

## COMPARISON OF TURKISH PRESIDENTIAL GOVERNMENT WITH US SYSTEM: ANALYZE BASED ON CONSTITUTIONS

Zuriya Garayeva

(zuriye.babayeva@hotmail.com)

Ph.D Candidate

(Academy of Public Administration  
under the President of the Republic of Azerbaijan)

### Abstract

*There are three types of democratic republic governance forms: presidential system, where executive and legislative branches are elected by people, without any responsibility to each other; parliamentary system, where legislative branch or even more head of the state are elected by people, but government takes responsibility before parliament, semi-presidential system, which consists of the mixed properties of these two forms of government. Transition of these systems, particularly between presidential and parliamentary government forms, is one of the topical issues of recent times. The article is devoted to the comparative analysis of the presidential government applied on the proposal of the Justice and Development Party (AKP) with US sample. The aim of the study is to analyse the main features of this form of government in Turkey in the context of US government system and to demonstrate its results in terms of democracy. In this context, firstly the principles of the Turkish and US presidential administration forms had been examined based on constitutions, and then the comparative analysis had been conducted and probable results had been put forward. It is still unclear for many people what to expect from the so-called 'Turkish type of presidential system'. This analysis was based on the study of the sources related to the subject, the analysis of the results obtained, the analysis and synthesis of the arguments, and also the comparative analysis method.*

**Keywords:** *presidential government form, transition, Turkey, Justice and Development Party, USA*

### Introduction

Republican forms of government are parliamentary system in which executive and legislative powers possess to one person, presidential system in which these powers are separately independent, and semi-presidential system which involves principles of first two systems. One of the topical issues of recent times, both from experience and theoretical point of view is the transition to presidential type of government. Before 1980s, transition to parliamentary government was more prominent, and later this tendency changed towards presidential one. While the US system plays a precedent in this process, the results in the countries which are lack of opportunities making system as successful as American governance, are differed from expected ones and the authoritarian government of the executive has emerged. Despite the fact that the leaders of Turkey, such as Najmeddin Erbakan, Alparslan Turkes, Turgut Ozal and Suleyman Demirel, offered the transition to the presidential government, Recep Tayyip Erdogan carried out this process on April 16, 2017 with the support of the Nationalist Movement Party (MHP) leader Devlet Bahceli. Those who want presidential administration have been mostly representatives of the right wing in politics and have said that changes will create a successful governance.

### **Government system of Turkey**

Turkey had been governed with parliamentary system since 1924. The constitution of 1924, which has had a significant impact on the modernization of republic and national sovereignty concepts, contributed to the transition to a pure parliamentary system adopted by the constitution of 1961. Having removed unity of powers, the 1961 Constitution introduced a 'Westminister' parliamentary government system based on a soft separation of powers [2, 258]. However, different conclusions had emerged during the period of the constitution in the political history of Turkey, chaotic coalition governments had been launched. Coalition governments had resulted in a military coup after the third power of Suleyman Demirel. After the coup d`etat of March 12, 1971, the executive power was further strengthened and the Cabinet of Ministers was empowered to adopt a decree with force to the law. [8, 84-85] Thus, parliamentary governance has been abandoned from pure principles. From the second half of the 70s, it was even more difficult to protect stability. The political crisis led to the subsequent coup d`etat on September 12, 1980 headed by the Chief of the General Staff of the Turkish Armed Forces, Kenan Evren. After coup d`etat Kenan Evren was elected as president of Turkey [4, 145-146].

But with this constitution, the powers of the parliament and the government were less than the powers of the president. The executive branch with powerful president was strong than parliament. The strong influence of the Security Council on the drafting of the constitution and presence of Kenan Evren in the coup d`etat had led to a strong president [4, 149-150]. As a result, the form of government abandoned from the pure parliamentary administration in 1961. The only difference between previous constitution in the powers of the President regarding the legislature is about the president's ability to present constitutional amendments to the people's vote. Powers of president regarding to both executive and judicial branches were more than the previous period. This constitutional reform, which has changed 17 times until the 2017 referendum [5, 6], has raised the debate on the transition to the new system after it has been removed from the parliamentary system. Turgut Ozal is the first political leader to propose this idea. While being both prime minister and president, Ozal claimed that presidential government would lead to Turkey's rapid development [6, 276].

The debate over the transformation to the presidential one has been boosted since coming power of the Justice and Development Party (AKP) in 2002. A constitutional referendum was held in 2007 to adopt amendment about election of president by people [14, md.79], which resulted in the emergence of a double executive power and ultimately changed the direction of the parliamentary system, which was designated by the president. Within the framework of the amendments the duration of parliamentary elections has been reduced from 5 to 4 years. [14, md.77] In 2012, the presidential administration was brought up again by Prime Minister Recep Tayyip Erdogan. The AKP offered the Constitutional Reconciliation Commission a change in the government system that year. The attempted military coup in Turkey on 15 July 2016 brought the AKP closer to the MHP and led to the acceleration of the system change process.

51% of voters voted in favor of changes on April 16, 2017. A part of the package, which included 18 amendments were implemented immediately after the referendum, and other part after the November 2019 election. However, the date was changed and at the June 24, 2018 elections candidate of AKP and MHP Recep Tayyip Erdogan was the 12th president in the history of Turkey with 52.9% of the votes. The AKP has partici-

pated with the slogan "Strong Parliament, Strong Government, Strong Turkey". The AKP and the MHP participated in the elections under the name of "Republican Union", Republican People's Party (CHP), İyi Party and Saadet Party (SP) established "National Unity". The Great Union Party (BBP), which did not participate in the elections, supported the Republican Union, and the Democratic Party (DP) supported the 'National Unity' [10, 48].

With the constitutional amendment parliamentary government replaced with presidential one. The number of members of parliament increased from 550 to 600 and their minimum age lowered to 18. The president can issue decrees about executive. If legislation makes a law about the same topic that President issued an executive order, decree will become invalid and parliamentary law become valid. Parliamentary terms are extended from four to five years. Parliamentary and presidential elections will be held on the same day every five years, with presidential elections going to a run-off if no candidate wins a simple majority in the first round. This two branches can send each other to election. The independence and impartiality of the Court were also reflected in the constitutional amendments [13, 159]. Let's analyze the changes separately, based on the three branches of power.

The major change in the executive body was the elimination of the prime minister's institution, the conversion of the president to the chief executive being the head of both state and government and the forming new post of vice president. The president has the power to appoint and dismiss ministers and Vice President. With the change in 2017, the rule of disconnection with the party after the election of the president was eliminated. The President may issue decrees with the force of law on issues related to his executive powers. However, these decisions can not be adopted in relation to fundamental rights and freedoms, nationality, political rights. The new version abolishes any assembly control over the executive law making. Presidential decrees cannot be issued on topics that are clearly regulated by legislation. If there were to be a contradiction between the two, legislation would overrule presidential decrees. The president will be able to declare a state of emergency for up to six months and no longer require cabinet approval to do so. During the emergency case, the president will be able to issue decrees on fundamental rights and freedoms. President proposes fiscal budget to Grand Assembly 75 days prior to fiscal new year. It is approved by the Budget Commission within 55 days and is discussed at the General Assembly and comes into force from the beginning of the year. Budget Commission members can make changes to budget but Parliamentary members cannot make proposals to change public expenditures. If the budget is not approved, then a temporary budget will be proposed. If the temporary budget is also not approved, the previous year's budget would be used with the previous year's increment ratio. The opening of a parliamentary investigation may be requested by the absolute majority of the full membership of the parliament, concerning allegation of a crime connected with their office committed by the assistants of the President of the Republic and the ministers. The Assembly may decide to open the investigation by the secret vote of the three-fifth majority of its full membership. The parliament may decide to send the person concerned to the High Court by the secret vote of the two-thirds majority of its full membership. [13, 104-105]

President shall give message to the Assembly regarding domestic and foreign policies of the country; shall promulgate laws; shall send laws back to the Grand National Assembly of Turkey to be reconsidered; shall appeal to the Constitutional

Court for the annulment of all or certain provisions of laws and the Rules of Procedure of the Grand National Assembly of Turkey on the grounds that they are unconstitutional in form or in content; shall appoint and dismiss the high ranking public executives, and shall regulate the procedure and principles governing the appointment thereof by presidential decree; shall accredit representatives of the Republic of Turkey to foreign states and shall receive the representatives of foreign states appointed to the Republic of Turkey; shall ratify and promulgate international treaties; shall submit laws regarding amendment to the Constitution to referendum, if deems it necessary; shall determine national security policies and take necessary measures; shall represent the Office of Commander-in-Chief of the Turkish Armed Forces on behalf of the Grand National Assembly of Turkey; she shall decide on the use of the Turkish Armed Forces; shall commute or remit the sentences imposed on persons, on grounds of chronic illness, disability or old age; shall appoint half of the members of the Higher Education Council and university rectors [13, 104].

The functions of Parliament are making, changing, removing laws; accepting international contracts; discussing, increasing or decreasing budget (on Budget Commission) and accepting or reject the budget on General Assembly; appointing 7 members of HSYK and using other powers written in the constitution [13, md.87]. The age requirement to stand as a candidate in an election has been lowered from 25 to 18, while the condition of having to complete compulsory military service has been removed. Individuals with relations to the military would be ineligible to run for election.

Regarding the changes in the judiciary, Article 9 of the Constitution adds the word "impartial" after the word "independent". Supreme Board of Judges and Prosecutors (HSYK) is renamed to "Board of Judges and Prosecutors" (HSK) , members are reduced to 13 from 22, departments are reduced to 2 from 3. 4 members are appointed by President, 7 will be appointed by the Grand Assembly. Board of Judges and Prosecutors candidates will need to get 2/3 (400) votes to pass first round and will need 3/5 (360) votes of parliament members in second round to be a member of HSK. (Other 2 members are Minister of Justice and Ministry of Justice Undersecretary, which is unchanged). The President used to appoint one Justice from High Military Court of Appeals, and one from the High Military Administrative Court. As military courts would be abolished, the number of Justices in the Constitutional Court would be reduced to 15 from 17. The cause of this is eliminating of the rule about appointment one member by High Military Administrative Court and other one by High Military Court of Appeals. Consequently, presidential appointees would be reduced to 12 from 14, while the Parliament would continue to appoint three. [13, md.159] In addition, president has the power to appoint one-fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the Higher Court of Appeals. Military courts shall not be established except for disciplinary matters, a military court will be set up only for crimes committed by military servicemen in the war-time. [13, md.142]

Changes in Turkey after the 16 April 2017 referendum involves only these issues mentioned above. Some of those who are against the amendment had set up their non-campaign campaigns on fictitious allegations. These allegations are mainly due to the fact that the republic will disappear and the kingdom will be created and the unitary structure will be replaced by federalism. According to Article 1 of the Constitution, "the Turkish state is the Republic" and this rule can not be changed in any way. The most

appropriate form of government for the kingdom is a parliamentary system, and a monarchy can not be established through presidential government. For the application of the federal structure, not only executive administration, but also the legislature and the judiciary must also be divided into states. [7, 45-47] In short, none of these claims are the correct criteria for criticism.

### **Differences between presidential government of Turkey and US**

The US political system was adopted as an example when preparing a package of amendments on transition in government system proposed by AKP. However, new government has led to controversy as it has different features from the US system. The first of these differences is that in the United States, parliamentary and presidential elections are held at different times, with the fact that the two branches of the power are inevitable. The duration of both branches is different. President is elected for 4 years, House of Representatives is elected for a two-year term; the Senate is elected for a six-year term and 1/3 of them go out every second year. [12, md.1/2] By this rule, the majority of the House of Representatives and the President are likely to be from different parties, in the context of respect for the majority, the rights of the minority are protected. This is the basis of the democratic principles of the American system. In the system proposed by the AKP and the MHP, the parliamentary and presidential elections are held at the same time and the terms of office are the same [13, 77].

One of the factors that led to the president's influence on the parliament in this type of government is related to the political party structure. Being undisciplined of the US political party system, lack of tough organization is one of the reasons for parliament's independence. There was a tough ideological contradiction and polarization among political parties in Turkey while parliamentary system was applied. Therefore, it was difficult for parties in parliament to accept each other's proposals and delay their legislative activities. But with new government system will change structure of parties and make it similar with US one. President's affiliation to his party is criticized that it can also leads disciplined party system, while in the United States the president can not be a party leader. But it is not relevant to reality. Because, one who electing as president may not cut relations with party regardless the rule of officially disconnecting with party [7, 69]. The Parliamentary Electoral Code also adopted a rule that contributed to the leadership of party leaders. Thus, election regions with up to 18 MPs are perceived as one constituency, from 19 to 35 - two, 36 and more MPs are divided into three constituencies. So, the party chairpersons who make up the list decide who will be elected, and the elected MPs put their ideas out and fall under the influence of the leader. As a result, Robert Michel's system of "iron law of oligarchy" emerges. On the other hand, the reason for the establishment of a disciplined structured party in Turkey was parliamentary government and proportional type of voting system. The use of the presidential administration and the majoritarian election system can have a positive effect on Turkey's party structure. Because the consistency of the list determined by the leader of the party in the parliamentary elections based on the previous election system was important, and as a result party members were dependant of the chairman [11]. In the new electoral system, the possibility of voting for the personal reputations of party members may increase as the voter identifies this list.

In addition, in US list of candidates for parliament are determined with close and open elections at the first stage. At the close election candidates are determined by party

members, at the open elections candidates are elected by voters regardless its party affiliation. This pre-election stage relieves Congress members of the party's influence. As a result, candidates are elected for their personal reputation, not their party affiliation [1, 33]. Therefore, the party chairman and candidates do not know which candidate will be elected in the constituency. The reason for the existence of undisciplined party system in America is that. Candidates for MPs in Turkey are not determined within pre-election stage as in the United States.

Another aspect that differentiates presidential government of Turkey from the US model is having authority of president and parliament to send each-other to election. The reason for this innovation is the prevention of a government crisis that may arise when the president and the majority in the parliament belong to a different party and in other cases [3, 280]. Even in the United States, which is an ideal example of this governance, where consensus culture is formed, party democracy exists, the diverse political position of the president and the parliament can lead to double legitimacy, mutual claims between the government and parliament, and power struggles. In 1995 Bill Clinton from Democratic Party and Republican-controlled Congress did not even agree on the budget project [3]. President Donald Trump, who was fighting a Congress controlled by the Democrats for funding the construction of a US-Mexico border wall, all executive departments and federal agencies were shut for 21 days and it has broken Clinton's record with 26 day-period [15].

The other difference is that the parliament in the US consists of two chambers, while Turkish legislative is unicameral. Being bicameral of Congress leads reflecting the interests of the majority in the legislative process. Another reason for this is the representation of all states at the federal level in parliament. As a result, This system represents pluralism not majoritarianism [1, 53]. But unitary structure of Turkey doesn't make this factor important. The presence of decentralization in the United States also makes a difference in the scope of parliaments' powers. Thus the powers of the US Congress are lower than the parliaments of unitary states such as Turkey, as Congress distributed its legislative powers with the legislatures of the states.

In the new system offered by the AKP, the president's own powers without need of parliament confirmation are carried out, but in the United States with the consent of the Congress. International obligations in the form of US contracts, appointment of ministers, appointing senior officials in the state apparatus are in the form of "Senate's advice and consent". When ratifying international treaties, there is a need for consent of 2/3 of the members of the Senate [12]. The Senate examines those who will be appointed, interviews with them, and gives opportunity to the most worthy ones. In Turkey, these powers are directly executed by the president. Although the president and members of the Supreme Court in the US are appointed by the president, the Senate's approval is important [12]. Turkish president appoint 6 members of "Board of Judges and Prosecutors", members of Constitution Court. There is a difference in the appointment of the vice-president. In America, the vice president is appointed through elections and becomes the head of the Senate [12]. In Turkey, the Vice President is appointed directly by the President and dismissed from office, if deems.

US president can affect to legislative power through veto. Two chambers can overcome veto with 2/3 majority of members [12]. In Turkey, to overcome a presidential veto, the Parliament needs to adopt the same bill with an absolute majority [2017, md.77] In the United States, all federal officials, including the president, may be dis-

missed by impeachment as a result of crimes such as betrayal, bribery, abuse of power. In Turkey, impeachment can only be applied to the president. [12]

One of the main differences in the new system of Turkey is that it gives the president the power to make a decree. Article 23 states that the President may issue decrees with the force of law on issues related to his executive powers. Before the amendment, such decrees were issued only in emergency circumstances. But now the president can make a decree on any matter except for fundamental rights and freedoms, nationality, political rights and on topics that are clearly regulated by legislation [13, 104]. In the United States, an executive order is only accepted on issues related to foreign policy and in emergency case. The Senate may approve or change it by law [12]. Political conditions and processes make it important to Turkish president fast decision making and that's why this change will cope the problems occurred in the past in terms of limits about adopting orders by the head of country.

Professor Burhan Kuzu, a member of the Constitutional Council who made the project, acknowledged that the changes were made to prevent the problems emerged in US system. Burhan Kuzu calls this system applied in Turkey as "Turkish type presidential government" and admittes that this model is closer to some the systems used in Latin American countries. Kuzu said that they don't accept the federal system in the United States and they apply a model that strengthens local governance based on a unitary system in Turkey [9, 126]. According to him, not having authority of the US president to issue executive order causes government crises and this situation will be prevented in Turkey.

### **Conclusion**

The processes that took place in Turkey's political history over the past 50 years: the successive coalition governments, government crises, terrorism, military coups and separatism have created a need for strong presidential government in Turkey. Transition to new system was inevitable particularly after 2007 referendum which brought change about electing president by people and removed parliamentary system. The main discussing issue about new presidential government proposed by Justice and Development Party is about differences with US system. Having made successful steps in the political, economic, and regional politics of the country, Recep Tayyib Erdogan has tried to establish a democratic system and to ensure the integrity of Turkey through transformation to strong presidential government. Having the right working mechanism of checks and balances system due to historical conditions of the country, party system, presence of pressure groups, political culture away from ideological and ethnic polarization is the success reason of not only presidential government, but also federal system and local government in US. The coexistence of these factors is not observed in all countries. Thus, while saying "presidential" government, first of all US comes to mind. In Turkey, the new presidential system will eliminate all this problems and will lead to undisciplined-democratic party system, improved political culture, democratic election system and will give opportunities to the president of Turkey to cope with regional and global problems that this country faces recent years. Through this way the AKP tries to create a political concept to push Turkey to the path of democracy, with abolishing existing shortcomings, plus the right of president to issue decree with force of law, holding of the presidential and parliamentary elections at the same time, and the right of Assembly and the head of state to send each other to elections will avoid

Turkey from problems that negatively affect US system. With one word, if these steps will be implemented properly, the transition to presidential government would be a turning point in Turkey's political history and make it one of the most democratic states over the world.

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