TURKEY'S NEW GOVERNMENTAL INSTITUTIONS UNDER THE RECENT CONSTITUTIONAL AMENDMENTS AND THE MAIN DIFFERENCES BETWEEN THE TURKISH AND US PRESIDENTIAL SYSTEMS

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Abstract- Turkey no longer features a parliamentary system of government since the recent constitutional amendments gave birth to a sui generis presidential system as of July 9, 2018. As such, new governmental institutions have been established in line with the new constitutional amendments and accordingly the administrative organization of Turkey has changed dramatically. On the other hand, there are significant differences between the presidential systems of Turkey and the United States of America. Thus, the said new governmental institutions and the material differences between the two governmental systems will be reviewed in this study.

Index Terms - Differences between the presidential systems of Turkey and of the United States of America, New governmental institutions of Turkey, Presidential System of Turkey, Presidential System of the United States of America

I. INTRODUCTION

Turkey abandoned the parliamentary system of government and adopted a sui generis presidential system as of July 9, 2018. Thus, new governmental institutions have been established in line with the new system of government and the administrative organization of Turkey has dramatically changed accordingly. Although Turkey's new system of government is qualified as a presidential system, there are some major differences between the presidential system of Turkey and the one of the United States of America. In this essay, we will first have a short look on the new governmental institution and then review the major differences between the said two presidential systems.

II. TURKEY'S NEW GOVERNMENTAL INSTITUTIONS

One major administrative institution that Turkey did not have before is the "vice – president". Precisely speaking, "the Turkish Constitution through Articles 104/8 and 106/1 and 4 introduced a new post/office in the governmental organization: Vice-Presidency. The Turkish Constitution necessarily gave the President the power to appoint one or more vice-presidents and dismiss them." [1] However, "the legal status of the vice-president was left far from clear in the Turkish Constitution"[2], and also "the Turkish Constitution is completely silent about the duties and powers of the vice-president. This leads us to conclude that the duties and powers of the vice-president shall be subject to the decision, or rather discretion of the President."[3]

Another significant change has been made regarding the status of the ministries. That's is to say, ministers were top officials of the relevant public services and they were responsible to the Parliament in line with the parliamentary system of government. However, they are now secretaries of the President and therefore they are responsible to the President. Moreover, "the Constitution of the Republic of Turkey gives the President full and complete authority to form the executive organ. The President is authorized to establish and determine the organization as well as the duties and powers of the ministries and abolish them. The ministers shall be appointed and dismissed by the President."[4] It should also be noted that as required by the rigid separation of powers of the presidential systems, "if a member of Parliament was appointed minister, he/she will lose his/her position as member of Parliament."[5]

New system of government also introduced Presidency Policy Councils and Presidency Offices that did not exist in the previous system of government. Pursuant to Articles 20, 21 and 22 of the Presidential Decree

[1] See Bülent SÖZER, *State Organs and Their Rule Making Powers under the New Constitution of the Republic of Turkey*, Vedat Publishing, İstanbul, 2018, p. 72, 73.
[2] See Bülent SÖZER, *State Organs and Their Rule Making Powers under the New Constitution of the Republic of Turkey*, Vedat Publishing, İstanbul, 2018, p. 74.
[3] See Bülent SÖZER, *State Organs and Their Rule Making Powers under the New Constitution of the Republic of Turkey*, Vedat Publishing, İstanbul, 2018, p. 74.
[4] See Bülent SÖZER, *State Organs and Their Rule Making Powers under the New Constitution of the Republic of Turkey*, Vedat Publishing, İstanbul, 2018, p. 76.
[5] See Bülent SÖZER, *State Organs and Their Rule Making Powers under the New Constitution of the Republic of Turkey*, Vedat Publishing, İstanbul, 2018, p. 76.

numbered 1 Presidency Policy Councils put forward proposals to the President regarding the decisions to be taken and the policies to be determined by the President. Nine policy councils have been established and they are responsible for policies on "science, technology and innovations", "education", "security and foreign policy", "law", "culture and arts", "health and food", "social politics" and "local government". The President is the head of the said nine policy councils. As for the Presidency Offices, Article 525 of the Presidential Decree numbered 1 sets forth that unlike the policy councils stated above, such offices have legal entities. Accordingly, these offices enjoy administrative and financial autonomy. Article 525 also states that four offices have been established and these are "Digital Transformation Office", "Finance Office", Human Resources Office" and "Investment Office". Pursuant to Article 527 of the Presidential Decree numbered 1, the duties of the said offices are, among others, as follows: Digital Transformation Office coordinates the digital transformation of public services (i.e. e-state related issues) and works on project regarding cyber security. Finance Office monitors national and international banking and finance sector and reports the analysis it makes thereon. Human Resources Office works on projects that aim at developing the human resource in line with Turkey's future goals. Investment Office is responsible for incentives that would lead to an increase in investments to be made in Turkey.

One last fundamental change in the administrative organization is the Administrative Affairs Directorate of the Presidency that replaced the Secretariat General of the Presidency of the previous system of government.[6] Pursuant to Article 5 of the Presidential Decree numbered 1, Director of Administrative Affairs who is the highest ranking civil servant in Turkey is the head of the Administrative Affairs Directorate of the Presidency and he/she is appointed directly by the President. Pursuant to Article 6 of the Presidential Decree numbered 1, Director of Administrative Affairs is responsible for, among others, the following: Rendering proper services to the President regarding the President's duties foreseen by the Turkish Constitution, ensuring adequate relations between the President and the Parliament, and ensuring a proper cooperation among public entities.

As the main institutions that have recently been included in the administrative organization in Turkey have been reviewed above, we should now mention the fundamental differences between the Turkish presidential system and the one of the United States of America. As the presidential system of government was actually born in the United States of America, we believe it is important to see the said differences between the two systems.

III. MAJOR DISSIMILARITIES BEWEEN THE PRESIDENTIAL SYSTEM OF TURKEY AND THE ONE OF THE UNITED STATES OF AMERICA

It is claimed that the Turkish Presidential System does not include the problematic qualities of the American Presidential System that would often lead to severe blockages between the President and the Congress, and that accordingly the Turkish system is an original model of government that is established taking into account the proposals aimed at the rationalization of the American model.[7] Therefore, we believe it is essential to review the principal dissimilarities between the two systems in this respect. Major differences between the Turkish Presidential System and the Presidential System of the United States of America are as follows:

- Article 77 of the Turkish Constitution sets forth that "elections for the Grand National Assembly of Turkey and presidential elections shall be held every five years and on the same day", and that "if the required majority cannot be obtained in the first ballot of a presidential election, a second ballot shall be held in compliance with the Procedure of Article 101." And, the said Article 101 states that "if absolute majority cannot be obtained in the first ballot, the second ballot shall be held on the second Sunday following this ballot. Two candidates who received the greatest number of votes in the first ballot run for the second ballot, and the candidate who receives majority of valid votes shall be elected President of the Republic." On the other hand, Article 1 / Section 2 and Article 1 / Section 3 of the Constitution of the United States of America set forth respectively that "the House of Representatives shall be composed of members chosen every second year by the people of the several states" and that "the Senate[8] of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years." As is seen from above, elections for both the Turkish legislature and the Turkish President are held simultaneously whereas this is not the case in the US. As such, it can be alleged that the aim of the simultaneous elections in Turkey is actually to create a legislature that would follow the policies of the President. Precisely speaking, the President and the

[6] See Kemal GÖZLER & Gürsel KAPLAN, *İdare Hukuku Dersleri*, Ekin Publishing, Bursa, September 2018, p. 144.

[7] See Yavuz ATAR, *Türk Anayasa Hukuku*, Seçkin Publishing, Ankara, September 2017, p. 181.

[8] Article 1 / Section 1 of the US Constitution states that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

majority party would highly likely share the same political values and ideas.

- Article 1 /Section 2, Article 1 / Section 3 and Article 2 / Section 1 of the Constitution of the United States of America set forth respectively that "The House of Representatives shall be composed of members chosen every second year by the people of the several states", and that "The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years" and finally that "He (meaning the President of the United States of America) shall hold his office during the term of four years, … together with the Vice President, chosen for the same term." As is seen from the aforementioned constitutional provisions, one major quality of the Presidential System of the United States of America is that the President holds his office until the expiry of his/her term of office and no one including the Congress has the authority to terminate such term of office stated by the US Constitution. Likewise, the President of the United States of America has no authority to dissolve the Congress either. As such, the members of both the House of Representatives and the Senate also hold their office until the expiry of their term of office without any intervention of the President. The rigid separation of powers foreseen by the US Presidential System actually necessitates such quality. However, this is not the case in the Turkish Presidential System. Indeed, pursuant to Article 116 of the Turkish Constitution, "The Grand National Assembly of Turkey may decide to renew the elections by three-fifth majority of the total number of its members. In this case, the general election of the Grand National Assembly of Turkey and the presidential election shall be held together. If the President of the Republic decides to renew the elections, the general election of the Turkish Grand National Assembly and the presidential election shall be held together. If the Assembly decides to renew the elections during the second term of the President of the Republic, he/she may once again be a candidate. … The term of office of the Assembly and the President of the Republic thus elected shall also be five years." Accordingly, both the President and the Turkish Parliament have the authority to terminate the term of office of the other provided that the elections will be renewed for both the President and the Parliament. The renewal of elections for both the President and the Parliament as stated above is alleged to be inserted in the Turkish Presidential System in order to avoid the deadlocks and crisis to be occurred due to disagreements between the President and the Parliament.[9]

- As is seen from Article II / Section 1 of the Constitution of the United States of America that is mentioned in the above paragraph, the Vice President of the United States of America is also elected for four years just like the President himself / herself. On the other hand, Article 106 of the Turkish Constitution states that "the President of the Republic may appoint one or more deputies after being elected." Thus, the Turkish Presidential System foresees one or more vice presidents who are appointed by the President whereas the Presidential System of the United States of America foresees only one vice president who is elected in line with the relevant constitutional provisions. Accordingly, pursuant to Article 106 of the Turkish Constitution, "if the presidential office becomes vacant for any reason, the presidential election shall be held within forty-five days. The Deputy President of the Republic of Turkey shall act as and exercise the powers of the President of the Republic until the next President of the Republic is elected." As is seen, Turkish Vice President(s) cannot replace the President until the expiry of the term of office of the President if the presidential office becomes vacant for any reason since the Turkish Vice President(s) are appointed but not elected. However, pursuant to Article 2 / Section 1 of the Constitution of the United States of America, "in case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President". Therefore, in the United States of America, under normal circumstances, the Vice President replaces the President and completes the term of office of the President in case the presidential office becomes vacant. This is because the Vice President is elected (but not appointed) for four years just like the President himself / herself. One may ask as to why the vice president(s) are appointed (but not elected) in the Turkish Presidential System, and the reason for that is claimed to be the following: The dual executive power consisting of a president elect and a council of ministers (a prime minister in particular) of the former system of government in Turkey led to legitimacy related problems since both the president and the ministers (the prime minister in particular) were both elected. Accordingly, the new system of government in Turkey did not actually foresee a vice president who is to be elected in order to avoid the legitimacy related problems to be occurred between a president and a vice president (who are both to be elected).[10]

[9] See Yavuz ATAR, *Türk Anayasa Hukuku*, Seçkin Publishing, Ankara, September 2017, p. 180.

[10] See Veysel EREN & Berat AKINCI, *"Yasama Yürütme İlişkileri Açısından Başkanlık Sistemi İle Cumhurbaşkanlığı Hükümet Sistemi'nin Karşılaştırılması"* in *Cumhurbaşkanlığı Hükümet Sistemi – Kamu Yönetiminde Değişim (Editor: Yüksel DEMİRKAYA)*, Hiperyayın Publishing, İstanbul, 2018, p. 60.

- Article 104 of the Turkish Constitution states that "he/she (meaning the President) shall appoint and dismiss the deputies of the President of the Republic and the ministers. He/she shall appoint and dismiss the high ranking executives, and shall regulate the procedure and principles governing the appointment thereof by presidential decree[11]." Thus, the Turkish President has the authority to directly appoint the Vice President(s), the ministers and the high ranking executives. In other words, the Turkish President does not have to seek pre or post consent from the Turkish Parliament in order for him/her to appoint or dismiss high level officials. On the other hand, the President of the United States of America has to get the Senate's approval in order to appoint high level officials including his/her secretaries. Therefore, it is probable in the United States of America that a person may not be appointed as a secretary or another high ranking executive due to lack of approval of the Senate, or it is also possible that such appointment process would last for too long because of the Senate's attitude.[12] The fact that the said appointments are subject to the Senate's approval in the American system of government is considered by some Turkish scholars an argument that leads to a "weak" president.[13] In addition, it is also argued by some Turkish scholars that a system of government including a president who does not need to seek approval from a parliament for high level appointments leads to high level bureaucrats who would serve during the same term of office with the President and accordingly the executive power would have no excuses in order to serve properly. [14] Accordingly, it is alleged that the authorities of the President and the Parliament have been separated so as not to create conflicts between the President and the Parliament regarding the appointment of high level bureaucrats.[15]

- Adoption of budget bill is under the sole authority of the Congress in the United States of America. On the other hand, preparation of budget bill and submission thereof to the Parliament in under the President's authority in Turkey.[16] Indeed, Article 161 of the Turkish Constitution sets forth that "the President of the Republic shall submit budget bill to the Grand National Assembly of Turkey at least seventy-five days before the beginning of the fiscal year. The budget bill shall be debated at the Committee on budget. The budget bill adopted by the Committee within fifty-five days shall thereafter be debated and adopted by the Plenary before the beginning of the fiscal year. If the budget law cannot be put into force within due period, the provisional budget law shall be enacted. If the provisional budget law cannot also be enacted, the budget of the previous year shall be applied increasingly as per the revaluation rate until the new budget law is adopted." The reason for providing the Turkish President with such authority is explained by some Turkish scholars on the grounds that a president with no authority on budget may be put in a position in which he/she cannot manage to accomplish even the least significant governmental matters in case a parliament does not adopt the relevant budget.[17] It should also be noted that the Turkish President has no authority to draft bills other than the budget bill (and the final accounts bill[18]).[19]

CONCLUSION

Turkey's new system of government, a sui generis presidential system, is in force as of 9 July, 2018. Accordingly, new governmental institutions have been established in line with such new system. Furthermore, Turkey's Presidential System pretends to rationalize the problematic qualities of the reference model, the American Presidential System. On the

[11] It should be noted here that this provision provides the President with the autohrity to determine as to who could qualify as a high level official. See Bülent SÖZER, *State Organs and Their Rule Making Powers under the New Constitution of the Republic of Turkey*, Vedat Publishing, İstanbul, 2018, p. 56.

[12] See Veysel EREN & Berat AKINCI, "*Yasama Yürütme İlişkileri Açısından Başkanlık Sistemi İle Cumhurbaşkanlığı Hükümet Sistemi'nin Karşılaştırılması"* in *Cumhurbaşkanlığı Hükümet Sistemi – Kamu Yönetiminde Değişim (Editor: Yüksel DEMİRKAYA)*, Hiperyayın Publishing, İstanbul, 2018, p. 59.

[13] See Yavuz ATAR, *Türk Anayasa Hukuku*, Seçkin Publishing, Ankara, September 2017, p. 180.

[14] See Veysel EREN & Berat AKINCI, "*Yasama Yürütme İlişkileri Açısından Başkanlık Sistemi İle Cumhurbaşkanlığı Hükümet Sistemi'nin Karşılaştırılması"* in *Cumhurbaşkanlığı Hükümet Sistemi – Kamu Yönetiminde Değişim (Editor: Yüksel DEMİRKAYA)*, Hiperyayın Publishing, İstanbul, 2018, p. 59.

[15] See Yavuz ATAR, *Türk Anayasa Hukuku*, Seçkin Publishing, Ankara, September 2017, p. 180.

[16] See Veysel EREN & Berat AKINCI, "*Yasama Yürütme İlişkileri Açısından Başkanlık Sistemi İle Cumhurbaşkanlığı Hükümet Sistemi'nin Karşılaştırılması"* in *Cumhurbaşkanlığı Hükümet Sistemi – Kamu Yönetiminde Değişim (Editor: Yüksel DEMİRKAYA)*, Hiperyayın Publishing, İstanbul, 2018, p. 63, 64.

[17] See Veysel EREN & Berat AKINCI, "*Yasama Yürütme İlişkileri Açısından Başkanlık Sistemi İle Cumhurbaşkanlığı Hükümet Sistemi'nin Karşılaştırılması"* in *Cumhurbaşkanlığı Hükümet Sistemi – Kamu Yönetiminde Değişim (Editor: Yüksel DEMİRKAYA)*, Hiperyayın Publishing, İstanbul, 2018, p. 64; See Yavuz ATAR, *Türk Anayasa Hukuku*, Seçkin Publishing, Ankara, September 2017, p. 180.

[18] Article 161 of the Turkish Constitution states that "central government final accounts bills shall be submitted to the Grand National Assembly of Turkey by the President of the Republic within six months of the end of the relevant fiscal year. The Court of Accounts shall submit its statement of general conformity to the Grand National Assembly of Turkey within seventy-five days of the submission of the final accounts bill to which it is related. The submission of the final accounts bills and the statement of general conformity to the Grand National Assembly of Turkey shall not preclude the auditing and trial of the accounts fort he relevant fiscal year that have not been concluded by the Court of Accounts, and shall not mean that a final decision has been taken on these accounts. The final accounts bill shall be debated and adopted together with the budget bill of the new fiscal year."

[19] See Mehmet UÇUM, *15 – 16 Temmuz'dan Cumhurbaşkanlığı Sistemine Türkiye'nin Demokratik Birliği Mücadelesinde Yeni Aşama – 16 Nisan*, Alfa Publishing, İstanbul, July 2018, p. 100.

other hand, as Turkey's system is brand new, we believe we should wait and see as to how the system will evolve.

REFERENCES

[1] Bülent SÖZER, State Organs and Their Rule Making Powers under the New Constitution of the Republic of Turkey, Vedat Publishing, İstanbul, 2018.

[2] Kemal GÖZLER & Gürsel KAPLAN, İdare Hukuku Dersleri, Ekin Publishing, Bursa, September 2018.

[3] Mehmet UÇUM, 15 – 16 Temmuz'dan Cumhurbaşkanlığı Sistemine Türkiye'nin Demokratik Birliği Mücadelesinde Yeni Aşama – 16 Nisan, Alfa Publishing, İstanbul, July 2018.

[4] Veysel EREN & Berat AKINCI, "Yasama Yürütme İlişkileri Açısından Başkanlık Sistemi İle Cumhurbaşkanlığı Hükümet Sistemi'nin Karşılaştırılması" in Cumhurbaşkanlığı Hükümet Sistemi – Kamu Yönetiminde Değişim (Editor: Yüksel DEMİRKAYA), Hiperyayın Publishing, İstanbul, 2018, p. 35 - 70.

[5] Yavuz ATAR, Türk Anayasa Hukuku, Seçkin Publishing, Ankara, September 2017.

[6] Presidential Decree numbered 1 on the Organizational Structure of the (Turkish) Presidency published in the Official Gazette dated July 10, 2018 and numbered 30474.

[7] The Constitution of the Republic of Turkey (https://global.tbmm.gov.tr/docs/constitution_en.pdf Date of Access: December 5, 2018).

[8] The Constitution of the United States of America, Applewood Books Bedford, Massachusetts, ISBN 978-1-55709-105-5

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