated that a pres-

idential system was essential to Turkey's economic development, and that a breakthrough in the economy could be achieved through a presidential system.[2] 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 issues of vital importance to the country, and that Turkey had an historic opportunity to become the leader of the region by overcoming this challenge.[3] Özal asserted that if Turkey were to adopt a presidential system, a strong separation of powers would be instituted which would accelerate the decision-making process.

Özal advocated that the president must retain the authorities that 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.[4] A prominent political figure of the period, the late chairman of the MHP, Alparslan Türkeş, silently followed the debates and did not speak negatively on the matter. According to Türkeş, transformation to a presidential system was necessary for a fast-moving and strong rulership.[5] Özal's proposal to change the system of government failed due to the lack of the necessary majority in the parliament to amend the Constitution.

After being elected president by the parliament, Özal reiterated that a presidential system was a requirement for Turkey's economic development because it would bring greater stability in governance.[6] In 1988, Özal suggested electing the president by popular vote; however, in view of the discussion held around his personality, he later emphasized[7] that the president would be definitely elected by the parliament. Debates on a presidential system were shelved temporarily after Özal died in office in 1993.

The Presidential system was opened to discussion once again by the late President Süleyman Demirel, Özal's successor. Demirel must have considered that the mere existence of a president, as a stabilizing element, was not strong enough during the crises that had occurred in Turkey towards the end of the 1990s; he brought the presidential system back into question as of 1997. Demirel's main argument on the issue was that a presidential system provides stability in government. Demirel noted that he had approved six different governments in four years, and argued that such instability in governance makes a parliamentary system questionable; he stated that Turkey should adopt either a presidential or a semi-presidential system.[8] The ensuing debate on the system intensified in academic circles and the political sphere. Counter statements claimed Turkey was not ready for a presidential system and that if such a system were to be imposed, it would transform into a dictatorship. It was also claimed that Demirel was asking for a presidential system for himself, i.e. out of self-interest.

After the July 15, 2016 failed military coup attempt by FETÖ, the MHP clarified its position in regard to a presidential system, stating that Turkey is currently struggling to survive against internal and external terror threats and, in such a period of crisis, the MHP wishes Turkey to reach a conclusion without wasting any more time in debates on the system of government

Debates on the presidential system frequently made the agenda with the arrival of the 2000s. The discussions intensified further following a constitutional amendment in 2007, whereby the president would be elected by popular vote. Considering the ratifications of electing the president by popular vote in connection with the model of presidency wherein 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 a "semi-presidential system."[9] The AK Party proposed a draft for a presidential system to the Constitutional Reconciliation Commission (CRC) in 2013; since then the presidential system has been advocated by many government officials, including President Recep Tayyip Erdoğan. The debates 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 quickly became the center of discussions. In the scope of that debate, politicians of the period voiced the need for a constitution change.[10] In the 2015 general elections, the AK Party referred to a presidential system in the declaration of the party platform for the election.[11]

The Constitutional Amendment Draft Proposed by the AK Party and the MHP

Perhaps the most critical development in the debates on a presidential system in Turkey occurred following the statement by Devlet Bahçeli, chairman of the MHP, in October 2016. Bahçeli stated that a *de facto* presidential system existed in the executive body and that a constitutional framework must be established to formalize it; and MHP, to this end, was open to any AK Party proposal in the Parliament.[12] It must be noted that the MHP's position in the debates on a presidential system differs from those of other opposition parties, many of which categorically oppose a presidential system. Although the MHP

Prime Minister Binali Yıldırım and MHP leader, Devlet Bahçeli, meet on December 01, 2016 to discuss the constitutional amendment.

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had many times issued statements giving precedence to a parliamentary system, the party 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 its position in regard to a presidential system, stating that Turkey is currently struggling to survive against internal and external terror threats and, in such a period of crisis, the MHP wishes Turkey to reach a conclusion (either positive or negative) without wasting any more time in debates on the system of government.[13]

The AK Party took these statements as an opportunity to move forward; it prepared a draft package for constitutional amendments, and shared it with the MHP. Following the meetings between the top officials of both parties, the proposal was jointly introduced to the Grand National Assembly on December 09, 2016.

The articles that were discussed, reconciled and secured by a compromise deal between the AK Party and the MHP, mostly fall under the headings concerning the (new) characteristics of the relations among the legislative, executive and judicial branches. Amendments focusing on the judicial branch will not be covered in this study, as they involve the institutional mechanisms of the judiciary. Instead, the article will focus on the headings that directly determine the relation between the legislative and executive bodies.

Amendments in Legislature

The legislative body, i.e. Turkey's Grand National Assembly (TBMM), has become a central figure in the debates. A frequently voiced criticism of the proposal is the argument that if the executive body is strengthened, the legislative body will weaken. A close look at the actual content of the proposal should prove helpful in assessing the validity of this criticism.

First of all, it should be noted that the unicameral structure of the Parliament is preserved in the proposal. In other words, a bicameral structure is not preferred and Turkey's circumstances and overall tendencies in comparative cases are considered in the draft. Having a unicameral or bicameral parliament must be considered as a political-institutional preference.[14] Turkey experienced the system of a bicameral parliament during the periods of *Kanun-i Esasî* (the first constitution of the Ottoman Empire) in 1876, and of the 1961 Constitution; that system was subject to significant criticism during the period of political instability in 1961-1980.

In current practice, the number of transitions from a bicameral system to a unicameral system is higher than the other way around.[15] Apparently, such overall switching to a unicameral system overlaps with a tendency towards a presidential system. Notwithstanding the lack of scientific evidence on the subject, it could be said that many countries governed by presidential systems (particularly in Latin America), have changed their systems of government to unicameral legislatures as the need for stability and fast decision-making has prevailed.

Article 2 in the draft proposes significant amendments regarding the structure of the Parliament. Accordingly, the number of representatives is increased from 550 to 600. Article 3 seeks amendments in the election of lawmakers. The age of eligibility to be elected as a lawmaker is lowered from the current 25 to 18; therefore, the modification paves the way for the younger generation to become parliamentary members. Another rectification in the article concerns the eligibility conditions for deputies. Accordingly, the provision seeking the completion of compulsory military service is removed and candidates are merely required not to have any obligation for compulsory military service. Therefore, persons who have officially postponed or been exempted from compulsory military service will become eligible for parliamentary membership.

Various modifications are made in articles that regulate parliamentary supervision over government, or requests for information from government. Accordingly, Article 7 proposes the ways to obtain information and audit through written question, parliamentary investigation and general debate. In contrast, information is currently obtained through parliamentary question, parliamen-

tary inquiry, general debate, parliamentary investigation, and motion of no confidence after requests for information from government.

Factors Likely to Affect the Legislature's Majority Support to President

Electing a president and a legislature simultaneously is one method suggested to prevent a deadlock between the legislative and executive branch

Put simply, the nature of the relation between the legislative and executive branches characterizes a system of government. The authorities and duties of an executive body on a legislative branch, and *vice versa*, determine this nature. A system nears parliamentarianism if one of these branches affects the other excessively; on the other hand, a strict separation of the executive body from the legislative body indicates a presidential model. In this sense, one must say that the proposal on constitutional amendments introduced by the AK Party to the Grand National Assembly may be considered a typical presidential model.

The motion for constitutional amendments presented to the TBMM[16] includes critical points about the factors that can affect the legislature's majority support to the President in a presidential system. Such critical points may be explained through two factors, one of which is the timing of presidential and parliamentary elections, and the other is the method of electing the President.

The Timing of Presidential and Parliamentary Elections

A key feature of a presidential system which ensures a strict separation of powers is the formation of the legislative and executive branches through separate 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 separately, becomes important.[17]

Research reveals that electing a president and a legislative body on the same day determines the political majority that dominates a parliament. There are two different approaches with regard to the effect of the timing of elections on a legislative majority's support to president: The first group advocates that concurrent elections of a president and legislature will create a problem in regard to the separation of powers, and that elections on the same day may lead to having a president and a legislative majority of the same political view.

The second approach asserts that separate elections increases the likelihood of having a president and a legislative body of different political views. This likelihood becomes more evident in a two-round presidential election.

Electing a president and a legislature simultaneously is one method suggested to prevent a deadlock between the legislative and executive branch. This approach is based on the hypothesis that a president backed by a legislative majority will control the legislative body if both are elected concurrently. Although such an interpretation is correct to some extent, a multi-party parliament is always a likely outcome of a concurrent election.

An in-depth examination of comparative examples reveals that the president, as the leader of the executive branch, is granted the authority for rule-making in order to let him/her materialize his/her policies

The draft that seeks modifications in the Constitution stipulates the election of the president and legislature on the same day. In presidential systems, a legislative majority and 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 parliamentarianism, 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 make significant contributions to the stability of the political system.

The Method of Electing the President

Another factor that can determine a legislative majority's support to the president is the method of electing the president.[18] Researches show that whether a president is elected in one-round or two-round voting affects whether legislators will come from the same political majority as the president. Both models have their advantages and cons. First of all, one-round voting prevents arbitrary outcomes, but prompts questions about the democratic legitimacy of candidates, who can be elected by receiving quite low votes. On the other hand, in the run-off voting model, only two candidates, who receive the highest votes in the first round, continue to the second round. Thus, in order to preclude political polarization and fragmentation, voters of different political tendencies must agree on one candidate. In some countries with a two-round voting system, popular figures from outside politics may become presidential candidates and even win elections.

Thus, it is seen that the AK Party's proposal adopts the run-off voting system and the proposal is not vastly different from the current procedure in force. According to the draft, the president is elected in a two-round ballot. If an 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 reconcile on a candidate who receives the majority of votes – even if s/he wins an 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. For instance, in the November 03, 2002 elections in Turkey, the Young Party leader, Cem Uzan, who was not a politician, won 7.25 percent of votes owing to a popular discourse.

Presidential Executive Orders

An in-depth examination of comparative examples reveals that the president, as the leader of the executive branch, is granted the authority for rule-making in order to let him/her materialize his/her policies. In the case of the U.S., a president is not directly granted such power; however, presidents exercise this authority based on Article 2 of the U.S. Constitution. While 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 laws passed by the legislature.[19]

The AK Party proposal grants executive power to the president. In the scope of a planned amendment to 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 regarding executive orders are listed in the same article as follows:

- Executive orders may not regulate fundamental rights, the rights and duties of individuals stated in Chapters 1 and 2 of the Constitution, or the political rights and duties stated in Chapter 4 of the Constitution.
- The president may not issue an executive order on issues solely regulated by laws as stipulated by the Constitution.
- The president may not issue an executive order on matters expressly regulated in the law.
- If any provision of a presidential executive order contradicts the law, the provisions of the law shall override the order and remain in effect.
- If the Grand National Assembly of Turkey passes a law on an issue on which the president may have issued an executive order, the law shall override or annul the executive order.

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 exemptions allay the major criticism about executive orders, i.e. that they enable the executive branch to *de facto* seize rule-making power, the legislature's most fundamental characteristic. Executive orders are considered to have a status

Deputy President of the AK Party Group in the Parliament, Mustafa Elitaş, presents the constitutional amendment proposal to the Speaker of Parliament, İsmail Kahraman, on December 10, 2016.

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similar to the existing Council of Minister's authority to issue statutory decrees. However, currently, the Council of Ministers may use statutory decrees pursuant to an empowering act of the TBMM. On the other hand, in the proposed amendment, and subject to the above exemptions, the president may use executive orders without an empowering act of the TBMM.

Notwithstanding, it must not be forgotten that presidential systems are based on hard separation of powers. Furthermore, the presidency, being an executive position; as such for it to need authority from the parliament to that end contradicts with the spirit of the system. At this point, the major criticism of the draft would be that the limits of executive orders to be issued by the president appear to be not clearly set in the proposal.

An arrangement in Article 9 of the proposal sheds some light on this ambiguity. That is, probable executive order infringements on fundamental rights and freedoms, which we often see in comparative samples, can be prevented. The draft clearly underlines that executive orders issued by the president cannot be about individual rights and duties, or about political rights and duties. However, the president is granted permission to issue executive orders concerning social and economic rights and duties addressed in the 3rd clause of Chapter 2 of the Constitution.

Considering all of these factors, presidential executive orders will be regulatory on the presidential bureaucracy, i.e. the executive body. Another complemen-

tary clause is included in Article 11 of the proposal. Accordingly, the appointments of vice presidents and ministers will be possible with the issuance of presidential executive orders. The number of ministers who will be appointed from the Parliament or from outside, the names of ministries, organizational structures, duties and authorities will be determined by executive order of the president. In this respect, it may be said that any kind of regulations with regard to ministries will be handled by means of executive orders.

The draft also clears the way for changes in the central administration by means of presidential executive orders. Thus, presidential executive orders will present substantial opportunities for organizing the public administration and making necessary reforms.

Mutual Termination

The proposal tries to find a remedy for potential gridlock between the legislative and executive branches; to this end, the draft suggests that the legislature and the president may decide for mutual termination, which means the simultaneous renewal of elections for both bodies

The Achilles heel in presidential systems is that they may lead to systemic deadlocks because of the hard separation of powers they prescribe, where neither the legislative nor executive branches can abolish or annul the other. The proposal tries to find a remedy for potential gridlock between the legislative and executive branches; to this end, the draft suggests that the legislature and the president may decide for mutual termination, which means the simultaneous renewal of elections for both bodies. In other words, the president will not have a unilateral power to abolish the parliament. A mutual termination power is introduced, which requires new parliamentary and presidential elections to be held on the same day.

By looking at comparative examples, one must say that the proposed arrangement is not encountered very often. The authority to terminate is usually granted to presidents *ex parte*. Regime crises occur frequently in systems that grant the authority for unilateral termination (Latin America countries in particular). The risk increases when presidents are elected from among non-political actors.[20] In practice, a parliamentary majority composed of different political traditions motivates the use of termination power. Such systems lack a constitutional mechanism to eliminate this negativity.[21] There are only a few countries where either the president or the legislative body has termination power. At present, only the constitutions of Peru, Ecuador and Venezuela grant their presidents the authority to abolish the legislature.

Article 12 of the draft regulates the power of mutual termination under the heading of "The renewal of the Grand National Assembly of Turkey (TBMM) and Presidential elections." The article states that the Grand National Assembly may decide for the renewal of elections with a three-fifths (3/5) majority of parliamentary members, and that the TBMM and presidential elections are to be held simultaneously. If the president decides for the renewal of elections, the parliamentary general elections will be held simultaneously with the presidential election. And if the parliament rules for the renewal of elections during the second term of the president, the president may once again be a candidate for presidency. Both the parliament and the president will sustain their authorities until the new bodies are elected. The term of office for the parliament and the president, whose elections are renewed simultaneously, will be five years.

With this arrangement, both the president and the TBMM have the power to renew elections. Therefore, the draft does not grant the president a one-sided authority to abolish the parliament, but tries to prevent arbitrary termination by enabling simultaneous mutual termination. However, under which conditions both elections will be renewed remains unclear.

Criminal Accountability of the President

The double-headed character of the executive branch in parliamentary systems renders the president unaccountable but regards the Council of Minister 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 directly necessitate the accountability of the president legally as well as politically. The accountability of the president mostly refers to criminal liability. The president's accountability may take the form of annulment of his or her tenure, which is considered a means of "checks and balances." Also referred to as "impeachment," the annulment of the presidency is regulated in Article 10 of the proposal.

According to Article 10, 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 decides for the launch of a probe in a secret ballot of three-fifths of the total number of members.

If a decision to launch an 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.

Many countries governed by presidential systems (particularly in Latin America), have changed their systems of government to unicameral legislatures as the need for stability and fast decision-making has prevailed

The report shall be submitted to the Speaker of the TBMM, and distributed to the General Assembly within ten days of submittal, and will be debated within ten days after its distribution. If deemed necessary, a decision 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 for a crime that would violate the terms of eligibility for office.

As noted, the proposal suggests three stages of prosecution for the alleged criminal liability of the President. Accordingly, first a motion of the absolute majority shall be presented to the Assembly; and then an investigation may be launched by three-fifths of the total number of members; and lastly, following the investigation, by the two-thirds of the total number of members, the president shall be put before the Supreme Court. A comparison between the current system and the proposed draft reveals that putting the President on trial is subject to tougher procedures. This appears acceptable considering that the proposed system is a presidential model. In the existing system, the president is the unaccountable wing of the executive branch and subject to trial only in the case of treason. Therefore, because the accountability of president is broadened under the proposal, and s/he is in charge of the whole executive branch, the prosecution of the president is made more difficult; this appears reasonable. 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; therefore, the criminal liability of the president is also expanded.

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 the vice presidency. In this new sys-

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tem, the President is the lead actor of the executive branch, but two critical posts grab one's attention as well: those of vice-presidents and ministers.

The vice-presidency is one of the critical elements of the presidential office in many presidential systems;[22] if the president is removed from office for any reason, the vice president has the authority to act as president.

Article 11 of the proposal regulates the vice-presidency under the heading of "Vice-Presidents, Acting for the President and Ministers." Again, by looking at 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 those found around the world. According to the proposed arrangement, if the presidential post is vacated for any reason, the vice-president becomes the acting president and exercises all his/her authorities until a new one is elected. Moreover, if the president cannot fulfill his/her duties for any temporary reason, such as sickness or travel abroad, the vice-president acts for the president. However, if there is more than one vice-president, as suggested in the proposal, there are ambiguities that should be clarified.

In the proposal, the procedures for electing the vice-presidents differ substantially from those seen in comparative examples. In many countries governed by a presidential system, the vice-president is elected together with the president on the same day. The vice-presidency exercises the powers of the president, if necessary; therefore, regulating the vice-presidency post is critical in terms of the democratic legitimacy of the position. At this point, the proposal seems to adopt the method of appointment rather than election. In our opinion, the legitimacy of vice-presidents is associated with that of the president elected by popular vote, according to the proposal. Therefore, the draft does not see any harm in the presence of a post that is directly appointed by the president, accountable to the president, and removed by the president, if necessary.

Other critical posts important for the president in order to fulfill his/her authorities and duties as the executive body are the "ministries." The draft regulates ministers together with vice-presidents under the same heading. Min-

isters 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 11 in the draft, both vice-presidents and ministers are subject to criminal liability. The proposal seems to adopt the same procedure in reference to their liabilities.

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.[23] Ambassadors, governors, central bank chairman, etc. are among a few examples of such officers. In these instances, the approval of the legislature is required to confirm the appointments the president makes.

In the proposal, one of the important topics on the system of government is the authority granted to the president for the appointment of high-ranking public officials. However, Article 9 of the proposal does not clearly state who these officials are. Nonetheless, it is possible to make a guess by examining some previous legal regulations. For instance, according to Article 2, number 3149, "the Law of Raising Top Level Administrators,"[24] which was established in 1985 and later quashed by the Constitutional Court, these officials are: 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, the president could potentially appoint the above-mentioned officials considering that the president is endowed with executive power.

The authorities granted to the president must be admitted as critical in order to put the policies of the head of the executive body into effect. In this sense, the proposal is in harmony with examples around the world. However, differently from other examples around the world, the approval of the legislative branch is not required to confirm these appointments under the current draft proposal.

Conclusion

Prepared and submitted to the Grand National Assembly of Turkey by the AK Party and the MHP, the draft is composed of 18 articles. It proposes a single-headed executive branch, and eliminates the deadlocks and defects of the

parliamentary system currently in force. To this end, it appears that the draft adopts a presidential system model; however, the model is tailored to Turkey's needs. First of all, the proposal disproves the arguments the opposition makes against a presidential system, such as federalism and bicameral legislature, and preserves the unitary State and a one-chamber parliament.

The draft also includes institutional regulations to allow "checks and balances" among the legislative, executive and judicial bodies. In this scope, the legal effect and status of presidential executive-orders before laws, the power of mutual annulment granted to the president and the parliament, and the broadening of the scope of the president's criminal liability are critical "checks and balances."

In the next stage, the president will expectedly hold a national referendum on the draft following the deliberations of the Grand National Assembly. Thus, it is not easy to predict whether or not the changes proposed in the draft will be materialized. For the first time, however, owing to this proposal, Turkey is engaging in a real debate about the presidential system. A discreet discussion on the subject has continued in the political arena for decades, but now the presidential system is being debated in a tangible way. Therefore, two valuable gains are highlighted with the draft. The first is that the system of government now rests on a concrete context, and perhaps for the first time, the draft ensures that advocates of the parliamentary system see the problems inherent in that system. The second is that although two parties contributed to the process of composing the draft, a countrywide environment of discussion and conciliation has been achieved. Time will tell if these developments will put an end to the debates on the system of government in Turkey.

Endnotes

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10. "Çiçek: Cumhurbaşkanlığı Seçiminde Sorun Yok," *CNN Türk*, (April 7, 2014).

11. Özbudun, "Başkanlık Sistemi ve Türkiye," p. 12.

12. The AK Party lacks a qualitative majority to directly amend the Constitution, but has the opportunity to take it to a national referendum if 330 lawmakers vote "yes" on it. The AK Party needs an additional 14 votes to reach 330. The MHP has 40 seats in the Parliament. So, their cooperation is essential.

13. Serdar Gülener, "Cumhurbaşkanlık Sistemini Gerçek Kılan Uzlaşma," *Star Açık Görüş*, (December 4, 2016).

14. Kemal Gözler, *Anayasa Hukuku Genel Teorisi*, (Bursa: Ekin Yayınevi, 2011), Vol. 1, p. 764-765.

15. Gözler, *Anayasa Hukuku Genel Teorisi*, p. 765.

16. Text used in assessments to be made in the next sections, see "Türkiye Cumhuriyeti Anayasası'nda Değişiklik Yapılması Hakkında Kanun Teklifi," retrieved October 13, 2016 from http://www2.tbmm.gov.tr/d26/2/2-1504.pdf.

17. For assessments on the subject, see Serdar Gülener, *Başkanlık Sistemlerinde Denge ve Denetleme*, (Ankara: SETA Yayınları, 2016), pp. 17-19.

18. For assessments on the subject, see Gülener, *Başkanlık Sistemlerinde Denge ve Denetleme*, p. 19.

19. Gülener, *Başkanlık Sistemlerinde Denge ve Denetleme*, p. 54.

20. Miguel Carreras, "Outsiders and Executive-Legislative Conflict in Latin America," retrieved May 12, 2015 from http://miguelcarreras.com/documents/paper_LAPS_Carreras.pdf.

21. Serap Yazıcı, *Başkanlık ve Yarı başkanlık Sistemleri: Türkiye için Bir Değerlendirme*, (İstanbul: Bilgi Üniversitesi Yayınları, 2013), p. 53.

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

23. Gülener, *Başkanlık Sistemlerinde Denge ve Denetleme*, pp. 61-62.

24. Official Gazette No. 18640, publication date: January 19, 1985; Ahmet Ünlü, "Yeni Düzenlemeye Göre Üst Düzey Kamu Yöneticilerinin Atama Usulü Nasıl Olacak?," *Yeni Şafak*, (December 12, 2016).

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