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Turkey: On the Road to a Presidential System

Karol Wasilewski

The Turkish parliament has adopted a constitutional reform package that introduces a presidential system. The amendments not only impair parliament's role but also weaken the judiciary's independence. To enter into force, the reform package must be approved by referendum, set for 16 April. The referendum campaign will intensify tensions in Turkey and the changes could lead to a deterioration of Turkey-EU relations.

Constitutional Change and Presidential System. The demand for a new constitution has been an enduring component of Turkey's political debates. The current charter was adopted after the 1980 coup d'état while the military was still in charge. Thus, the constitution is perceived by society to be a relic of the coup. That is why in almost all political campaigns since then, including the two last parliamentary elections in June and November 2015, leading Turkish parties have been speaking about the need for a modern, democratic constitution for Turkey. However, while there has been consensus among the major political parties on the need to change the constitution, discord has characterized their talks on introducing a presidential system, which has been pushed by the ruling Justice and Development Party (AKP).

The proposal to introduce such a change to Turkey's political system isn't new. It cropped up during the presidencies of both Turgut Özal (1989-1993) and Süleyman Demirel (1993-2000). Nevertheless, the argument over the presidential system came back to the fore with the election of AKP leader Recep Tayyip Erdoğan as president in August 2014. During his campaign, he repeatedly claimed he wouldn't be "a regular head of state". He asserted he would push for an "active presidency" model and wouldn't be impartial, claiming he "always stands on the nation's side". Although Erdoğan's membership of AKP ceased upon his election to the presidency, he maintains huge influence on the party. Ever since, the party has been pushing for the change to a presidential system. Its politicians claim that it would dissolve the problems of a "dual executive" (prime minister and president) and would contribute to the country's development. The opposition disapproves of these arguments and asserts that a presidential system means the end of Turkish democracy. Because AKP didn't have the majority it needed to push the constitutional reform through without help, its projects have been in limbo. The situation changed in October 2016 when Devlet Bahçeli, the Nationalist Movement Party's (MHP) leader, voiced support for the change. This political turnabout was the result of complex political bargaining. In return for the MHP leader's support, the government has allegedly pledged to continue the fight against the Kurdistan Workers Party (PKK)—formally considered by Turkey, the EU and NATO to be a terrorist outfit—and may have even promised to include some MHP deputies in a future cabinet. In any case, cross-party dialogue on the constitutional reform package was initiated and ended in December 2016, when a joint project was revealed.

The Reform Package. The constitutional reform package consists of 18 articles. Under its provisions, the head of state—the chief executive—will not be required to break links to his or her party. The president would be elected through general elections to a maximum of two five-year terms. Furthermore, presidential and parliamentary elections will be held at the same time. According to the reforms' authors, this will encourage voters to vote for the same political option in the two elections. However, this formula carries another consequence, namely the possibility of the use of the so-called "guillotine" system in which either the president or parliament with a three-fifths majority can force early, simultaneous presidential and parliamentary elections. If parliament decides to call early elections during a president's second term, the head of state will have the opportunity to stand as a candidate.

The president may appoint ministers who will not be parliament members and vice presidents. The censure motion will cease to exist, and a process called “investigation” (*soruşturma*) will be introduced. It will be limited to ministers and vice presidents. However, the president’s criminal liability will be increased. A head of state can be charged not only with treason, the same as now, but also any other crimes. Initiating a criminal procedure against a president would require an absolute majority of parliament. The indicted president would be tried before a Constitutional Tribunal acting as a State Court (*Yüce Divan*).

Under other reforms, the head of state will have broad powers, from appointing ambassadors to leading security policy. What is more, the president will be able to issue decrees on “affairs concerning executive power”. This power will be limited, for example, to issues “clearly defined in law” and may be voided or altered by an act passed by parliament. The head of state also will be responsible for presenting a budget.

The constitutional reform package contains meaningful provisions concerning the judiciary. A key issue is the group of modifications to the Supreme Board of Judges and Prosecutors, which is responsible for personnel policy and disciplinary action in the judicature. According to the suggested changes to the constitution, the board will be reduced from 22 to 13 members and appointed by the president and parliament. The change cancels the right granted to the judiciary in 2010 to appoint 11 of the board’s members. It also means that all the most important judges in Turkey will be appointed by politicians (nearly 70% of them by the head of state).

Controversy. The proposals to change the constitution have faced heavy criticism by the other parties in parliament, namely the Republican People’s Party (CHP) and the Peoples’ Democratic Party (HDP). Some MHP deputies have also raised their objection, among them such significant politicians as Atilla Kaya, its former deputy leader. They claim that the constitutional reform will contribute to regime change, resulting in one-man rule because it sharply increases the head of state’s position, impairs parliament’s role and weakens the judiciary’s independence.

CHP leaders announced their intent to filibuster the debate on the package as soon as it reached parliament but failed. Between 10 and 21 January, AKP and MHP deputies voted on the constitutional reforms, with each article in the package receiving more than 330 votes, enough to send them to the nationwide referendum planned for 16 April.

The parliament votes were extremely turbulent. Nonetheless, the greatest controversy was stirred by the lack of many AKP deputies to use a secret ballot, required under Article 175 of the current constitution. This suggests that the parliamentarians acted under immense pressure and that they were afraid of potential consequences. It calls into question the rule of law in Turkey.

What to Expect. The upcoming referendum campaign will be intense and aggressive. The opposition will argue that the proposed reforms are undemocratic and will question the legality of the parliament voting. From CHP’s leader Kemal Kılıçdaroğlu’s statements, one can conclude that the opposition will also try to portray the proposed changes as a way to introduce a federal system and the division of Turkey, attempting to persuade to their side nationalist voters afraid of such a development. The government and President Erdoğan will also try to reach those same voters because key indicators are that it will be precisely their votes, along with conservative Kurdish voters, who will decide the referendum’s fate. Observers therefore should expect the debate to be aimed at mobilizing nationalist and conservative voters (recent surveys suggest that that group may constitute 60-70% of voters). One can also expect some anti-Western rhetoric because it is well-received by this group. Furthermore, the government camp might continue to insist that the presidential system is the way to resolve Turkey’s numerous problems and guarantee the country’s development.

Opinion polls do not give a clear answer as to whether the government will be able to mobilise enough support for its constitutional changes. Nonetheless, they do show that most voters do not understand the consequences of the changes. As well, the circumstances under which the campaign will be held, with the country still under a state of emergency imposed after the failed coup in July 2016, means the government side should have a better chance to convince the public to side with it. Also in the authorities’ favour is the huge level of state control over media, which helps shape the political discourse, and the huge level of confidence in the president. Moreover, recent changes to election law that make voting easier for Turks who live abroad may influence the referendum result. Previous elections have shown that most Turks who live outside the country prefer AKP. Since the circumstances of the referendum campaign are in the government’s favour, that Turkish society would accept the changes and presidential system seems feasible.

The most meaningful consequence of the constitutional reforms on Turkey’s foreign policy will be the increase in Erdoğan’s control over it. This may result for a time in greater unpredictability and service to the Turkish president’s political whims. However, this shouldn’t change either Turkey’s commitments to NATO or its Syria policy, because actions in these areas are already greatly influenced by the president. Yet, the constitutional reforms may result in further serious tensions in Turkey-EU relations. If the doubts expressed by the Council of Europe and others that the changes do not guarantee adequate separation of powers or effective checks and balances prove to be true, continuing the Turkey-EU negotiation process may be impossible. Thus, the EU should prepare a strategy to prepare to re-establish its influence on Turkey in the long term. The bloc should make use of instruments that will be both helpful in maintaining day-to-day cooperation with the Turkish government (such as negotiations about reform of the Custom Union or the visa regime) and others directed towards Turks themselves (EU projects at a more local level). The Polish government can help set the tone for a discussion about the preparation of such a strategy.