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Legal Profession in Different Legal Systems – Türkiye's New Governmental System: Presidential System. Evaluation of the Old Parliamentary System and the New Presidential System from historical, political and legal perspectives

Abstract

Türkiye transitioned to a presidential system of government in 2017, ending the parliamentary system that had been in place since 1876. The debate for the transition to the presidential system was based on long-standing political, economic, and social issues. After the current government published the demand of systemic change, society was divided into dissidents and supporters. Those who did not support the idea criticized the Latin American model Presidency system, while those who supported the idea emphasized that the government would implement the Turkish type of Presidency system. Turkish citizens approved the transition to the Presidency system by a very small margin in the 2017 Presidential System referendum. By then the new presidential system, which has been in effect since 2018, has been implemented, put into practice and the results have been obtained. Therefore, it is appropriate to make adequate comparisons between the old and the new system at the moment.

The first part of the paper will try to introduce the historical background of political systems in Türkiye. The second part will describe governmental systems in general and the way of their functions. The paper will continue to evaluate the constitutional changes in 2017 and its effect on the Turkish institutions. The conclusion will sum up the paper's intention. This article aims to introduce the transition process of Türkiye from parliamentary system to the Presidential Government System from historical, legal and political perspectives.

Key words: Türkiye, Presidential System, Parliamentary System, Constitutional Amendment, Governmental System

Introduction

A Brief History of Türkiye's Parliamentary System

It is critical to look at the legacy that Türkiye² received from the Ottoman Empire when considering the origins of the *Turkish parliamentary system*. The Ottoman Empire is known for its repetitive, monotonous, and monarchical traditions, yet the empire has undertaken significant constitutional amendments to keep up with modern developments and modernize the state (23rd of December 1876)³. Restricting the power of the emperor and increasing the function of the parliament can be given as examples. Despite the fact that constitutional amendments were made in the name of modernity, it was practically experienced that the emperor's authority was limited only on the paper. Although the changes could not be achieved, the people's awareness that even the emperor would face such limitations served this objective and helped open the door for the appearing of new ideas, monarchy opponents, and republican sympathizers into society. From the late Ottoman period to the republican period,

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² The President Recep Tayyip Erdoğan has asked the international community to recognize Turkey's name as Türkiye. Starting from June 1st, 2022, the UN announced that they will recognize Turkey as it is in Turkish language Türkiye. Erdoğan stated that "The word 'Türkiye' represents and expresses the culture, civilization, and values of the Turkish nation in the best way." Therefore, since it is internationally recognized now this paper will mention Turkey as Türkiye.

³ Kanun-i Esasi The Constitution of 1876.

there was no actual political legacy, but these activities at least contributed to the emergence and growth of contemporary political concepts like representation, parliament, opposition, and even national sovereignty, which are the cornerstones of constitutional-democratic politics. (Erdogan,2003)

After the collapse of the Empire (1922), the Turks, who had been subject to a monarchy during the Ottoman Period, made their decisions in favor of modernization and the parliamentary system (29th of October 1923). The presidential system was an option for the Turks when they abolished the monarchy in place of the parliamentary system. The transition to the Republican regime did not result in any changes to the political system, despite the fact that the new regime is appropriate for the presidential system. Turks made a decision to keep the parliamentary system in place. From 1877 to 2017, eventually 140 years of parliamentary system experience was practiced. (Gözler,2000) On the other hand, when the Turks transitioned to the Republican government, the Republic was unable to demonstrate the features of a complete parliamentary system. Because rapid decisions had to be made in order to revolutionize the most essential societal growth components at the time such as agriculture, industry, education, and employment. Therefore, the Turkish political system remained mostly unchanged until the end of 1980. Discussions on changing the government system for the first time in Türkiye started in the 1980s. After the 1980s, it was claimed that the presidential or semi-presidential systems were preferable for Türkiye's socio-cultural structure and history of democracy because the Parliamentary regime was unable to resolve the government's obstructions. (Ay,2004) Although the previous governments attempted to restructure the government up until the early 2000s, these attempts were unsuccessful. The biggest change regarding governmental system happened in 2007. The system was amended when it was agreed that the President appointed by the Parliament would be elected directly by the citizens. Eventually Türkiye transitioned from the parliamentary system which was in force during the final years of the Ottoman Empire to the presidential system ten years later, in 2017.

A new governmental system which is known as the *Turkish type of Presidential Presidency System* was officially and de facto implemented in Türkiye with 51.18% of the vote as a result of the constitutional amendment made with the referendum held on 16th of April 2017.

Governmental Systems

According to the type of interaction between the institutions that carry out state responsibilities, government systems are categorized in constitutional law. (Karatepe,2013) The three basic governmental institutions recognized by modern constitutions are the legislative, executive, and judicial branches. (Tezic,2012)

The political systems that are directly or indirectly relevant for political decision-making and the interactions between such institutions constitute a system of government. In a more narrow manner, the political system delivers choices that are legally enforceable for the rest of society.

The parliamentary system and the presidential system are the two categories under which separation of powers-based governance systems are generally classified. The degree of separation between the legislative and the executive determines the separation in question. The presidential system is characterized by a more rigid division, while the parliamentary system is characterized by a softer separation. Additionally, there are semi-presidential practices that combine these two systems. The Anglo-Saxon realm is where both the parliamentary and presidential systems originated and spread. (Al,2020)

To have a better understanding on the comparison of presidential and parliamentary system political scientist Linz explains it as:

	Presidential System	Parliamentary System
Character of democratic legitimation	Dual	Single
Term of office	Rigid	Flexible
Accountability	Low (no re-election)	High (re-election)
Identifiability	High (personalization)	Depends on personalization of political culture
Power Distribution	Winner Takes All	Coalition Government allows for better representation
Character of electoral game	Zero-Sum	Positive Sum
Political style	Delegative Polarizing Symbolic (Head of State)	Responsive Accomodating Issue-oriented
Political socialization of President	Potentially an Outsider	Compatible with other political forces (parties)
Character of rule	Stability under certain circumstances	Instability under certain circumstances
Succession	Vice-President (sometimes)	Within power distribution among parties or new election
Compatibility with party system types	Only with small number, non-polarized and structured party systems	With most party system types
Type of leadership	Personalized	Personalized and/or party oriented
Compatibility with segmented societies and/or federal states	President can serve as symbol of unity of state	Options of power sharing by coalition building
Position of military (asgrantor/defender of state)	Danger of deligitimization of a person	Danger of deligitimization of a parliamentary body

Table 1: Parliamentarism and Presidentialism compared (Linz, 1994)

The most obvious difference between the parliamentary and presidential systems is that in the parliamentary system, the only institution and owner of democratic legitimacy is the parliament. The executive consists of the legislature, and the formation and continuation of the government depends entirely on the confidence of the parliament. There is no specific management time guarantee. On the other hand, in the presidential system, the executive is determined directly by the people, not by the legislature. Executive power is vested in a single person elected by the people, not in the cabinet appointed by the parliament. The president, who has important constitutional powers, is elected by the people for a fixed term. A fixed term of office is envisaged in the presidential system. (Al,2020)

The parliamentary system and the presidential system have been widely discussed in academic studies, and both systems' advantages and disadvantages have been outlined. These studies largely focus over how democracy, freedom, and basic rights relate to things like

political involvement, political parties, political stability, income level, income distribution, and political institutions. According to empirical data from the studies, the parliamentary system is superior to the presidential system in terms of ensuring the sustainability of the democratic regime. It has been observed that parliamentary-based nations experience fewer military coups. (Özbudun,2005) Additionally, studies have found that countries with parliamentary systems of government had greater income distribution. (Bagece,2017)

On the other hand, the administrative stability of the system, its strong and effective leadership, and its quick decision-making capacity are some of the advantages of the presidential system that are frequently cited. There is a general assumption that the presidential system promotes stability (Linz, 1990). In the presidential system, the executive does not act as a board and has a fixed term of office, which gives important benefits in terms of promoting administrative stability. The presidency system's requirement for a specific amount of management assurance, particularly in emerging nations, may help to combat administrative instability. However, there are some who argue that the flexible mandate provided by the parliamentary system is more preferable for democracy, rather than the fixed term of office provided by the presidential system, even though the executive (president) is in office for a specified period of time provides significant advantages in terms of administrative stability. (Linz,1990)

Turkish Type Presidential System and Basic Features of the New System

Over the years previous governments in Türkiye called for a political system change, but the Turkish people rejected this demand with a strict and certain decision. On the other hand, the current government went a step further and submitted this demand to a referendum. Türkiye, according to the current government, is one of the nations dealing with instability in an unstable region (Turgut, 1998) and a strong executive branch is the only way to overcome this issue. The current government stated that the presidential system is the only solution to take quick and effective decision. Furthermore, the issue of double headedness in the executive will be solved along with the presidential system, according to those who support it, and possible political crises will be avoided.

With the constitutional change approved by the Turkish Grand National Assembly on January 9, 2017, the first legal framework for the Turkish presidential system was created. In the abovementioned amendment, a system was defined as unique to Türkiye and the “Turkish type of Presidential Presidency System” was defined in place of the term "Presidential System." (Altun,2017) With the adoption of the regulation, several constitutional amendments were made, directly impacting things such as presidential elections, reelections, executive duties, tools for the legislature and executive to exercise mutual control, the president's ability to issue executive orders, his criminal liability, and his affiliation with a political party. In more detail constitutional amendment includes:

- 1. The age to be elected as a deputy was lowered from 25 to 18,*
- 2. The number of deputies was increased from 550 to 600,*
- 3. The way has been opened for the law proposal to be made by the deputies instead of the government,*
- 4. Presidential elections and parliamentary general elections to be held every 5 years and on the same day,*
- 5. In case the President or the parliament decides to renew the election, both elections are held at the same time,*
- 6. The President's affiliation with his party should not be cut off,*
- 7. Granting the President the authority to issue decrees,*

8. *Granting the President the authority to appoint senior public officials,*
9. *Granting the President the authority to make administrative regulations regarding institutions by presidential decree,*
10. *Giving responsibility to the Presidency for its actions and operations,*
11. *Giving the authority to prepare and present the annual budget to the President,*
12. *Lifting the martial law and rearranging the issues related to the state of emergency,*
13. *Adding the expression “impartiality” in addition to the expression of judicial independence,*
14. *The demilitarization of the judiciary,*
15. *Reorganization of the High Council of Judges and Prosecutors (venice.coe.int,2017)*

Political Criticism Towards the New Presidential System

The President's duties received the majority of public criticism of the new political structure. As it can be seen on the articles with the system reform, the executive branch's dualism was eliminated, and the President now holds both the Prime Minister's and the President's responsibilities in one hand. The President's authority to issue decree laws, his relationship with the judiciary and his determination power over the legislature have been criticized over the *separation of powers*.

On the other hand, criticisms were made about the new system, that the President could not be adequately supervised by the parliament despite his increasing functions, and that the President's supervision by the judiciary is not possible in practice. Moreover, the President's continuing to preside over his own party took its place among other political criticisms. In the old system, it was essential for the President to be *impartial and independent* from all political parties, but this article was shelved with the new system. Now the President can be the leader of a political party and he can continue to make decisions on behalf of his party. This abolished the President's equal distance from all political parties.

Before the constitutional amendment, the authority *to take decisions in extraordinary situations* was in the hand of the parliament, but after the constitutional amendment, this authority was given to the *Council of Ministers*, which convened under the chairmanship of the *President*.

Another political criticism is the President's constitutional right to appoint senior public officials. With this modification, the president's appointments were criticized for being perceived as utterly biased and unfair such as university rectors.

Constitutional Arrangements Regarding the Judiciary in the New System

One of the most outstanding aspects of the judiciary in the new constitutional amendment is undoubtedly the position of the courts. In Article 9 of the 1982 Constitution, the phrase *impartial* was added to the phrase that the jurisdiction of the trial is exercised by independent courts on behalf of the Turkish Nation.

There are three types of courts in Türkiye that can exercise judicial authority: judicial, administrative, and military. The military was no longer in charge. Except for disciplinary courts and tribunals entrusted with trying troops in times of war, military courts have been abolished as a result of the change made to Article 142 of the Constitution. (Koc,2021) The process for choosing the Council of Judges and Prosecutors members changed, and part of the members were now chosen by the parliament. The reason for this shift is that the prior CJP members were chosen by their fellow members, which allowed for divisions and factions within the judiciary. On the other hand, the President's tradition of choosing some Supreme

Court justices persisted. Additionally, the CJP members were chosen for terms of four years, and those whose terms had already ended were re-elected.

One of the criticisms is that the judiciary's independence will be compromised by the Assembly and President choosing the Constitutional Court's members, and that over time, the President will choose the majority of the court's members.

Conclusion

The separation of powers and the rule of law are the foundations of both the parliamentary and presidential systems, which are the dominant forms of governance in the 21st century. The most significant issue raised while discussing Türkiye's presidential system is "authoritarianism, dictatorship, and the possibility of polarization and one-man rule." The opposition parties and the vast majority of the population still continue to oppose the presidency system, as can be observed. I would like to point out that the presidential system will endanger the future of democracy in societies where democratic institutions are not rooted, the culture of democracy is not deepened, and the political process is prone to polarization. In 2023, Türkiye will celebrate the 100th anniversary of its republic while holding its second presidential election. No matter what choice is made as a result of this election, Türkiye's significant political influence and history will remain. In my opinion Türkiye has had serious political issues in the past, particularly with regards to upholding a stable democratic regime. It is, however, quite challenging to claim that the legislative system is to blame for this. Türkiye attempted to resolve its issues by supporting the president and ultimately implementing the presidential system. Previous governments had no interest in making the legislature stronger. Since Türkiye has switched to the presidential system, the discussion should shift from ineffectiveness of the parliamentary system to the weak points of the presidential system.

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