

## Constitutional changes in Turkey: A presidential system or the president's system?

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On 21 January 2017, following two weeks of tense debates, the Turkish Parliament adopted a controversial 18-article constitutional amendment package aimed at transforming Turkey from a parliamentary governance system to an executive presidency. A nationwide referendum on the changes will take place later this spring. If adopted, it will give the president unprecedented powers, including an increased influence over parliament and the courts – two main sources of checks and balances. Separation of powers and judicial independence are the cornerstones of democratic societies and such a development is likely to raise concerns from the EU. This risks worsening an already problem-fraught relationship.

### *Why a presidential system?*

Turkey has had a parliamentary governance system since the Ottomans established the first parliament in 1877. The idea of a presidential system gained real traction in 2014 when Recep Tayyip Erdoğan became Turkey's first directly-elected president. It gained momentum following the 15 July 2016 failed coup, with the support of Devlet Bahçeli, the Nationalist Movement Party (MHP) leader. According to Erdoğan and senior members of the ruling Justice and Development Party (AKP), an executive presidency would deliver greater stability and prevent future political crises as it would eliminate the possibility for a power struggle between the president and prime minister. While they also claim it would strengthen the independence of the judiciary and the system of checks and balances, based on the content of the amended articles this seems improbable. The package is broadly supported by all AKP representatives with little or no opposition. The Republican People's Party (CHP), the pro-Kurdish Peoples' Democratic Party (HDP), all main parties out of the Parliament, including the Islamist-leaning Felicity (Saadet) Party, Turkey's liberals, civil society and business organisations are strongly opposed, viewing it not only as a system change but also a regime change that risks bringing about one-man rule.

Without the support of Bahçeli, who originally opposed the idea, the AKP would have failed to muster the necessary 330 votes to pass the bill. Bahçeli's U-turn came about in the aftermath of the biggest rebellion against his leadership. The split in the party was visible during the debates. Of the MHP's 40 legislators, almost half rejected the bill. Deputy Head Atila Kaya resigned from the party. It is likely that Bahçeli secured political gains both before and post-2019, including ministerial posts in return for his support.

### *Key elements of the executive presidency*

If adopted, the changes will be implemented in 2019, or earlier if the Parliament decides to hold early elections. The president would be allowed two five-year terms. This means that Erdoğan could remain in power until 2029 or even beyond if there are early elections before the end of his last term. The most controversial articles are as follows:

- Article 7: This provision allows the president to remain a member of a political party, and even the chairperson. Under the current constitution, the president cannot be affiliated to a political party in order to preserve their impartial status. In the new system, the president may run the party as well as the country. This raises concerns about the creation of a party state. Moreover, political party chairmen have a key role in deciding electoral lists. With the new constitution the president may also choose and control the majority of parliamentarians in the event that the president's party also has the majority in the parliament. Thereby the president may control both executive and legislative bodies. This is very problematic in terms of the separation of power.
- Article 8: All executive power currently held by the prime minister and ministers will be transferred to the president. The prime minister's office will be abolished and the president will be the sole authority using the executive power as head of state. The president will also be allowed to issue decrees. Although the scope of this right is narrow and laws will continue to take precedence over decrees, this will give the president a limited legislative power.

- Article 9: A new process will make impeachment almost impossible, making the president less accountable. While the signature of a simple majority will be required to start proceedings, a three-fifths majority will be needed to create an Inquiry Commission. If the Inquiry Commission decides to send the president to the Supreme Court, it will require the backing of a two-thirds majority.
- Article 10: The president can appoint one or more vice-presidents. While the vice-president(s) will not be elected, they will be able to rule the country and use all of the president's powers when the president is absent, seriously ill or in the event of their death.
- Article 11: The president has the right to dissolve the Parliament. The downside of this would be that in all cases both presidential and parliamentary elections are renewed simultaneously. Moreover, the Parliament may also decide on early elections with a three-fifths majority.
- Article 14: This gives the president significant power over the Council of Judges and Prosecutors. The president will directly and indirectly, through the parliament, play a central role in the selection of the members of the Council, which is a key institution in terms of judicial independence.

With these changes, the Parliament also loses the right to interpellation. Moreover, ministers appointed by the president will not require Parliament's approval and they will not be accountable to the Parliament.

Clearly a presidential system is not a bad thing *per se*. The AKP regularly points to the US as an example. However, there are big differences. The US system has a clear separation of powers. Neither the executive, nor the legislative bodies can terminate one another. Furthermore the US president has no control over his own party either. Moreover, independence of the justice system is very important in the US.

### ***Heading to a referendum***

Turkey has been under state of emergency rule since 20 July 2016. There has been an increasing clampdown on critics of the government while pressure on the media has intensified. Furthermore, the country has endured multiple terrorist attacks from both ISIS and the PKK. At a time when society is highly polarised and anxious, the environment is not tangible for such an important referendum. Turks are also grossly uninformed about the issue. According to polls, the majority of Turks have little knowledge of what they are being asked to vote on. Ultimately the vote is very likely to be about President Erdogan rather than the amendments.

With current support for an executive presidency at 43%, an AKP-MHP coalition is set to launch a nationwide 'Vote Yes' campaign. MHP dissenters (there are three who are very popular with the party's support base), along with CHP and the HDP will lead the 'No' vote. The state of emergency complicates the situation as rallies can only take place with official permits. Furthermore, given that the AKP controls the majority of the media, the opposition will be relying heavily on social media, which will be insufficient in terms of outreach. Given Erdogan's skills of convincing the masses and the unfair campaign environment, a 'yes' vote seems more likely. A 'no' vote would be a huge blow to Erdogan, but would probably not lead to early elections.

### ***The EU's reaction***

While the Council of Europe has raised its concerns and is already discussing the issue, EU leaders and institutions were rather silent in the run up to the vote in Parliament. The campaigning period is likely to bring more reactions and statements. However, at a time when EU-Turkey relations are already strained, with Turkey's membership negotiations *de facto* frozen, it is unlikely to have much impact. There also seems to be little interest from the EU in taking any measure that could risk the EU-Turkey migration deal. This will create further frustration with pro-Europe groups in Turkey. The EU should be more vocal, particularly as the new Trump presidency is unlikely to prioritise such issues. However, the EU's messaging should be done in a constructive rather than threatening way to avoid further tension with Ankara. It could also continue to provide a platform for democrats, journalists and civil society to raise their voices.

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